

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

(Family Division)

Suit No. FL 282 of 2018

BETWEEN:

ROSALIND BROOMES

Applicant/Wife

AND

ANDERSON BROOMES

Respondent/Husband

Before the Honourable Mr. Justice Cecil N. McCarthy, Judge of the High Court (Acting)

2019: 30 April

2019: 12 June

Mr. Kendrid R. Sargeant for the Applicant/Wife

Mr. Theron I. S. Mendes for the Respondent/Husband

DECISION

INTRODUCTION

[1] The applicant, Rosalind Broomes and the respondent, Anderson Broomes, were married on July 29, 2006. They have a son, who is now 24 years old. The parties separated in 2015 but continued to live

in the matrimonial home at #18 Church Hill Road, Ashton Hall, St. Peter until March, 2018 when, according to the wife, she was locked out of the matrimonial home.

[2] The wife now seeks the following relief:

- “a) A declaration that the matrimonial property situated at #18 Church Hill Road, Ashton Hall in the parish of Saint Peter in this Island is owned by the Applicant and the Respondent in equal shares or in such shares as the court may determine:
- b) Further or in the alternative an order under section 57 of the Family Law Act Cap. 214 altering the interests in the said property so as to vest a one half share or interest therein in the Applicant or such other share as the court may determine;
- c) That the Respondent be at liberty to purchase the Applicant’s share and/or interest of the Order of the Court or such other date as fixed by the Court;
- d) That in default of such payment by the Respondent to the Applicant the said property from the proceeds of the sale.”

[3] The husband is the legal owner of the matrimonial property. The land, comprising 1,206.20 square metres, was purchased by him on April 11, 2002.

- [4] A valuation by C David Edwards on February 2, 2018 assesses the land to be worth \$135,648.00 and the building thereon \$650,000.00.
- [5] About one year prior to their marriage, the couple took up residence in a two bedroom apartment which forms part of the ground floor of the matrimonial home. At this time the matrimonial home was incomplete but both parties made an effort to ensure that it was habitable and cohabitation at the matrimonial home commenced.
- [6] The wife alleges that she and the husband cohabited at her grandmother's house for 10 years prior to the commencement of cohabitation at the matrimonial residence. The husband denies that the couple lived together prior to 2005.

ISSUES

- [7] There are two major issues for the Court to consider:
- i. Did the parties cohabit for 10 years prior to the marriage as alleged by the wife and if so, how does this impact on the claim being advanced by the wife?
 - ii. What share in the matrimonial property the Court should grant to the wife pursuant to its powers under section 57 of the Family Law Act, Cap. 214 ("the Act)?

THE EVIDENCE

- [8] The wife's application was supported by an affidavit and a Statement of Financial Circumstances, both filed on September 13, 2018. She also gave oral testimony.
- [19] In response, the husband filed affidavits on October 19, 2018 and November 23, 2018 respectively and a Statement of Financial Circumstances on November 6, 2018.
- [10] There was a striking contrast between the wife's evidence and that of her husband.
- [11] The wife's affidavit in support of her application is very short on particulars, and there is a total absence of documentary evidence.
- [12] For example, the wife deposed that in the latter part of 1999 she was involved in an accident; was awarded a settlement; and the proceeds were paid into her account at the Bank of Nova Scotia.
- [13] She also alleged that the proceeds of the settlement was given to the husband to assist with the construction of the matrimonial home.
- [14] Nowhere in her affidavit did the wife disclose what was the amount of the settlement; or when it was paid. Furthermore, she has provided no

documentary evidence to support her contention that it was placed in her account at Bank of Nova Scotia.

- [15] The husband exhibited 14 documents to his affidavits including a letter that showed that the settlement monies paid to the wife were transferred to her a full two years after completion of the construction of the matrimonial home.
- [16] In her affidavit the wife alleged that after the birth of Damien, the only child of the marriage, the husband moved into her grandmother's house at Ashton Hall, St. Peter where they lived for a 'number of years'. By the time the wife gave oral evidence, she was able to state that the 'number of years' that the husband resided at the grandmother's house was 10 years.
- [17] Having carefully listened to the evidence and observed the demeanour of the wife and the husband I have determined that the evidence of the wife is unreliable. However, while the evidence shows that the husband did not reside at the grandmother's house since 1995, as alleged by the wife, there is some evidence that at some time prior to 2005 cohabitation commenced at the grandmother's house at Ashton Hall, St. Peter. I note, for example, that the wife's name, address and telephone number at Ashton Hall, St. Peter appear along with the husband's on cheques drawn on the Bank of Nova Scotia and

Caribbean Commercial Bank. When one considers that the husband admits to sleeping 4 nights per week at Ashton Hall, it is reasonable to conclude that perhaps because of the construction of his house at Ashton Hall he had moved to Ashton Hall in the latter part of 2003.

[18] I am of the view that prior to the latter half of 2003 the parties were involved in a visiting relationship.

[19] On the facts I find that the parties commenced cohabitation in the latter half of 2003 at the grandmother's house at Ashton Hall, relocated to the matrimonial home in 2005, and continued to reside in the same house until March 2018 when the wife moved to her current residence.

[20] I am also satisfied that the parties separated in August 2015 even though they continued to reside in the same household.

[21] The wife in her affidavit swore that she bought and installed curtains, cleaned, cooked, washed and planted a garden. She also said that she paid the utility bills and bought groceries for the family.

[22] She also testified that she contributed to the tiling of the floors and helped supervise the workmen during the construction of those. She also claimed that she assisted with the tiling of the house.

- [23] Somewhat surprisingly, the wife did not emphasize her role as homemaker and parent. A finding that the wife was the primary caregiver to the son must be inferred from the evidence since neither in the affidavit nor the oral testimony was the wife's role as parent highlighted.
- [24] By contrast the husband both in his affidavits and oral evidence represented that he did most of the cooking, cleaning and pressing. He puts his contributions to the household at 70% and the wife's at 30%.
- [25] Having reviewed the evidence, I am of the view that the land was purchased and the dwellinghouse built almost exclusively through the financial efforts of the husband. I also hold that the husband played a significant role in the upkeep of the dwellinghouse and its environs.
- [26] In respect of the construction of the house, the evidence suggests that the wife did play a role. Her name was on the bank account from which items for the construction of the house was purchased. She appeared to have done some supervision of workmen and would have used the account to purchase materials for construction. For two years, the husband occupied the grandmother's house apparently rent-free while the matrimonial home was being constructed. I hold that the

wife did make an indirect contribution to the acquisition, conservation and improvement of the matrimonial home.

[27] In reviewing the evidence it is noteworthy that both parties suffered injuries that were sufficient to bring their employment to an end.

[28] In the case of the husband, he received a settlement of \$791,182.85 on July 15, 2002. A copy of the cheque was exhibited as part of his affidavit evidence.

[29] In the case of the wife, she alleged that she received \$60,000.00. The husband says that his best recollection was that she received less than \$15,000.00.

[30] In cross-examination the wife testified that her back was sore on occasions. Her main complaint was intermittent back pain. I formed the view that there is no good reason why she could not work. However, there is no evidence that she worked since sustaining the injury in 1999.

[31] The husband sustained injury which required him to resign from the Defence Force. Yet he alleges that he did the majority of the work in the matrimonial home. He also appears to be able to work now if he so desired.

- [32] The extent of the documentary evidence supplied by the husband suggests that he was very frank with the Court. However, given his injury, the Court is guarded about his contention that he contributed significantly more to the household chores. Given the fact that the relationship lasted more than twenty years (though cohabitation was 12 years until separation, and 15 years, if one counts, the period after separation, where the parties continued to live in the matrimonial home), I am prepared to regard the non-financial contributions of the parties as equal especially having regard to the fact that the son resided throughout with the mother.
- [33] The wife sustained injury in an accident in 1999 for which she appears to continue to receive disability benefits from the National Insurance Scheme. No documentary evidence has been given of the extent of the injury. What is not disputed is that the wife has not worked since 1999.
- [34] As is often the case in this jurisdiction, the parties have agreed upon the distribution of their joint property and they are contending over the share and interest in the matrimonial home.

APPROACH OF THE COURT TO A SECTION 57 PROPERTY APPLICATION

[35] In the case of **Proverbs v Proverbs (2002) 61 WIR 91, (Barbados CA)** the Court identified the three steps a court has to follow when determining a property application under S. 57 of the Act:

- (i) the net property of the parties must be identified and valued by the court;
- (ii) the respective contributions of the parties within the terms of section 57(3) must be considered and evaluated; and
- (iii) the Section 53(2) factors, so far as relevant, should then be considered.

Determining Net Value

[36] It is important to identify and value the assets of the marriage and then determine their net value before awarding a sum of money altering a party's interest in the matrimonial property.

[37] In **Proverbs**, the Court arrived at the net value of the matrimonial home, by first establishing the market value of the property and then subtracting outstanding debts thereon, namely the balance due on the mortgage and the bank loan.

Contributions of the Parties

[38] Section 57(3) of the Act provides as follows:

In considering what order should be made under this section, the court shall take into account the following:

- “a. the financial contribution made directly or indirectly by or on behalf of a party or a child to the acquisition, conservation or improvement of the property, or otherwise in relation to the property;
- b. the contribution made directly or indirectly to the acquisition, conservation or improvement of the property by either part, including any contribution made in the capacity of home maker;
- c. the effect of any proposed order under the earning of either party;
- d. the matters referred to in section 53(2) in so far as they are relevant; and
- e. any order that has been made under this Act in respect of a party.”

[39] The Court must consider these principles and give an order that it just and equitable as between the parties.

The factors under section 53(2) of the Act

[40] The considerations set out in section 53(2) of the Act are:

- a. the age and state of health of each of the parties;
- b. the income, property and financial resources of each of the parties and the physical and mental capacity of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;
- c. whether either party has care and control of a child of the marriage or union other than marriage, who has not attained the age of eighteen years;
- d. the financial needs and obligations of each of the parties;
- e. the responsibilities of either party to support any other person;
- f. the eligibility of either party for a pension, allowance, or benefit under any Act or rule, or any superannuation fund or scheme, or the rate of any such pension, allowance, or benefit being paid to either party;
- g. where the parties have separated or the marriage has been dissolved, a standard of living that in all the circumstances is reasonable;

- h. the extent to which the payment of maintenance to the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;
- i. the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;
- j. the duration of the marriage or union other than a marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;
- k. the need to protect the position of a woman who wishes only to continue her role as a wife and mother;
- l. if the party whose maintenance is under consideration is cohabiting with another person, the financial circumstances relating to the cohabitation;
- m. the terms of any order made or proposed to be made under section 57 in relation to the property of the parties;
- n. any fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.

[41] As observed in **Proverbs**, the section 53(2) factors are also prescribed for spousal maintenance applications and the Court, must therefore, be careful to consider only those factors relevant to a section 57 application.

Applying the law to the facts

Net Value

[42] By a valuation dated the 2nd day of February, 2018 and prepared by C. David Edwards a valuer, the matrimonial property was valued at \$785,648.00, with the land totaling \$135,648.00 and building \$650,000.00.

[43] In the husband's first affidavit at paragraph 23(ix), it is stated that the sum of \$94,501.70 is owed to the Bank of Nova Scotia as a result of a mortgage over the property for the sum of \$120,000.00. The further sum of \$9,990.86 is owed to the Barbados Public Workers Co-operative Credit Union Limited as result of funds advanced to effect the house repairs. The Court, therefore, holds that the net value of the property is $\$785,648.00 - (\$94,501.70 + \$9,990.00) = \mathbf{\$681,246.30}$.

[44] By Conveyance dated the 11th day of April, 2002, the husband purchased in his sole name the land on which the matrimonial home

was subsequently built. At the time of purchase of the land in 2002, the parties were not living together. Since there was no cohabitation between the parties and the applicant made no financial contribution to the land, it is my view that the wife has no equity in the land. The applicant's interest in the matrimonial property is, therefore, limited to a share in the value of the house only i.e. $\$681,246.30 - \$135,648.00 = \mathbf{\$545,598.30}$.

[45] In **Cox v Cox (2007) 71 W.I.R.53**, a decision of the Barbados Court of Appeal, the Court upheld the trial judge's decision in similar circumstances to limit the wife's claim to a share of the property minus the site value of the land.

[46] In the instant case I adopt the approach in **Cox** and hold that the value of the land must be deducted from the total value of the property.

Contributions of the parties

[47] The husband stated in paragraph 13 of his first affidavit that the wife was unemployed when the land was purchased and the matrimonial house was constructed. She continued to be unemployed throughout the duration of the marriage but continues to receive small disability cheques from the National Insurance Department. It is the Court's

view that the amounts received were insufficient to make any meaningful contribution towards the maintenance or improvement of the matrimonial property. With respect to conserving the property both the husband and the wife claim that they paid the utility bills. Given her unconvincing oral testimony the Court is inclined to accept the husband's view that he paid those bills.

[48] For the purposes of comparison, I find that the case of **Lowe v Lowe (unreported) Suit 400 of 1989** (Barbados High Court) to be useful. The evidence of the parties was not in dispute that prior to their marriage the husband purchased the parcel of land on which the dwellinghouse was then constructed from his own funds and from mortgage funds advanced by a financial institution. The construction was commenced in 1979 and the parties started to see each other in early 1979. The parties married in 1983 and the dwellinghouse was completed in 1988. Prior to the marriage the wife used to assist the husband by providing some housekeeping chores on weekends. The parties separated in 1988 and on the 23rd day of October, 1989 the court granted a decree nisi of dissolution of the marriage. The wife was found to have made no contribution towards the building cost thereof.

- [49] In applying sections 56 and 57 of the Act, the court was satisfied that the wife made no direct financial contribution towards the acquisition of the property and, therefore, had in law no right or title to the property within section 56 of the Act. The court found that the wife made the normal contribution towards the food and utilities before separation that allowed the husband to honour his mortgage installments due on the property.
- [50] The Court decided that after just over 5 years of marriage, the husband would be entitled to 80% and the wife 20% in the equity of the property, having regard to the fact that the wife would be responsible for providing a home for the child.
- [51] The case of **Edey v Edey** (1989) 24 Barb. L.R.36 is also useful for the purposes of comparison. In that case, in a marriage that lasted ten years, the court awarded the wife one-third share of the matrimonial home based substantially on her role as a home-maker. In that case the wife had made no financial contribution to the purchase of the home or the furniture and there were no children of the marriage.
- [52] In the instant case the Court is also of the view that the wife has no right or title to the property under section 56 of the Act.

- [53] The wife, though having no right or title to the property under section 56, has been found to have made an indirect contribution to the acquisition, conservation and improvement of the dwellinghouse.
- [54] The husband would have resided rent-free at the grandmother's house for two years while the house was being constructed at Ashton Hall.
- [55] It is my view that this constitutes an indirect contribution by the wife to the acquisition of the matrimonial property.
- [56] The wife's financial contribution to the matrimonial property has been insignificant. However, the husband did say in his evidence that if [the wife] "contributed \$3,000.00 to the property she contributed a lot".
- [57] It is more likely that she would have made some small financial contribution to the property. But she clearly made a contribution as a home-maker, and as mother of the child of the marriage.
- [58] Having regard to the length of the marriage I consider that the wife is entitled to a 20% share of the dwellinghouse, based on the section 57(3) factors.

Section 53(2) Factors

[59] The wife appears to be in stable health. Other than the fact that the husband was involved in an accident for which a sizeable award was made, there is no indication that, notwithstanding, his condition is in decline.

[60] The wife sustained injury in an accident in 1999 for which she appears to continue to receive disability benefits from the National Insurance Scheme. No documentary evidence has been given of the extent of the injury. What is not disputed is that the wife has not worked since 1999.

[61] The husband is 55 years of age. The wife is 50 years of age. It is fair to say that the wife may now experience difficulty finding employment. She now resides at her sister's house where she and her son occupy a room.

[62] When compared to the wife, the husband is in a superior financial position. The husband's assets are stated in his Statement of Financial Circumstances to be valued at \$762,084.00 and liabilities at \$143,362.00. His annual income amounts to \$48,857.00 whereas his expenses are given as \$48,999.60. The wife on the other hand has income of \$9,600.00 and her annual expenses are stated as

\$15,480.00. Her assets are valued at \$3,000.00 and she states no liabilities.

Disposal

- [63] Cohabitation between the parties is estimated to have lasted for 12 years. The land was acquired prior to cohabitation and is the legal property of the husband. The wife made no contribution to the acquisition of the land and I, therefore, hold that the land is held solely by the husband.
- [64] The husband made all financial contributions towards the acquisition of the dwellinghouse. Nevertheless, it is found that the wife is entitled to an interest in the house to which she made an indirect contribution.
- [65] The wife made a significant contribution to the household as homemaker or parent. She would also have done some supervision of the workmen at the matrimonial home during construction and the husband would have benefitted from rent-free accommodation while the property was being constructed.
- [66] Whilst the health of the parties is not in issue, the age of the applicant and the fact that she has been accustomed to being financially provided for are noteworthy. The applicant is a 50 year old woman,

without employment, who may find difficulty regaining employment and who is now in need of a home. By contrast, the husband is in a comfortable financial position and is assured of a monthly income of about \$4,000.00 from his pensions.

[67] Pursuant to section 53(2) it is appropriate to grant the wife a further 10% share in the house only.

[68] In all the circumstances I assess the share and interest of the wife to be 30% of the net value of the dwellinghouse only.

[69] I, therefore, order that the husband do pay to the wife a sum of money representing 30% of the net value of the dwellinghouse on or before October 31,2019. Either party shall have liberty to apply.

Cecil N. McCarthy

Judge of the High Court (Acting)

