



**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 38 OF 2007**

BETWEEN:

RUPERT CORNELIUS LAYNE

Petitioner

v

GLADYS ELIZABETH LAYNE

Respondent

Appearances:

Mr. O. Dennie for Petitioner

Ms. Kay Bacchus-Browne for Respondent

CONSOLIDATED WITH

HIGH COURT CIVIL CLAIM NO. 333 OF 2008

BETWEEN:

MATTHEW DENNIE

Claimant

v

DEXTER DESHONG

Defendant

Appearances:

Ms. Kay Bacchus-Browne for Defendant

Mr. O. Dennie for Claimant

2009: March 9th
April 28th
July 29th

JUDGMENT

CLAIMS

- [1] **Joseph Monica J:** Both suits relate to property on which stands a dwelling house at Kingstown Hill (disputed property). Suit 38/2007 is an ancillary application by the respondent that the petitioner make periodical payments, secured provision and lump sum payment; that the petitioner make a property settlement for the benefit of the respondent, pursuant to section 32 of the Matrimonial Causes Act 1989. The respondent also seeks an order pursuant to section 47 of the Matrimonial Causes Act setting aside a reviewable disposition made by the petitioner to defeat the respondent's interest.
- [2] Suit 33 of 2008 is a fixed date claim for recovery of possession of one bedroom in the upper storey of the dwelling hose. The suits were consolidated and, after trial, written submissions were submitted on 29 May 2009, 2nd June 2009 and 12th June 2009.
- [3] The claims advanced and evidence led centered on the ownership and possession of the disputed property with respondent Gladys Layne also claiming the disputed property as the matrimonial home.

BACKGROUND

- [4] Rupert Layne and Gladys Layne were married on 8th April 1959. A decree absolute was granted on 22nd August 2007. There are ten children of the marriage, all born on the disputed property, now all adults. Rupert Layne had children outside of the marriage one of whom is Matthew Dennie claimant in 333/2008, born before the marriage.
- [5] Erica Williams, who died on 13th January 1999, was the owner of the disputed property and permitted the Laynes to live in the dwelling house on the disputed property from about 1961. Around 1984 Gladys Layne moved out of the house. There were conflicting reasons

for her departure. I consider the evidence and I make findings on a balance of probabilities.

THE DISPUTED PROPERTY

[6] Erica Williams by will dated 8th August 1990 devised the disputed property to Rupert Layne, subject to a life interest of Cleve Browne, who obtained probate of the will (179/2000) on 12th December 2000. Cleve Browne died on 25th August 2006.

[7] In March 2002, Gladys Layne stating that she had been in exclusive possession of the disputed property registered a Possessory Deed for the disputed property. On 19th June 2008, Rupert Layne obtained a Declaration of Possessory Title under the Possessory Titles Act 2004 (No. 38 of 2004) (The Act).

[8] The issues of Law submitted by Ms. Bacchus-Browne:

1. Can the High Court make an Order giving away matrimonial property to one spouse only under the Possessory Title Act?
2. What is the effect of material non disclosure by Rupert Layne regarding his possessory title?
3. There were two material non disclosures.
4. What is the wife's share of the matrimonial home?

[9] Material non-disclosures

- (i) That the property was matrimonial property and the wife and children still had actual and constructive possession.
- (ii) The husband never had uninterrupted possession.

[10] The issues submitted by Mr. Dennie:

1. Bearing in mind that Rupert Layne the Claimant's predecessor in title obtained title from the Court pursuant to an Order of Court in respect of which there was no appeal by Gladys Layne who entered an appearance to the application, can this

Court cancel the Order of Court and Certificate of title duly signed by the Registrar with respect to the property in question?

2. Bearing in mind the admissions by both Rupert Layne and Gladys Layne that the property was owned by Erica Williams who gave them permission to live there can this Court find that the property was matrimonial property?
3. Doesn't the conduct of Gladys Layne in taking out a Possessory Deed in 2002 claiming that the disputed property belongs to her absolutely clearly indicate that she never regarded the property was matrimonial property?
4. If Gladys Layne in fact regarded the disputed property as matrimonial property then why three years after the death of Erica Williams she attempted to disinherit her ex-husband by claiming in her Possessory Deed Number 932 of 2002 that the property belongs to her absolutely?
5. Does payment of land taxes by Gladys in the name of "Erica Williams" during her lifetime and after the death of Erica Williams in Gladys Layne's name only entitle her to ownership of the disputed property?
6. Does the spending of monies to repair property which has been acknowledged is owned by Erica Williams give the person who spends the money to repair the property and who has been occupying the property without paying rent the right to claim ownership of the said property on behalf of his mother?

OWNERSHIP - POSSESSION

[11] In this ancillary property matter, husband Rupert claims ownership of the disputed property by devise from Erica Williams. He also claims by adverse possession as against owner Erica Williams. One cannot be an owner and at the same time be an adverse possessor. I note that Rupert applied for a declaration of possessory title after probate of Erica's will on 12th December 2000 by which will she devised the disputed property to him.

[12] Was Erica the owner of the disputed property at the time she devised it to Rupert Layne in 1990? For Rupert Layne to have obtained a Declaration of Possessory Title, the Court would have held that Erica's title as owner was extinguished by virtue of sections 17 and 19 of the **Limitation Act (Cap. 90)**. As Erica's title was extinguished after twelve years, there was no ownership title to pass to Rupert. Those sections read:

17 (1) "No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."

19: "Subject to.....at the expiration of the period prescribed by this Act for any person to bring an action to recover land.....the title of that person to the land shall be extinguished."

[13] Gladys' evidence was that Erica Williams gave her the disputed property (which she also claims as the matrimonial home), but died before she was able to give her documentary title. Documentation is necessary. Merely stating that she was given the disputed property with no supporting documentation does not take the matter further.

[14] Gladys also claims the disputed property by adverse possession. She obtained a registered document no. 932/2002 around March 2002, in which she recited that she had been in actual exclusive continuous uninterrupted and unmolested possession for the past thirty years. (As I mentioned earlier ownership and adverse possession do not co-exist).

[15] Gladys testified that she lived in the house for some twenty three years continuously (1961 to 1984) with her husband and children. In 1984 she moved out and went to live in Rillan Hill. She put other persons to hold her possessory interest, son William who lived there until 2007, followed by Dexter DeShong defendant in suit 333/2008. Rupert had nothing to do with Dexter occupying the house as Rupert's evidence was that he did not know when DeShong went to live in the upper storey of the house.

[16] Gladys' earlier statement of exclusive possession of the disputed property for thirty years made to support a possessory title was untrue. Gladys made that statement before the

passage of the Act but that does not excuse her or relieve her from a consequence.
Rupert Layne's evidence was:

"Agree that house I gave away to Matthew me my wife and children ,lived in it since we marry.....We live in it for years until all children grew up and became big. After my wife left home my son Williams lived there until recently."

[17] Rupert also made a claim of exclusive possession of the disputed property at a point in time. Rupert and Gladys have admitted that they both were in occupation and possession of the house, at the same time, for more than twelve years.

[18] I accept Counsel Bacchus-Browne's submission that there is a consequence where a person withholds information in the process of obtaining a declaration of possessory title under section 26. Subsection (1) of that section enacts that where a person knowingly withholds a fact or matter of information, a declaration of possessory title obtained by means of that fraud or falsehood shall be null and void except as against a bona fide purchaser for valuable consideration without notice and a second or subsequent mortgagee in respect of that piece or parcel of land.

[19] I decline Counsel's invitation to hold void a document obtained by Rupert, or that the Court on its own volition should set aside or vary the judgment obtained without trial. I do not have all the details of what Rupert may or may not have done. In a case where there is a claim that information was concealed, an opportunity to be heard is to be given to the person who it is alleged concealed information. That is not a matter to be handled at this time.

[20] Relative to the submission made that the Court should act under section 27, that section relates to where a mistake is made when the application for possessory title is filed. Was there a material mistake made when the application for possessory title was made, or was information withheld? I pose those questions as both points have been submitted but I do not attempt to answer them as this application before the Court is an ancillary application, not an application by an opposing party claiming interest. That section reads:

“Where a declaration of possessory title is obtained as a result of a material mistake in the application, the declaration shall be void and shall be set aside by an order of the Court upon an application by an opposing party claiming an adverse interest.”

[21] As Erica’s ownership title was extinguished, Rupert and Gladys were in occupation of the dwelling house as the matrimonial home. The Court is to decide whether husband and wife have interest in the matrimonial home, and the extent of the interest. I look at the factors in the Matrimonial Causes Act (Cap 176) to ascertain if there are pointers towards shares of the disputed property. These factors are:

1. The income, earning capacity, property and other financial resources which each of the parties to the marriage has, or is likely to have, in the foreseeable future.
2. The financial needs, obligations and responsibilities which each of the parties of the marriage has, or is likely to have, in the foreseeable future.
3. The standard of living enjoyed by the family before the breakdown of the marriage. This factor does not have any significant bearing.
4. The age of each party to the marriage and the duration of the marriage. There is no age evidence. The marriage lasted from 1959 to 2007.
5. Any physical and or mental disability of either of the parties to the marriage. There is no evidence on this factor.
6. The value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution of the marriage, that party shall lose the chance of acquiring - is a factor that does not arise in this case.
7. The contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family.

[22] The evidence on the various elements is relatively sparse and often conflicting. Gladys in her affidavit filed on 6th February 2009 claimed that Rupert Layne failed to support her since she left him. He had a monthly income from his business as a baker. She had no income and her children supported her. In her affidavit filed 5th March 2009 she stated that when she went to live at Rillan Hill she worked lands in the mountain to support herself and the children. At the hearing she testified:

"He (Rupert) didn't give. My mother had to send something to give children to eat provision and a little money. She give me what she can afford \$40.00 provision every week for me to get something to eat...Sister Mary Bain send me something from England. She would send me money to help with children. She send me five pounds twenty pounds. I used to do some gardening. After I run from him I go to Vermont and go in garden to get something to help myself. When children in school I look after them. Go in market sell in market provision parlour in market. I sold juicy, cake a little food on Fridays and Saturdays.....

He was baker. He didn't give money all the time. When he feel like. He never have bank account."

[23] When they lived together he never told her what was his salary per week. Sometimes he gave her \$40.00 a week He spent his money on rum. To help herself she stated she collected \$150.00 from parlor sales but in her affidavit of 5th March 2009 she said she made \$200.00 per week and so supplied the home and the children with necessities. During cross examination she said that she put more money than her husband in the property by repairing and painting but cannot tell Court if it is 60%. She paid the taxes for the disputed property.

[24] William's evidence was that he paid some of the utility bills and repaired the house. Rupert admitted that William did meet some bills and that he repaired the house. William said that it was his mother who provided money for school books. He did admit that his father did bring "bread" home.

[25] Rupert said that Gladys does not have an interest in the matrimonial home. His evidence was that she took things away from the house when she moved so he takes the house from her. He admits that a valuation of \$41,900.00 for the house is reasonable.

[26] Both parties made contributions to the family and both are beneficially interested in the matrimonial home. I think that the wife made substantial contributions (in kind), looking after the home and caring for ten children from childhood to adulthood. That was an exceptional job and must be reflected in the order that is made. It seems to point towards a greater share than Rupert, as the contributions made by the wife were part breadwinner in addition to being the homemaker - how great is not clear.

[27] How contributions should be viewed is seen from comments made by Saunders JA (as he then was) in *Stonich v Stonich* BVI Civil Appeal 17/2002. From the evidence it is not possible to arrive at what a greater beneficial share for the wife should be. The authorities indicate where clarity is lacking equality is equity. *Rimmer v Rimmer* (1952) 2 AER 863 at page 868 Denning L.J. said:

“In cases where it is clear that the beneficial interest in the matrimonial home or in the furniture belongs to one or other absolutely, or it is clear that they intended to hold it in definite shares, the court will give effect to their intention: but when it is not clear to whom the beneficial interest belongs, or in what proportions, then, in this matter, as in others, equality is equity.”

In the *Stonich* case, Saunders JA said:

“The Court should not pay too much regard to a contribution merely because it is easily quantifiable in hard currency and too little to a contribution that is less measurable but equally important to the family structure”.

[28] As detailed in Suit No. 333/2008, Rupert Layne's title is not yet indefeasible under section 25 and his Declaration of Possessory title is now challenged in an ancillary suit. He holds 50% beneficial interest of that disputed property on a trust for Gladys, and that percentage interest will be held on trust by a person to whom the disputed property is conveyed, that is, Matthew Dennie. Rupert admitted that a fair valuation of the disputed property is \$41,900.00, so that half of that value is \$20,950.00.

CLAIM NO. 333 OF 2008 – MATTHEW DENNIE V DEXTER DESHONG

[29] Claimant Matthew Dennie's statement of claim recites that he is the lawful owner of the disputed property by virtue of Deed No. 2733/2008 (2008 Deed) where Rupert Layne conveyed it to him as a gift. He claims that defendant Dexter DeShong occupies one bedroom in the upper storey of the dwelling house on the disputed property as a tenant at will and, despite notice to deliver up possession, the defendant continues to so occupy. Rupert also lives in the dwelling house in a room in the lower storey.

[30] In that 2008 deed the recitals read “that this deed confirms and ratifies an earlier deed 491/2007 that the donee (Matthew Dennie) “should take and hold the said hereditaments

in full and final satisfaction of their previous contract under the said deed bearing registration number 491 of 2007." It also recites title from a Declaration of Possessory Title dated 19th June 2008 (Deed No. 2583/2008.).

[31] DeShong denies Dennie's ownership of the disputed property and claims that the disputed property belongs to Gladys Layne by virtue of Deed of possession 932/2002. He pleads that Gladys never abandoned the disputed property when she moved out in 1961 and left her son William to possess the disputed property, which is the subject of matrimonial proceedings. When William moved out Gladys put DeShong to live in the upstairs of the house and he is not tenant at will.

[32] DeShong alleges that Dennie has not complied with Part 8.5 of the Civil Procedure Rules in bringing this suit inasmuch as Gladys is owner in possession of the disputed property and is entitled to matrimonial home interest. Dennie's reply was that CPR 8.5 was not complied with as Gladys was not in physical possession of the disputed property having been living in Rillan Hill for over thirty years. I do not think it necessary for me to deal with this point in the circumstances of this case.

[33] In a reply, Dennie states that his father Rupert Layne obtained a Declaration of possessory title under the Act, following the procedure set out in the Act. Gladys entered an appearance on 21st February 2008 but took no further action under the Act. Dennie denies that Gladys acquired possessory title by virtue of Deed No. 932/2002, as she had ceased occupation of the disputed property from about 1977 when she went to live at Rillan Hill, leaving her husband in undisturbed possession. He denies that William Layne was ever in possession of the disputed property and denies that the property is matrimonial property.

[34] Claimant Dennie states that he relies on section 25 of the Act and contends that his predecessor in title Rupert Layne has obtained an indefeasible title to the disputed property. Further, that Gladys has not made an appeal against the Court's order declaring Rupert Layne the fee simple owner of the disputed property and the time for appealing has long expired. I shall deal with those points.

[35] Where a person files an entry of appearance in opposition to an applicant's claim for a declaration, followed by a written claim, there follows a trial where the applicant for possessory title and the person opposing the grant of a declaration, present evidence to the Court and the Court makes an order. There is a procedure (which was followed in this case) when an application for possessory title is made, where no entry of appearance is filed or where a person files an entry of appearance but does not file a written claim, outlined in section 12 which enacts:

- “(1) An applicant may obtain judgment without trial where a person:
 - (a) fails to enter an appearance; or
 - (b) fails to file a written claim within the time allowed for so doing.
- (2) The Court may set aside or vary a judgment obtained without trial on any conditions it considers appropriate.
- (3) Where a person who has entered an appearance pursuant to section 7 fails to file a written claim within the time allowed for so doing the applicant may proceed ex-parte and the Court may make an order or give a decision as it sees fit.”

[36] Gladys Layne, having filed an entry of appearance, did not file a written claim and the Judge made an order. She did not take advantage of the other provisions of the Act by filing an appeal or seeking a variation of the order made. Rupert Layne is entitled to a title that cannot be defeated, upon the Registrar publishing the Court Order in one issue of a newspaper. Section 22 provides:

“The Registrar shall, by notice in the Gazette, publish in one issue of a newspaper circulating in Saint Vincent and the Grenadines particulars of all orders made by the Court containing a declaration of possessory title within one month of the making of the order.”

[37] Sections 24 enacts the appeal provision:

“A person aggrieved by an order or decision of the Court made or given under this Act may appeal to the Court no later than three months after the order or decision is made or given.

[38] Section 25 sets out the circumstances in which a declaration of possessory title cannot be defeated. The section enacts:

"The person named in an order containing a declaration of possessory title is entitled to an indefeasible title:

- (a) three months after the date of publishing particulars of the order pursuant to section 22 where there is no appeal:
- (b) upon the determination of the appeal where there is an appeal and the appeal is made within the time prescribed in section 24."

[39] As there was no appeal by Gladys Layne, paragraph (a) applies, which is, after the passage of three months following publication by the Registrar, of the Court's Order dated 22nd May 2008, Rupert Layne's title becomes indefeasible and cannot be defeated. No publication extract was presented to the Court and publication seems not to have taken place.

[40] At the date of trial, Rupert Layne, not having a title that was not indefeasible can only pass to Dennie what he has under the Order – a title that is not indefeasible. Dennie having a title that is not indefeasible cannot successfully claim that he is the lawful owner of the disputed property and entitled to recovery of possession of a room in the dwelling house from defendant DeShong.

[41] DeShong can defend his action of occupying the bedroom as against Dennie by claiming that Dennie has no indefeasible title, but he cannot mount a title attack against Dennie as he (DeShong) has no standing under the Act. He may use Dennie's lack of an indefeasible title as a shield but not as a sword. His shield was the claim that Gladys Layne is the owner of the disputed property. I have found that Gladys has a 50% interest in the disputed property.

[42] Orders -

Suit No. 38 of 2007

- (1) Petitioner Rupert Layne held 50% of the disputed property on a constructive trust for Respondent Gladys Layne. Rupert Layne conveyed the disputed property to Matthew Dennie who now holds 50% of the disputed property on trust for Gladys Layne.

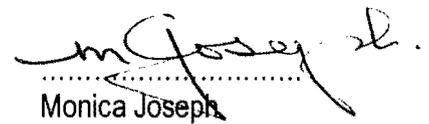
(2) Parties are at liberty to apply.

(3) There is no order as to costs.

Suit No. 333 of 2008

(4) Claimant Matthew Dennie's claim is dismissed.

(5) There is no order as to costs.


.....
Monica Joseph
High Court Judge (Ag.)
7th July 2009