

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 256 OF 2002

BETWEEN:

ANDREW DOUGAN

Claimant

v

SHELLEY-ANN DABREO

Defendant

Appearances:

Mr. M. Malcolm for the Claimant

Miss Petina Knights for the Defendant

2008: November 4th
December 4th

JUDGMENT

BACKGROUND

[1] **JOSEPH, Monica J:** Around 1992 Claimant Dougan and Defendant Dabreo formed a common law relationship that produced three children. Dabreo has a daughter of whom Dougan is not the father.

[2] The parties and the children lived together in a two storey house, firstly downstairs while the upper storey was being constructed, then upstairs, on land at Colonarie. Differences arose between the parties and Dabreo moved with the children to the downstairs of the house and their relationship ended in 2001. Dabreo still lives downstairs and Dougan lives upstairs.

[3] Claimant Dougan claims:-

- (1) a declaration that the dwelling house belongs to him;
- (2) a declaration that the Defendant has no proprietary interest in the house;
- (3) an order for the defendant to vacate the house.

THE ISSUE AND LAND DOCUMENTS

[4] The issue is whether the house belongs to claimant Dougan; whether defendant Dabreo has a proprietary interest in the house and the extent of that interest.

[5] Legal ownership is evidenced by Deed 35/1998 between Government and Dougan dated 24th March 1998 of 4,375 square feet of land at Colonarie numbered Lot 25 on Plan C850.

[6] There is a Mortgage Deed No.1286/1998 dated 1st May 1998, between mortgagors Dougan and Dabreo, and the mortgagee The National Commercial Bank, mortgaging the land on which the house stands, to secure a sum of \$5000.00 which sum Dougan acknowledges in his Particulars of Claim, filed on 11th June 2002, was to pay for the lot of land. As both parties signed that mortgage deed, Dougan acknowledges that Dabreo has some interest in the land.

[7] By Mortgage Deed No. 28 of 1999 dated 5th January 1999 between mortgagor claimant Dougan and mortgagee The National Commercial Bank, there was a further charge on the land of \$35,000.00. Dabreo was not a party to this deed and knew nothing about this further charge. The bank's loan activity statement running from 8th January 1999 to 5th October 2005 is in Dougan's name.

SUBMISSIONS – 14th November 2008

[8] On 14th November 2008 counsel submitted written submissions.

[9] Mr. Malcolm's argument for Dougan was that due to the small contribution, if any, which Dabreo is claiming that judgment ought to be given in favour of Dougan and that Dabreo be ordered to leave the property on a specified date.

[10] Miss Knight's argument for Dabreo was that the maxim equality is equity should apply and that Dabreo ought to be awarded a half share interest in the house.

THE LAW AND ITS APPLICATION

[11] Miss Knight pointed to **Midland Bank PLC v Cooke** (1995) 27 H.L.R. 733: At page 8 para 2, the Court said:

"I take it to be clear that if the Court is satisfied that it was the common intention of both spouses that the contributing wife should have a share in the beneficial interest and that her contributions were made upon this understanding, the court in the exercise of its equitable jurisdiction would not permit the husband in whom the legal estate was vested and who had accepted the benefit of the contributions to take the whole beneficial interest merely because at the time the wife made her contributions there had been no express agreement as to how her share in it was to be quantified.

....In such a case the court must first do its best to discover from the conduct of the parties whether any inference can reasonably be drawn as to the probable common understanding about the amount of the share of the contributing spouse upon which each must have acted in doing what each did, even though that understanding was never expressly stated by one spouse to the other or even consciously formulated in words by either of them independently. It is only if no such inference can be drawn that the court is driven to apply as a rule of law, and not as an inference of fact, the maxim "equality is equity" and to hold that the beneficial interest belongs to the spouses in equal shares. The same result however may often be reached as an inference of fact."

[12] Mr. Malcolm pointed to **Burns v Burns** (1984) 1 AER 244, and provided this extract:

"...The Court would not impute a common intention that the plaintiff was to have a beneficial interest in the property merely from the fact that she had lived with the defendant for 19 years, had looked after the family's well being by performing the domestic duties of the household and had brought up their children..."

[13] Miss Knight's argument is that the Court should follow the principle outlined by Sir Raymond Evershed MR in Rimmer v Rimmer at p 867 "C" and followed in Austin v Austin and Stonich v Stonich:

"Where the Court is satisfied that both the parties have a substantial beneficial interest and it is not fairly possible or right to assume some more precise calculation of their shares I think that equality almost necessarily follows."

[14] I think that the key word is "substantial". It is necessary for me to consider common intention and substantial beneficial interest. If I find that there was common intention to pool their resources then I am to examine the evidence to arrive as to whether any thought was given by the parties as to the extent of that interest.

[15] Was it equality or was their interest to bear some proportion to the contributions they have made? If no intention was expressed as to individual shares and it is not possible to ascertain what those shares ought to be then equality is equity.

[16] However, if it is possible for the Court to arrive at contributions made, as precisely and fairly as it can, then the Court should do so. Where the Court finds that substantial contributions have been made to the property by both parties, then that must be reflected in the order that the court makes, that is, equal shares. If contribution was made by a party that is not substantial then that party may have a proprietary interest in the property.

[17] Paragraph 27 of Dabreo's Defence reads:

"The Defendant by her labour, efforts and lack of financial remuneration is entitled to a half share in the said property and accordingly to continue to occupy same."

[18] I consider what was the common intention was at three stages –

- (1) 1992 the date the parties moved into the dwelling house;
- (2) the years of their relationship including the contributions made to the family finances;
- (3) what was the position at the time of their separation in 2001.

- [19] It was the intention of both of us to live as family and be happy stated Dougan. I take that statement to be an expression of what the common intention of the parties was at the time they moved into the house in 1992 – not merely the emotional element, but also as a family pooling of financial resources throughout the relationship. The latter element adding to the former element, both contributing to a happy family environment. That is what I read into Dougan’s evidence about their intention.
- [20] At the commencement of the relationship there was that intention, but the parties did not go into details of the emotional element nor the financial element - as they were a family. It is now for the Court to sort out the financial element by looking at their conduct relating to finances during that relationship.
- [21] In 1998 that intention was continuing as both parties signed a mortgage deed for \$5000.00 to pay for the land. So far as that mortgage deed is concerned, I hold that “equality is equity” and the parties share equally in the beneficial interest in the land.
- [22] Having applied equality is equity to the beneficial interest in land, am I to apply that maxim to the house? I think not as I understand the evidence. The common intention seems not to have been sustained as in 1999, Dougan obtained a further charge on the property to facilitate construction of the upper storey of the house, of which Dabreo stated she had no knowledge. He made all the mortgage payments. Dougan’s evidence was that he also borrowed \$10,000.00 from his brother. It would seem that from 1999 the relationship was beginning to deteriorate and Dougan was abusive towards Dabreo.
- [23] As Dabreo’s evidence was that from 1999 Dougan was abusive towards her which was reported to the police, I do not believe her evidence that she assisted Dougan with the cultivation of bananas after she moved downstairs which I have found to be in 2001. I shall attempt to decide on the contributions made by the parties from 1992 to 2001.
- [24] I examine how they lived and shared. From the time they moved into the house the parties made contributions to the family finances. Dougan farmed and provided cash, the

proceeds from farming, Dabreo, in kind, assisting Dougan in farming and carried bananas on her head to the road. She managed the household and she took care of the children. Dougan's evidence was that, in addition to himself purchasing groceries for the family, he periodically provided her with cash to purchase groceries until they parted company.

[25] I do not find a beneficial interest in the house by Dabreo merely from the fact that the parties had a relationship and that Dabreo looked after the family's well being as in the case of Burns v Burns. I make the finding of beneficial interest in the property by Dabreo by starting off with the point that both their names appear on the mortgage deed. I add the facts of their relationship of living together and making contributions and Dougan's statement that they intended to live as a family. Dougan has a higher substantial beneficial interest in the house than Dabreo and he holds legal ownership in the land. They share equally in the beneficial interest in the land. What should be the proportions of beneficial interest of the parties?

VALUATION OF HOUSE AND LAND:

[26] The upper section of the house is of a greater value than the lower storey: upper storey is valued at \$79,000.00 – lower storey at \$15,600.00 and land at \$21,875.00.

[27] I make a mathematical connection – as precisely as I can. To do so I allocate points to the factors that make up their claims and contributions and arrive at a percentage property interest.

| Claim and contribution | Allocated points | Dougan | Dabreo |
|---|------------------|--------|--------|
| \$5000.00 | 10 | 5 | 5 |
| \$30,000 (\$5000.00 already accounted for) | 20 | 20 | 0 |

| Claim and contribution | Allocated points | Dougan | Dabreo |
|--|------------------|--------|--------|
| Dougan /Farming. Dabreo(farming/ household management/ enhanced land value | 70 | 40 | 30 |
| Total | 100 | 65 | 35 |

Legal ownership Claimant Dougan - beneficial interest 65%

Proprietary beneficial interest in the house - Defendant Dabreo - - 35%

[28] How do I translate that finding in a practical sense to a dwelling house where the parties are of very modest means? I attempt to do that in a practical sense in the first part of the Order I make. If this turns out not to be practical or workable then the second part of the Order becomes operative.

[29] Order in two parts:

First part: The dwelling house to continue to be occupied in the manner in which it was occupied at the date of the trial – Dougan occupying the upper storey and Dabreo occupying the lower storey.

Second part: Six months after the date of this order, if what is ordered under the first part is unworkable then a valuation report is to be obtained, fee for which is to be shared proportionately 65% - 35%. One party is to pay the other party the value of the other's interest in the property and the receiving party of that value is to vacate the house.

[30] Parties are at liberty to apply to the Court.

[31] I invite counsel for the parties to address the Court in Chambers on costs.

Monica Joseph
High Court Judge (Ag.)
24th November 2008