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IN THE COURT OF APPEAL OF SIERRA LEONE

CIV. C. App. 61 / 2008

BETWEEN

WILLIAM COCKIL BRIGHT - APPELLANT

AND

MRS CYRILLA ROSELYN BRIGHT - RESPONDENT

CORAM Hon. Mr Justice E. E. Roberts, J A
" Mrs Justice A. Showers, J A
" Mr Justice A. S Fofanah, J

E.E.C. Shears Moses Esq. for the Appellant
C.C.V. Taylor Esq. for the Respondent

JUDGEMENT DELIVERED THE 8th DAY OF August 2012

SHOWERS, J. A. This is an appeal against the Judgment of Edwards, J. dated 6th October 2008 in which the learned Judge ordered, inter alia, as follows:

> "That the property situate lying and being at 24 Aitkins Street, Murray Town Freetown be valued and sold at the best market value possible and the proceeds of sale be divided equally between the Plaintiff and the Defendant"

The Respondent had applied by Judges Summons dated 30th June 2008 for Judgment to be entered against the Appellant pursuant to Order 16 of the High Court Rules 2007 on the ground that the Appellant has no defence to that part of her statement of claim in which she sought a partition of premises situate at 24 Aitkins Street Freetown or sale of the said property at the market value and that the proceeds of sale be divided equally between the Plaintiff (the Respondent) and the Defendant (the Appellant).

The brief facts of the case are that the Appellant and the Respondent are husband and wife and had got married on 29th April 1989. In 2002 the Respondent was in London undergoing gynaecological treatment and returned

to Sierra Leone sometime in 2005 but did not return to the matrimonial home at 24 Aitkins Street, Murray Town Freetown.

On 17th March 2008 the Appellant took out a petition for the dissolution of his marriage to the Respondent who filed an answer and cross – petition on 7th May 2008 in which she claimed inter alia a half-share of all properties acquired during the marriage including that at 24 Aitkins Street, Freetown.
The Respondent issued a writ of summons dated 8th May 2008 in which she again claimed, inter-alia, a half-share of the said property situate at 24 Aitkins Street Freetown, to which the Appellant filed a defence. The Appellant then took out the judges summons already mentioned to which the learned Judge gave judgement and held that the Appellant has no defence to the claim therein and ordered a sale thereof and the proceeds shared equally between the Appellant and Respondent. The Appellant being dissatisfied with the said Judgment has now appealed to the Court of Appeal.

The Appellant alleges that the learned Judge misdirected himself when he stated that it is not sufficient to show that there are triable issues but he has to see a prospect of success of the issues. Further that he never considered the Appellant's defence that the property in issue is the matrimonial home of the parties and is also matrimonial property. The learned Judge in his Judgment relied on the unreported 2004 Supreme Court case of **Aminata Conteh** vs **APC**. Counsel for the Appellant opined that the said learned Judge had misinterpreted the said Supreme Court decision when he said that it is not whether there are triable issues but if there is a prospect of success. Counsel's contention is that its success can only be realized after the matter has been tried and all evidence adduced before the Court.

The question therefore is whether the defence raised has triable issues with any prospect of success. Counsel for the Appellant has submitted that its success can only be realized after the matter has been tried and all evidence adduced before the Court. This cannot necessarily be the case as the court should be in a position to assess at that stage whether there is a defence on the merits with a prospect of success. If this were not the case then the provision of entering a summary judgment pursuant to Order 16 of the High Court Rules 2007 would not be feasible.

In this case, counsel for the Appellant complained that there are matters which ought to go to trial. He submitted that the conveyance was made freely for "good causes, love and for good consideration" and these are matters which would have been borne out by evidence as these were not mentioned in any affidavit as having occasioned the Appellant having the property conveyed to both himself and the Respondent.

It is my view that the Appellant in his affidavit sworn to on 4th July 2008 stated the reason for making the Deed of Gift in their joint names. Counsel for the Respondent has submitted that, the Deed of Gift which has not been challenged in any way discloses the parties share in the said property. He has relied on the provisions of sections 50 (i) and 63 (i) and (2) of the Conveyancing Act 1881. He contended that the Deed of Gift having been properly tendered in evidence before the court and there being no suggestion of fraud, force, forgery or even mistake, there is no need for extrinsic evidence to be admitted to rebut the expressed intention of the Appellant as set out in the said Deed, Counsel for the Respondent drew the court's attention to **Halsbury Laws of England 3rd** ed Vol. 11 paragraph 646 and 648 in support of his submission. He went on to submit that there is no evidence before the court that the said Deed does not contain the intention of the Appellant when he conveyed the property to himself and the Respondent.

It is apparent that the property in issue was conveyed therein to both parties as joint tenants. The property is therefore owned by the said parties in law as joint tenants. Counsel for the Respondent has contended that the Respondent is entitled to an equal share of the proceeds of sale as the Deed of Gift provides proof of ownership of all the legal interest in the property. He stressed that there was no caveat in the Deed as to any distinguishable interest to be held by the parties as would be required by law and that in the absence of such caveat or separate agreement by Deed, the parties in a joint tenancy take in equal shares.

Counsel for the Appellant has stressed that the learned Judge never considered the issue of matrimonial property and that the issue is central to the matter. He further contended that the property is matrimonial property which demands other evidence for entitlement by the parties as distinct from individual persons who own property jointly.

Counsel relied on **J. G. Millar's Family Property and Financial Provision** at pages 77-78 for this submission. He further relied on several decided cases which are authority for the principle that the court had to consider the financial contributions before going on to determine in what proportion the parties had a share.

Counsel for the Respondent in his submissions contended that the learned Judge did not ignore the issue of the matrimonial property and referred the court to his Lordship's pronouncements on the issue.

He went on to submit that the Deed of Gift does not state that the property is conveyed to the parties for use as a matrimonial home or for any purpose whatsoever. He submitted that the Appellant suggested that the purpose for which the property was conveyed was to obtain a loan from the bank. He stated

that there is no evidence before the court that the Respondent recognizes the property as being conveyed to her jointly with the Appellant for use as a matrimonial home and maintained that it was conveyed for various good deeds and in consideration of love.

Counsel further contended that no special considerations apply in instances where husband and wife hold property jointly. He relied on **Megarry** and **Wade**, **Law of Real Property** 4th ed at page 473 where it states that the ordinary law of co-ownership is modified only where there is some trust whether implied resulting or constructive. He submitted that in this case no trust was suggested by the affidavit in opposition or by the statement of Defence.
Let me at this stage refer to the dictum of Lord Denning in the case of **Bernard vs Josephs** (1982) 3 ALL E.R 162 at 166 where he said as follows:

> "…. a conveyance into joint names does not necessarily mean equal shares. It is often required by the local council or by the building society when they grant a mortgage so that they are both responsible for repayment. It is sometimes done on the suggestion of lawyers, without taking into account all the factors, such as their contributions to the purchase money and so forth.
> As between husband and wife, when the house is in joint names and there is no declaration of trust, the shares are usually to be ascertained by reference to their respective contributions, just as when it is in the name of one or other only. The share of each depends on all the circumstances of the case taking into account their contributions at the time of the acquisition of the house and, in addition their contributions in cash, or in kind, or in services, up to the time of separation."

The said Lord Justice went on to adopt the words of Pearson, L. J. in **Hine vs Hine,** a case relied upon by counsel for the Appellant. The words are as follows (1962) 3 All ER 305 at 350.

> "In my judgment, however the fact that the husband and wife took the property in joint tenancy does not necessarily mean that the husband should have a half interest in the proceeds of the sale now in contemplation. The parties agreed expressly or by implication from the creation of a joint tenancy that the house should be the matrimonial home and should belong to both of them (technically to each of them in its entirety) and that on the death of one it would belong to the other by right of survivorship. They did not however make any agreement or have any common intention what should happen in the event of the marriage breaking up and the property then being sold."

I believe this is the situation here. The Appellant in his affidavit gave the reason for his making the Deed of Gift in their joint names. He deposed that it was to

make it easier to secure a loan from the Bank where they both worked. He stated that all payments of the loan were made by him and he acknowledged that the property is their matrimonial home.

In this case, it is clear that the legal interest in the property vests in both parties. The issue to be determined is as to the beneficial interest therein. In such a case there is the necessity for further evidence to be heard. In **Pettitt vs Pettitt** (1969) 2 ALL E.R. 385 at 405 Lord Upjohn said:

> "In the first place, the beneficial ownership of the property in question must depend on the agreement of the parties determined at the time of its acquisition. If the property in question is land there must be some lease or conveyance which shows how it was acquired. If that document declares not merely in whom the legal title is to vest but in whom the beneficial title is to vest that necessarily concludes the question of title as between the spouses for all time, and in the absence of fraud or mistake at the time of the transaction the parties cannot go behind it at anytime thereafter even on death or the break up of the marriage."

Here there has been no express declaration in the said Deed of Gift as to the beneficial interest of the parties in the said property, the court must look to see their respective contributions towards the construction of the said building. It is therefore clear that the court cannot consider the issue of the share of a matrimonial property in the same way as it does for two private individuals. As Counsel for the Respondent has himself submitted the ordinary law of co-ownership is modified only where there is some trust whether implied, resulting or constructive. The beneficial interest of the Respondent has arisen out of a resulting trust. From the cases already cited it is evident that the court has to look beyond the document of title and consider the intention of the parties at the time of acquisition of the property and the financial contributions made by the parties thereto.

Counsel for the Appellant has complained that the learned Judge erred in dealing with the issue of the loan obtained by the parties for the construction of the house when he held that that issue was extraneous and irrelevant. It is my view that far from being extraneous or irrelevant, that issue is central to the case. The application was for an order for the partition or sale of the premises in issue and for the proceeds of sale to be divided equally between the parties. It has already been established that cases between husband and wife ought not to be governed by the same strict considerations both at law and in equity as are commonly applied to the ascertainment of the respective rights of strangers when each of them contributes to the purchase price of property. In cases between husband and wife extrinsic evidence may be admissible.

See the case of **Pettitt** vs **Pettitt** (supra) at page 405 where it states as follows

> "But the document may be silent as to the beneficial title. The property may be conveyed into the name of one or other or into the names of both spouses jointly in which case parol evidence is admissible as to the beneficial ownership that was intended by them at the time of acquisition and if, as very frequently happens as between husband and wife, such evidence is not forthcoming, the court may be able to draw an inference as to their intentions from their conduct."

In the light of these authorities, where the beneficial interest of the parties is in issue, the court can allow further inquiry into the intention of the parties at the time of acquisition of the property. The matter ought therefore to go to trial for the determination of these issues.

I therefore do not agree with counsel for the Respondent in his submission that the issue of the loan bears no relevance whatsoever. Nor do I agree that the issue of the loan is extraneous and irrelevant as found by the Judge. The issue of the loan, the contributions of the parties to the construction of the house are the triable issues to be considered in the determination of the shares of each party in the matrimonial property.

it is therefore clear that there are triable issues with some prospect of success raised by the Appellant to be considered here and the learned Judge erred in acceding to the application for summary judgment. The appeal is allowed and the Judgment of the High Court dated 10th October 2008 is hereby set aside. The matter is remitted to the High Court for trial. Costs of the Appeal to the Appellant to be taxed.

Hon. Mr Justice E. E. Roberts, J. A.

Hon. Mrs Justice A. Showers, J. A.

Hon. Mr Justice A. S. Fofanah, J.