SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

Claim No. SLU HMT 2003/0009

REUBEN EPHRAIM SMITH

Petitioner

AND

CELESTINE CLAUDIA SMITH

Respondent

Appearances:

Mr. Mark Maragh for Petitioner

Ms. Samantha Charles for the Respondent

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2009: February 3

March 2

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Cottle J:

[1] On 10th August, 2005 the Petitioner applied to the court for a declaration that the matrimonial home and its contents located on Block 1251 B parcel 301 in Grande Riviere Gros Islet is community property within the meaning .of Article 1190 et seq, of the Civil Code of St. Lucia. Alternatively he sought a declaration that the respondent held the property, registered in her sole name, on trust for himself and her in equal shares. He wished to be paid for the value of his share of the property. In his affidavit in support, the petitioner swears that the parcel of land was purchased by the brother of the Respondent with funds supplied him by the Petitioner. The house was built, he says from the proceeds of sale of a jointly owned home in Seattle, Washington.

[2] The respondent, in her affidavit, swears that the parcel of land was a gift to her from her brother. She exhibits the deed of donation. She explains that at the time, the marriage was experiencing difficulties and she had even filed for divorce. Against this background, her brother gave her the property so she could establish a home for herself after the marriage ended. In the event she discontinued her petition and the parties continued to be married until 2004 when the decree nisi was granted, later to be made absolute.

[3] It is convenient to dispose of some of the contentions of the petitioner at the outset. On the question of whether the matrimonial home is community property the answer is that it is not. This argument has been advanced in these courts before. Each time it has been rejected. The incidents of community property are founded on the domicile of the parties at the date of

celebration of the marriage. I can do no better than to repeat the words of Sir Vincent Floissac C. J. in Remy v Prospere 44 W1R 173:

> ***"The codal definition of "community" indicates that community of property is a question of status or matrimonial status. The definition signifies that community is a product, incident or consequence of the matrimonial status. Since article 5 provides in effect that the St. Lucian laws relating to matrimonial status (which is the source of community) apply only to persons domiciled in St. Lucia. It follows that the St. Lucian laws of community do not apply to a husband who was not domiciled in St. Lucia at the time of his marriage. Any doubt as to the restricted application of the St. Lucian laws of community is removed by the proviso to article 1180 which accentuates the otherwise obscure precondition of St. Lucian community that the husband should be domiciled in St. Lucia at the time of his marriage".***

[4] It has also been advanced that S 45 of the Divorce Act can operate to empower the court to award the Petitioner the value of a share in the matrimonial home. This contention cannot stand for the simple reason that the Petitioner has not made any application for a property order. As pointed out by Edwards J. in Barnard v Barnard SLU HMT 2001/0131 delivered on 5th May 2006, such an application must be made pursuant to section 45 (1) (b) of the Divorce Act and Rule 75 of the Divorce rules. In the absence of such an application the petitioner can get no assistance from section 45 of the Divorce Act.

[5] The Petitioner offers an alternative argument to found his entitlement to a share of the matrimonial home. He seeks to a declaration that the respondent holds a share of the home in trust for him.

[6] In Murphy v Quigg et anr 54 WIR 162 Sir Vincent Floissac C. J. defines the implied, constructive or resulting trust in these terms:

> ***"Where a claimant proves that he or she has made a substantial contribution to the acquisition or improvement of property in circumstances from which the court may reasonably infer a common intention on the part of the legal owner of the property and the Claimant that the Claimant would have a beneficial interest in the property by reason of that contribution, the legal owner will be deemed to hold the property on an implied, constructive or resulting trust in favour of the Claimant to the extent of the Claimant's contribution. Such a trust is established merely by proof of the substantial contribution and the common intention"***

[7] From the evidence in this case I am satisfied that the petitioner made a substantial contribution to the cost of the building of the matrimonial home.

[8] The respondent points out that section 14(2) of the then Alien's (landholding Regulation) Ordinance Cap 228 prohibits the holding of any property in trust for an alien. The Petitioner has

always been an alien fir the purpose of the legislation and has never held a license. The Respondent thus argues that she could not hold the property in trust for the petitioner.

[9] This argument has been considered by the Privy Council on appeal from St. Vincent in the case of Young v Bess 46 W!R 165. The reasoning of the Privy Council was adopted by the Court of Appeal in Murphy v Quigg. I see no need to repeat that reasoning here. The interest of the Petitioner is enforceable notwithstanding the underlying illegality.

[10] The evidence before the court as to the contribution of either spouse was unclear. The Petitioner earned more than the respondent but the respondent contributed most of her earnings to the house hold. All properties owned before by the parties had been owned in equal shares.

[11] I therefore grant a declaration that the respondent holds an equal share of the value of the house in trust for the Petitioner. The parties have helpfully agreed on the value of the house at $566,220.00.

[12] There were also applications for periodical payment by both parties. I have considered all of the circumstances of this case, the ages of the parties their financial resources and responsibilities and health included I consider it just to make no order for periodical payments for maintenance to either party.

The Order

[13] The respondent shall pay to the Petitioner the sum of $283,110.00 representing half the value of the matrimonial home. Such payment shall be made within 90 days failing which the Petitioner is at liberty to apply for an order that the home be sold, the amount of the costs of sale deducted, and the sum $283,110.00 be paid to the Petitioner with the balance going to the Respondent.

[14] I award costs to the Petitioner in the sum of $3.000.00.

Brian Cottle

HIGH COURT JUDGE