

IN THE CAYMAN ISLANDS COURT OF APPEAL

CAYMAN ISLANDS CIVIL APPEAL 9/86

BEFORE: THE HONOURABLE MR. JUSTICE ZACCA, P.
THE HONOURABLE MR. JUSTICE GEORGES, J.A.
THE HONOURABLE MR. JUSTICE HENRY, J.A.

BETWEEN: FRANCES CELIA PREEDY PETITIONER/RESPONDENT
A N D : GEORGE HUNTER PREEDY RESPONDENT/APPELLANT

MR. N. HILL, Q.C. AND MR. P. BONI FOR APPELLANT

MR. J. JENKINS FOR RESPONDENT.

27TH AUGUST, 1987: 6th APRIL, 1988

ZACCA, P. :

The parties to this appeal were married on August 24, 1981. There are no children of the union. Mrs. Preedy has two children from a previous marriage. The children lived with Mr. and Mrs. Preedy but they were in part maintained by Mrs. Preedy's former husband. On August 6, 1986 a decree of divorce was granted to Mrs. Preedy. The marriage lasted some five years.

In the Grand Court, the wife sought an Order for a division of the family capital assets in equal shares. The learned Grand Court Judge made the following Order :

1. The matrimonial home (Block 5B Parcel 19 West Bay South) and all land and fixtures appurtenant thereto to be sold and the proceeds, after paying all expenses of sale, advertisement and related expenses, to be shared equally between the parties.
2. All furniture, furnishings (including curtains and carpets, and pictures), crockery, cutlery and appliances (not being fixtures included in paragraph 1 above) and other household items and garden implements to be sold and the proceeds, after paying all expenses of sale, advertisement and related expenses, to be shared equally between the parties.

3. Sale of the foregoing to be by public auction after reasonable advertisement but, subject thereto, to be effected with reasonable despatch:

Save that, with the consent of both parties, any one or more or all such items may be sold by private treaty.

4. Either party to be at liberty to bid for any of the foregoing items at any public auction.

5. The respondent is to transfer to the petitioner forthwith the blue Ford thunderbird motor car absolutely and free from encumbrances.

6. Petitioner to have the care, custody and control of the two children of the former marriage.

7. Respondent to pay the costs of this application.

8. Liberty to both parties to apply for further directions in implementing this Order.

The husband has appealed against this Order.

For the appellant Mr. Hill argued that the learned Judge failed to take into account the respective contributions of the parties and was wrong in holding that a division in equal shares was based on principles which had been established in the Grand Court.

In his reasons for the Order, the learned Judge said:

" Implicit in the Order was the recognition that assets jointly owned belong to each equally and it matters not, assuming no fraud, duress or other malfeasance, how those assets came to be jointly owned when relations were on a sweeter basis. If a husband gives property or a share in property to his wife then that property or share becomes, for all purposes, hers and cannot be clawed back just because the marriage is foundering on rocks and he wishes he had not been so generous. Here

the matter goes further because the wife not only contributed by running the home, but also contributed directly from money she earned during the marriage albeit that his earning power was from time to time greater than hers. The money they earned went into a joint account.

The division of assets has been approached on a broad basis applying principles which have become well established in this court. It was not considered appropriate to attempt to deal individually with minor items. "

The learned trial Judge unfortunately failed to identify the principles on which he relied and no such principles have been adverted to on this appeal.

In January, 1980, before the marriage took place, the husband entered into a contract to purchase what later became the matrimonial home, the purchase price being C.I. \$58,000.00. He paid a deposit of \$13,000.00 and subsequently paid all the instalments and interest which were due under a mortgage. The wife contributed some \$11,358.00 towards the purchase price of the house. She also contributed towards the running of the house and the household expenses came from a joint account to which she contributed as a result of her working. The husband alleged that the property was put into his name and the wife's name as joint tenants because of pressure from his wife.

In the absence of any evidence to the contrary, where a husband purchases property in the name of himself and his wife, a gift to her may be presumed.

In Pettit v. Pettit, 1970, A.C. 777 at p. 815, Lord

Upjohn stated :

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" So that in the absence of all evidence, if a husband puts property into his wife's name, he intends it to be a gift to her, but if he puts it into joint names, then (in the absence of all other evidence) the presumption is the same as a joint beneficial tenancy."

Again at p. 813, Lord Upjohn observed :

" 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. If there is no such available evidence, then what are called the " presumptions come into play. "

In Wachtel v. Wachtel 1973 1 ALL E.R. 829, Lord Denning considered the way in which the Court should exercise its discretion in regard to the matrimonial home.

At p. 837, Lord Denning said :

" How is the Court to exercise its discretion under the 1970 Act in regard to the matrimonial home. We will lead up to the answer by tracing the way in which the law has developed. Twenty five years ago, if the matrimonial home stood in the husband's name, it was taken to belong to him entirely, both in law and in equity. The wife did not get a proprietary interest in it simply because she helped him buy it or to pay the mortgage instalments. Any money that she gave him for these purposes would be regarded as gifts, or, at any rate, not recoverable by her: See Balfour v. Balfour. But by a long line of cases, starting with Re Rogers' Question and ending with Hazell v. Hazell, it has been held by this Court that,

"if a wife contributes directly or indirectly, in money or money's worth, to the initial deposit or to the mortgage instalments, she gets an interest proportionate to her contribution. In some cases it is a half share. In others less. "

In Browne v. Pritchard, 1975, 3 ALL, E.R. 721, the matrimonial house was purchased by the husband. The wife made no contributions towards the purchase. The house was, however, put into their joint names. The marriage lasted three years. The wife claimed that she was entitled to a half share of the matrimonial home. Lord Denning agreed with the findings of the Judge who held :

" Although the wife is joint owner, it would not be right to say that she should be entitled to a half interest. The marriage only lasted three years and the husband owned the previous house, the proceeds of sale of which provided the deposit. One third is the proper proportion, see Wachtel v. Wachtel. "

Lord Justice Roskill at p. 725 said :

" The next question is, what sort of share ought the wife to have in this house, the only asset of the couple? If it had not been in joint names, I doubt very much whether any court, after a three years' marriage, would have given her as much as a one-third interest. But the house was put into joint names although, in fact, the husband had provided the only financial contributions to the purchase other than the mortgage. This was, in fact, quite considerable because he sold a former house of his own and borrowed some additional money from his family. He has also paid the mortgage instalments, and presumably, in due course, will pay them off. What effect has the fact that the house was put in both names?

"I think it should have some effect but should not be allowed to dominate the picture. "

When, therefore, the matrimonial house is purchased by the husband and the house is put into the joint names of the husband and the wife, the wife is entitled to a share in the house where she makes a contribution towards the purchase or there is a presumption of advancement which has not been rebutted.

The starting point should be a one-third share. In deciding whether the share should be more than one-third, the Court should take into account the contributions made by the wife and the length of the marriage. The wife who looks after the home and family contributes to the family assets as ^{does} the wife who goes out to work.

In the instant case, bearing in mind the financial contributions made by the husband and the wife, the length of the marriage, we are of the view that the wife's share in the matrimonial home and the furniture should be fixed at 40 per cent. In some cases it may be as much as a half share.

In the result, the appeal was allowed and the Order of the learned Judge was varied accordingly. No Order was made as to costs.