THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(DIVORCE)

Claim No.: SLUHMT 2008/0067

BETWEEN:

JOSEPH BISCETTE
Boguis, Babonneau

Petitioner

and

MARIE BISCETTE (NEE DELAIRE)
Garrand, Babonneau

Respondent

Appearances:
Ms. Lydia B Faisal for the Petitioner/Applicant
Mr. Oswald Larcher for Respondent

2012: August 24.

DECISION

[1] GEORGES J. [AG.]: The parties in this matter, residents of Babonneau married each other at the Babonneau Roman Catholic Church on 14th July 1990 and cohabited thereafter at Garrand until 31st December 2004 when they began living apart. They are and were both domiciled in St. Lucia he being a heavy equipment operator and she a retired nurse's assistant. The petitioner aged 36 at the date of marriage now resides in rented property at Boguis whilst the respondent then aged 47 continues to reside at Garrand in the matrimonial home.

[2] The petitioner disclosed that the respondent had initiated divorce proceedings which were withdrawn on 7th February 2008. The present petition which was filed

by the husband on 5th May 2008 alleges that the parties had lived apart since December 2004 was undefended. An amended petition which was filed by the petitioner on 7th November 2008 alleged that the respondent had deserted the petitioner for a continuous period of at least two years immediately preceding presentation of the first petition on 11th December 2004.

[3] The amended petition was also undefended and a decree of divorce was pronounced on 10th November 2008 in the petitioner's favour pursuant to section 4(1) of the Divorce Act 1973.

[4] By notice dated 12th May 2009 the petitioner applied for the following declaration/orders of ancillary relief namely:

1. That property registered as Block 1448 B Parcel 245 is community property.
2. That the said property is to be viewed and valued by a valuer appointed by the Court with the consent of the parties and the cost of the valuation to be borne equally by the parties.
3. That the respondent who has been in exclusive possession of the property pay to him the value of his half share of Block 1448 B Parcel 245 on or before 31st December 2009.
4. No order as to costs.

[5] In his supporting affidavit the petitioner avers that the said property is community property and is jointly owned with the respondent. Exhibited with the affidavit is a copy of a Deed of Sale Instrument No. 1412/93 dated 15th April 1993 in respect of Block 1448 B Parcel 245, a copy of the Land Register and Survey Plan in respect of the said Parcel 245 marked together as Exhibit JB1.

[6] The matter was scheduled for hearing on a number of occasions from 20th July 2009 but did not come on stream due to the absence of either the respondent or her counsel. Eventually by order of the Court dated 25th January 2010 it was directed that the said property be viewed and valued by valuer Charles Heywood

and that costs be borne equally by the parties.

[7] Quantity Surveyor Heywood furnished a valuation report dated 22nd March 2010 which put the estimated market value of the property at EC$367,870.00 and his fees and expenses at $1,350.00. Four photographs of the dwellinghouse and surroundings were displayed.

[8] In her answer to the petitioner's application for division of property (Parcel 245) the respondent averred at paragraph 2 of her affidavit that the dwelling house located on the land in question was her sole property and was acquired by her during a previous marriage. That averment was wholly unsubstantiated the court noted.

[9] In paragraphs 6 and 7 of an affidavit sworn 12th April 2010 and filed 21st April 2010 the respondent stated that she and her previous husband John Harold had separated in 1980 at which time they both returned to St Lucia and amicably distributed their assets. The value of the said house she declared was $70,000.00 and that she paid him his half share of $35,000.00. No supporting documents of any kind were produced by the respondent to verify/confirm this but the valuer and professional quantity surveyor Charles Heywood on 22nd March 2010 put the value of the land which measured 21,555 square feet at $215,550.00, the building at $112,320.00 and external works at $40,000.00. (Emphasis supplied)

[10] The Court noticed from the photographs which were exhibited by Mr. Charles Heywood that the building in question is constructed "of reinforced concrete slab on grade and consisted of hollow concrete block walls rendered and pointed internally and externally". In short the building is clearly a solid concrete structure.

[11] The title to the property as stated in the Deed of Sale is in the joint names of the Petitioner/Applicant and the Respondent who are the registered proprietors of Parcel 1448 B 245 as per a certified copy of the Land Register which is exhibited with each party being entitled to a half share.

[12] There is no evidence or allegation of fraud or mistake in the registration process of this parcel of land such as would invoke section 98 of the Land Registration Act. Indeed based on the documentary evidence at hand the well known latin maxim – cujus est solum ejus est usque ad coelum et ad infernos – which translated means that the ownership of land carries with it everything above and below the surface – would without more in my considered opinion be apt in the circumstances.

[13] The crucial issue as I see it is that the Deed of Sale by which Parcel 1448 B Parcel 245 was conveyed to the parties equally was prepared by counsel of their choice in 1993. No attempt has been made to reverse or vary the entry of the name of the Petitioner/Applicant as half share owner thereof and there has been no allegation of fraud or mistake by the respondent. The onus is on the Respondent to show that Article 1164 of the Civil Code of St. Lucia Cap. 4.01 of the Revised Laws 2001 does not apply to the case. The said Article provides that:

> "Tesitmony cannot in any case be received to contradict or vary the terms of a valid written instrument."

The Deed of Sale for all intents and purposes is registered as Instrument No. 1412/1993 and is a valid written instrument learned counsel for the petitioner/applicant submitted.

[14] Having been signed sealed and registered the only basis on which the said title could possibly be impugned or varied are on the grounds of fraud or mistake pursuant to section 98 of the Land Registration Act 1984 counsel further contended. I fully concur.

[15] The respondent's case is that the petitioner is not entitled to any share of the dwellinghouse but only to a share in the land. So that the issue which falls to be decided is whether or not the parties are equally entitled to the house and land as the petitioner claims or otherwise.

[16] Counsel for the petitioner submitted that this was not the kind of case in which a party to a marriage has made improvements to property conveyed in the name of one spouse only and that other has to adduce evidence of substantial

improvement in order to be entitled per section 45 of the Divorce Act 1973 to a share to and in the property.

[17] Nor is this a case in which the property was acquired before the marriage and conveyed in the name of only one of them as a result of which the other party has to prove the existence of either a resulting trust or a constructive trust.

[18] In the instant case the conveyance of the property took place in April 1993 after the marriage of the parties in July 1990 and the entire property was conveyed to each of them in equal shares together with all appurtenances and dependencies thereon.

[19] There was no stipulation in the deed of conveyance relating to the immovable structure standing thereon that it was the sole property of the respondent. The clear intention of the conveyance was that the parties were to share the entirety of the immovable property equally on the reasonable premise that the petitioner had done extensive improvement work on the house.

[20] In her affidavit in response to the petitioner's application filed 21st April 2010 the respondent accepted in paragraph 18 that the land registered at the Land Registry as Block 1448B Parcel 245 was community property but contends that the house built on it is not save for the front verandah and garage which she claims that the petitioner and herself built together and to which she is entitled to her half share. I frankly find this incongruous and reject that claim as wholly unacceptable unsupported as it is by any values. (Emphasis supplied)

[21] In his affidavit in reply filed 20th May 2010 the petitioner disclosed in paragraph 4 that the respondent and himself had in fact lived together for two years before their marriage in 1990 and detailed in paragraphs 5, 6 and 7 the extensive and substantial improvements and additions he had carried out on the house including installation of solar water heater. All of this he declared (in paragraph 7) was done over a period of several months but was complete before the land was purchased in 1993. Giles Mitchell, a contractor who had been hired by the petitioner to

change the ceiling of the house filed a supporting affidavit on 31st May 2010 on behalf of the petitioner.

[22] What the respondent seeks to achieve is to vary the entry of the Land Register in respect of Parcel 1448B 245 so as to reduce the Petitioner's share as shown to less than a half share. In order to achieve this, evidence would have to be adduced to show that there was an error in the registration process made or obtained by fraud or mistake pursuant to section 98 of the Land Registration Act 1984. None of this has been done. Furthermore as indicated in paragraph 13 it is incumbent on the respondent to show that Article 1164 of the Civil Code of St. Lucia Cap. 4.01 of the Revised Laws 2001 does not apply in the instant case.

[23] On 17th January 2012, Mr. Oswald W. Larcher filed a Notice of Acting in place of Stanley Felix for the respondent. On 20th January 2012 a copy of the Notice of Acting was duly served on the petitioner Joseph Biscette and his Legal Practitioner Lydia Faisal. On 30th July 2012, Mr. Oswald Larcher, Legal Practitioner for the respondent, Marie Biscette filed the respondent's skeleton arguments in compliance with the order of the court dated 23rd March 2010.

[24] The gist of Respondent counsel's argument is that prior to her marriage to the Petitioner (in 1993) the Respondent was married to John Harold in 1964 and during their marriage they built a house in 1974 on a parcel of land belonging to her family.

[25] Her husband Harold and herself were subsequently divorced in 1980 and Harold was paid his half share of the value of the house which they had built together and she continued to live in her house and land owned by her family until the year 1992 when the Delaire family elected to give her the parcel of land on which her house was erected since 1974.

[26] However, by virtue of the Deed of Sale dated 15th April 1993, the Respondent in her Affidavit dated 12th April 2010 stated that it "is community property". The Respondent contends that the present dwelling house was built long before her

marriage to the Petitioner.

How long did the parties live together?

[27] According to Charles Heywood's valuation report dated 26th March 2010 the building is estimated to be approximately 35 years old. The evidence shows and it is not disputed that the Petitioner and the Respondent lived together for approximately 15 years prior to their breaking up and living apart in December 2004.

[28] Mr. Heywood's report is captioned "Valuation of Property at Garrand Quarter of Dauphin owned by Mr. Joseph and Mrs. Marie Biscette". The Deed of Sale dated 15th April 1993 by Edmund, George and Sylvester Delaire is to Joseph Biscette and Marie Biscette comprising 21,555 square feet for $21, 555.00 and was sold together with all other the appurtenances and dependencies thereof. This was evidently community property as borne out by the Deed of Sale and subsequent registration in the Land Register of Parcel 1448B 245 with ½ share to each of the parties. (Emphasis supplied)

[29] It is the petitioner's case that the house that he met the respondent with and in which they cohabited before and during the marriage has been completely subsumed by extensive and substantial improvement work which took place prior to the purchase of the land upon which the dwelling house stands.

[30] The respondent on the other hand contends at paragraph 16 of her affidavit in response that the extension carried out by the petitioner merely consisted of a front verandah and a garage and was built about June 2003 at a cost of $7,480.00. Neither party produced documentary evidence of any sort to substantiate what they had told the Court in that regard.

[31] The issue which has to be decided is whether or not the parties are equally entitled to the entire property or not. This is fully addressed in paragraphs 16 to 19 of this decision and especially in paragraph 19 where it is emphasized that the clear intention of the conveyance dated 15th April 1993 was/is that the parties were

to share the entirety of the immovable property equally and this could only be premised on the basis that the petitioner had done substantial and extensive improvement work on the house and this is reinforced by Exhibit JB1 – the registered Deed of Sale (Instrument No. 1412/93) and a copy of the Land Register in respect of Parcel 1448B 245 which is indefeasible except on the ground of fraud or mistake which has not been established and which is in the joint names of the parties with each being stated to be entitled to a half share.

[32] I accordingly enter judgment for the Petitioner/Applicant as follows:

(1) That the property registered as Block 1448B Parcel 245 situated at Garrand in the Registration Quarter of Dauphin in the names of Joseph Biscette and Marie Biscette in half shares is declared to be community property.

(2) That the cost of valuation of the said property in the sum of $1,350.00 be shared equally and be promptly paid by the Petitioner and the Respondent to Mr. Charles N.W. Heywood, Quantity Surveyor.

(3) That the Respondent do pay to the Petitioner the value of his half share of the property comprising Block 1448B Parcel 245, that is to say $183,935.00 on or before 28th February 2013.

(4) No order as to costs.

Liberty to apply.

Ephraim Georges
High Court Judge [Ag.]