

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA

CIVIL JURISDICTION

2018-HC-DEM-CIV-FDA-417

BETWEEN:

1. MAY DEBRA REECE, female of age
 2. ALEX REECE, male of age
 3. ALECIA BOOKER, female of age
- Claimants

-and-

1. FREDERICK BOOKER, male of age
 2. SHERON McKENZIE, female of age
- Defendants

The Honourable Justice Navindra A. Singh, Puisne Judge

Ms. Mandisa A. Breedy for the Claimants

Ms. Ashley King for the Defendants

Delivered April 1st 2019

DECISION

This action was commenced as a Fixed Date Application for possession of property known as and situate at Lot 231, being a portion of land west of Tract “X” and being portions of Tract “X”, Plantation Golden Grove, East Bank Demerara (hereinafter referred to as the Property) based on the Claimants’ claim that they own the land by County of Demerara Transport numbered 781 of 2008 [**Exhibit “A1 - A4”**].

The First Named Claimant testified that she and the First Named Defendant became involved in a visiting relationship in 1994, from which union the Third Named Claimant was born in 1995.

The Second Named Claimant is the First Named Claimant's son from a previous relationship.

The Second Named Defendant began living in "the Property" in the year 2010 on the invitation of the First Named Defendant.

The First Named Defendant contends that the First Named Claimant was his wife and he was unaware that she had obtained title for "the Property" in the names of her and her children (the Second and Third Named Claimants).

The First Named Defendant claims that he is entitled to at least a one half share in "the Property".

The First Named Defendant through his Attorney's submissions did not clearly state the legal basis or theory upon which he claims to be entitled to a one half share in "the property" but rather alluded that based on the evidence adduced at the trial the claim is based either on the law of trust or on the basis that the property is matrimonial property.

Based on the pleadings, the Second Named Defendant is not claiming any right to possess nor to share in the ownership of "the property", however, she claims that she has effected substantial improvements to the property since she moved into "the property" in 2010.

Based on these representations by the Defendants the action was converted to a Statement of Claim and managed to trial.

ISSUE I

Is “the Property” matrimonial property?

FACTS

The First Named Claimant’s evidence is that she became a member of the Samatta Point Housing Cooperative Society in 1995 and was allocated Lot 231 Samatta Point, Grove for the purpose of building a house. [See **Exhibit “C”**]

It is her evidence that she invested her own money to commence construction of a house on the said Lot 231 since the First Named Defendant refused to be part of such construction and he in fact removed from the apartment that they were then living in because of his disapproval of her spending her money to build a house.

The construction of the house was completed in 1997 and the Claimants and the First Named Defendant moved into and began living in the house.

The First Named Claimant and the First Named Defendant then got married in December 1998.

She testified that sometime after moving into “the Property”, the building was extended and the First Named Defendant only contributed the sum of \$40,000.00 (forty thousand dollars) towards the extension.

She testified that the relationship between her and the First Named Defendant broke down in 2004 and she travelled to St. Lucia in search of work.

She testified that in 2007 she approached the First Named Defendant to go half and half in purchasing the land and he said, “*No, you and your children try with y’all land, he mother and father got property in Buxton*”.

In 2007 she also employed two carpenters to effect repairs to the kitchen window and back step of “the property”.

She petitioned the High Court for a dissolution of her marriage in 2007 and a Decree Absolute dissolving the marriage was granted by the Court in January 2008.

She testified that after the divorce the First Named Defendant asked to her to permit him to remain in “the property” until he secured alternative accommodation and she acquiesced.

In 2017 she discovered that the Second Named Defendant was living with the First Named Defendant in “the property”.

In June 2017 she determined the First Named Defendant’s license to occupy “the property” by written correspondence.

The First Named Defendant’s evidence in chief is that he provided the acquisition price for the purchase of the land in 1994 and the construction of the building, which was completed in 2005.

He testified that “the Property” was purchased from the Co-op.

His evidence in chief was that the First Named Claimant was unemployed at all material times, however, under cross examination he testified “*I can’t remember saying that because I know she was working when we break up and when we get back together. I remember her having barbecues when they have fairs*”.

It is his evidence that the First Named Claimant removed from “the Property” sometime between the years 2007 - 2009 and further she removed all of the household furnishings.

It is his evidence that at that time (around 2007), the First Named Claimant asked him to provide the balance of the purchase price but he refused to provide that since she was insisting that “the Property” be transferred to her solely.

He could not remember when he was married, when he was divorced or when the First Named Claimant moved out of “the Property”.

He could not remember how much money he paid for the acquisition of the property nor how much was required for the final balance.

LAW

Matrimonial property refers generally to assets owned in common by husband and wife as a result of it having been acquired during the marriage by means other than an inheritance or a gift to one spouse, each spouse generally holding a one-half interest in the property. [Black’s Law Dictionary; Ninth Edition]

Married Persons’ Property Act; CAP 45:04 section 15A

ANALYSIS

It is clear from the evidence that the First Named Defendant does not know anything about the acquisition of “the Property”.

He clearly does not know procedurally how “the Property” was physically acquired and occupied and the Court is convinced, on a balance of probabilities, that he had little or nothing to do with the construction of the building.

The Court finds the First Named Claimant to be truthful and believable witness.

The Court finds that First Named Defendant to be an untruthful witness.

On an assessment of the evidence the Court finds the First Named Defendant’s claims of contributing to the acquisition of “the Property” to be false, particularly, since “the Property” could not have been “acquired” and was not acquired in 1994.

Clearly in 1994 the First Named Claimant commenced occupation of the land as a squatter.

The Court does not believe that the First Named Defendant contributed financially to the construction of the building

This lack of knowledge coupled with the evidence that the First Named Claimant clearly, solely, pursued the acquisition of the land and the construction of the building suggests that though the occupation of the land occurred during a period when the First Named Claimant and the First Named Defendant were in a relationship, the First Named Defendant was uninterested in securing any interest in “the Property”.

This finding is further buttressed by the fact that, by his own admission, he refused to contribute to the acquisition of the Transport from the Ministry of Housing and the dilapidated state of “the property” evidenced by Exhibits “E1 - E7”.

This admission also demonstrates that the First Named Defendant was well aware of the First Named Claimant's continued efforts to acquire the property.

Firstly, the Court finds that at the time of the acquisition of title to "the Property" [Exhibit "A1 - A4"], the First Named Claimant and the First Named Defendant were no longer married or in a common law relationship and therefore the acquisition of "the Property" is not matrimonial property.

Notwithstanding this finding by the Court, assuming that the acquisition could be considered to be during the marriage and the obtaining of paper title was merely procedural which process was merely completed in 2008, after the dissolution of the marriage was completed, the Court further finds that in situations such as this, where one spouse clearly demonstrates an intention to have nothing to do with the acquisition of the property or investment in the asset, the general definition of matrimonial property cannot be applicable.

It follows to reason that though two persons are married, there will be times when one favours an investment and the other refuses to be support such investment or even be a part of it and in such cases it would be repugnant to common sense that the unsupportive, uninvolved spouse would benefit from the investment if such investment becomes lucrative, simply because of a marriage contract.

This is distinct from a finding pursuant to section 15 (9) Married Persons' Property Act which makes it possible for a Court to depart from awarding the general one-half interest.

In these circumstances the Court is can make a finding that the acquired property is not matrimonial property.

CONCLUSION

Based on the First Named Defendant's withdrawal from the acquisition of the land and non-participation in the construction of the building the Court finds that "the Property" does not form matrimonial property and therefore the First Named Defendant is not entitled to any share therein.

Further, and in any event, the fact that the First Named Defendant's claim (by way of Counterclaim) has been brought more than 10 years after the dissolution of the marriage, his claim is statute barred by virtue of section 15A of the Married Persons' Property Act.

ISSUE II

Is "the Property" or any share thereto being held on trust by the Claimants for the First Named Defendant?

LAW

Civil Law of Guyana Act; CAP 6:01 section 3 (d) (iv)

CONCLUSION

There is no evidence of any document or memorandum in writing establishing such a trust.

The Court finds that there is no legal basis to find that the Claimants' or any one of them holds any share to "the Property" on trust for the First Named Defendant.

In the circumstances the Court grants judgment to the Claimants in terms of paragraph 1 subparagraphs (a) and (c) of Fixed Date Application filed March 12th 2018.

The Defendants' Counterclaim filed May 22nd 2018 is dismissed.

The Court awards costs to the Claimants against the First Named Defendant in the sum of \$200,000.00 and against the Second Named Defendant in the sum of \$75,000.00.

Justice N. A. Singh