

CIV. APP. 57/95

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

ADMINISTRATOR AND REGISTRAR-GENERAL
SUBSTITUTED FOR ALHAJI YUSUF AHMED - APPELLANT

AND

MRS. HANNAH AHMED - RESPONDENT

CORAM:

HON. MS. JUSTICE U.H. TEJAN-JALLOH - C.J.
HON. MS. JUSTICE S. KOROMA - J.S.C.
HON. MR. JUSTICE A.N.B. STRONGE - J.A.

A.K.A Barber, Esq. for the Appellant
Berthan Macaulay Jnr. for the Respondent

JUDGMENT DELIVERED ON DAY OF 2009

Justice U.H. Tejan-Jalloh C.J.

This is an appeal against the judgment of the High Court delivered on 14th July, 1995.

The respondent as the Plaintiff in the High Court brought an action against the Appellant the Defendant in the High Court for the following reliefs:-

- (a) A declaration that the premises situate lying and being at 31, Lightfoot Boston Road, off Wilkinson Road, Freetown is jointly owned by the Plaintiff and the Defendant, in the Alternative that the Defendant is holding a trust in equal shares for the Plaintiff and himself.
- (b) A partition of the said premises and a sale of same for the purpose of the partition.
- © Account
- (d) An injunction restraining the Defendant from interfering with or preventing the Defendant from going to the said house.
- (e) Costs. Such costs to be borne by the Defendant

The action was contested by the Defendant who filed a Defence, denying, in its entirety the Plaintiff's claim.

In a considered judgment, the Learned Trial Judge found for the Respondent as follows:-

1. That the property lying situated and known as 31, Lightfoot Boston Road, off Wilkinson Road, Freetown is the joint property of the Plaintiff and the Defendant. It is declared that the property was and is held by the Defendant in trust for the Parties in equal shares.
2. That the aforesaid property be sold by public auction or private treaty whichever the Parties agree on.
3. The net proceeds of sale be distributed in equal shares between the Plaintiff and the Defendant.
4. That all expenses incurred on the sale be met out of the proceeds of sale.
5. That the costs of these proceedings are awarded to the Plaintiff, such costs to be taxed.

Aggrieved by the decision, the Defendant filed in this Court only one original ground of appeal and by leave three additional grounds were filed.

They are as follows:-

1. That the decision is against the weight of the evidence.
- Additional Grounds of Appeal:-
2. The Learned Trial Judge treated the proceedings as one for a divorce thereby arriving at a wrong decision.
 3. The Learned Trial Judge failed to consider and or apply the distinction between Mohammedan Law and Civil Law in relation to property having regard to the undisputed evidence that the Appellant and Respondent are married according to the Mohammedan Law which said marriage is still subsisting.
 4. The Learned Trial Judge erred in law in failing to consider and or uphold the law relating to Mohammedan Law thereby arriving at a wrong decision.

At the hearing of this appeal, Mr. Barber Esq. for the Appellant indicated to the Court that he would be arguing all the grounds together while Berthan Macaulay Jnr. Esq. for the Respondent sought leave to argue grounds 1,2, and 3 together and ground 4 separately.

Whilst this matter was reserved for judgment, the Appellant died on the 7th of June 2008. By Order of this Court made on the 20th day of March, 2009 the Administrator and Registrar-General was substituted in place of the Appellant.

The main thrust of the Appellant's Counsel attack against the decision of the Court below was on the failure of the Learned Trial Judge to take into consideration that the Appellant and the Respondent were married according to the Mohammedan Law which I observe was neither pleaded nor proved. It has rightly been pointed out by counsel for the Respondent that the specially endorsed Writ of Summons did not contain any prayer concerning marriage. The Writ clearly indicated that the basis of Respondent's claim was her contribution to the property and not the fact that it was to be their matrimonial home. The Respondent's evidence in the Lower Court was clear and unequivocal. At page 56 line 8 of the records. She said:

"My claim to the house is based on the fact that I did not only contribute towards the building but I initiated the process of putting up the building".

It would be observed that the Respondent and her witnesses testified along the same line. While Counsel for the Appellant in the Court below impliedly conceded that the Respondent made contribution. This can be clearly inferred.

I refer to page 118 lines 6 - 8 where he said:-

"I submit that if the Plaintiff is entitled to anything she is only entitled to want the Honourable Court finds she has put in terms of labour, materials or otherwise in the erection of the building."

It is observed that at no time did the Counsel for the Respondent submit in the court below that the Respondent was not entitled to any claim by virtue of her Mohammedan marriage with the Appellant unlike A.K.A. Barber Esq. who was harping on the marriage until on the 15th March 2007 when he conceded and said:

"I agree that both parties contributed". And for that reason Berthan Macaulay Jnr., Esq. then relied on the case of *Grant V. Edwards* (1986) 2 All ER 426. Mr. Barber having conceded that the Respondent was entitled to a beneficial interest in the property the quantification of that right is the next issue to be determined."

Looking at the detailed facts, the records reveal that the Parties were at the material time husband and wife. The law is settled that if proprietary estoppel is established, the Court gives effect to it by giving effect to it by giving effect to the common intention so far as may fairly be done between the parties. In cases between husband and wife Romer L.J. made it clear in *Rimmer V. Rimmer* (1952) 12 All E.R. 863 that cases between husband and wife ought not to be governed by the same strict consideration, both law and in equity as commonly applied to the as ascertainment of the respective rights of strangers. Other authorities on this proposition include *Balfour V. Balfour* (1919) 2 K.B. 571; *Fribance V. Fribance* (1957) 1 All E.R. 357; *Gissing V. Gissing* (1970) 2 ALL E.R. 780 AT 792.

IN *Eves V. Eves* (1975) 3 ALL E.R. 765 Brightman L.J., plainly felt that a common intention that there should be a joint interest point to the beneficial interests being equal.

The evidence which the Learned Trial Judge accepted is that the Respondent made substantial financial contribution to the construction of the building.

Respondent also asserted that she had some document in respect of her expenditure but that the Appellant had denied her access to them. I accept and agree with the submission of Counsel for the Respondent that the Learned Trial Judge applied the correct principles of law to this action. I find that the case of *Grant V. Edwards & Anor.* (1986) 2 All E.R. 426 cited in the judgment is almost on a par with the facts of this case. It was held where an unmarried couple lived in a house which was registered or held in the name of

only one of the parties, the other could establish a beneficial interest in the property, if he or she could establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership.

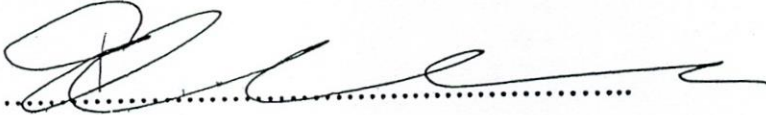
I find that the Learned Trial Judge reviewed the evidence given by the witnesses meticulously and fully. He duly assessed and evaluated them, gave reasons which are amply supported by the evidence. In the light of the foregoing, I am of the view that this appeal fails on all grounds and it is hereby dismissed. The judgment of the High Court is affirmed i.e:

1. That the property lying, situate and known as 31, Lightfoot Boston Road, off Wilkinson Road, Freetown was and is the joint property of the Respondent and the Appellant (deceased). It is declared that the property was and is held by the Appellant's substitute in trust for the Parties in equal shares.
2. That the aforesaid property be sold and the Parties shall have the first option to purchase the property at the commercial rate within a period of 60 days failing which the property can be put for sale by public auction or private treaty.
3. The net proceeds of sale be distributed in equal shares between the Respondent and the Defendant's substitute.
4. That all expenses incurred on the sale be met out of the proceeds of sale.
5. The Administrator and Registrar-General and the Respondent's solicitor do have conduct of the sale.
6. Each Party to bear it's cost.



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HON. MS. JUSTICE U.H. TEJAN-JALLOH - C.J.



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HON. MS. JUSTICE S. KOROMA - J.S.C.

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