

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. M1052 OF 1995

SHEILA BHARATH

PETITIONER

AND

RAMJIT BHARATH

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES

Appearances:

Ms. Leandra Ramcharan for the Petitioner

Mr. Andrew A. Casimire for the Respondent

JUDGEMENTS

This is an application by the Petitioner/Wife (hereinafter called “the Wife”) by way of a Notice dated the 15th September 2003 in which she seeks an order against the Respondent/Husband (hereinafter called “the Husband”) for a transfer of property order in respect to premises situate at Ebonite Drive Sukram Village Manzanilla, (hereinafter called the matrimonial home), a lump sum payment and an account of all rents received from the said matrimonial home and periodical payments for her maintenance and support.

The parties were married on the 5th day of July 1966 and separated on the 10th day of April 1991, a period of some 25 years. There are three children of the family all

now over the age of 18years. At the time of the separation the last child was 14 years.

The matrimonial home is situate on land owned by both of the parties purchased in the year 1983. According to the valuation report put into evidence by consent the matrimonial home is valued at some \$170,000.00. The matrimonial home comprises three apartments two of which are rented out at a total monthly rental of \$1,300.00 and the other occupied by the Husband and his common law wife.

Two affidavits were filed in this matter one of each party and there was cross-examination of both parties.

The Husband's affidavit is first in time, filed on the 11th December 2003. By this affidavit the Husband deposes that he is unemployed, is 62 years and suffers from psoriasis which he claims prevents him from working. According to him he has rented out the first apartment at a rental of \$500.00 a month for the past two years and the second apartment at a rental of \$800.00 from the month of June 2003. In all he claims to have received the sum of \$15,200.00 as rental income from the matrimonial home up to the time of the filing his affidavit. Save for claiming that he built the matrimonial home from "scratch with his own hands" the rest of his affidavit concentrates on the money expended by the him in maintaining the matrimonial home. He claims to have spent the sum of \$83,005.00 over a 20 year period, i.e. from the year 1983, on maintaining the said matrimonial home.

The Wife in her affidavit denies that the matrimonial home was constructed by the Husband solely or that any major repairs were done to the home after she left. She deposes to her contributions throughout the marriage both physically, to the construction of the home and the care of the family, and financially, through her earnings as a seamstress. She also deposes to certain behavior on the part of the Husband during the marriage, which without saying more, if believed, would in my opinion amount to conduct which a court ought to take into consideration in a determination of financial relief. She also deposes to the fact that she was forcibly ejected from the matrimonial home by the Husband and that thereafter the Husband refused to support her or the children of the family. The Wife denies that the Husband is unemployed stating she still sees him regularly in working clothes riding his bicycle. She further deposes to the fact that the disease, psoriasis, is a skin disease and could not affect the Husband's capability to work. According to her the Husband has rented out the upstairs apartment from the month of June 2000 and the downstairs apartment from the month of May 1991 thereby receiving a total of \$83,500.00 in rental income i.e. up to the month of March 2004. With respect to her present situation she deposes that she works as a seamstress earning the sum of approximately \$500.00 a week. Her monthly expenses are in the region of \$2,889.00 per month. She now suffers from arthritis. According to her the Husband has purchased a parcel of land and it is his intention to rehouse himself and his new family. There has been no affidavit in response filed by the Husband. In cross-examination no attempt was made to challenge the Wife's evidence as to the

Husband's behavior during the marriage, the effect of the psoriasis or her contributions to the welfare of the family and the construction of the home.

Neither was there any challenge to the Wife's evidence of her present situation. In the circumstances I accept the Wife's evidence with respect to these facts.

In cross-examination the Husband admitted that far from being dependant only on the rental income from the matrimonial home as he would have had us believe he owns a brush cutter and for the past two years has earned an income from same. He also admitted to still doing the occasional carpentry work although he claimed not to be able to do much because 'he can't see the joints', a fact not deposed to in his affidavit sworn only 7 months earlier.

From the contents of his affidavit and his cross-examination I am of the opinion that the husband is not a witness of the truth. The Wife on the other hand gave her evidence in a credible and straightforward manner and I accept her evidence. The Husband has not only received in excess of \$83,500.00 in rent since the breakdown of the marriage but he has also had the benefit of living rent free in the matrimonial home while the Wife has had to pay a rent. Further when one looks at his claim for moneys spent on maintaining the matrimonial home not only do these expenses relate to a period when the parties lived together but they include charges for work which the Husband could properly have done himself, as for example the claim to have spent some \$31,200.00 maintaining the grounds and appurtenances i.e. brush cutting and mowing for the past 20 years. I do not accept the Husband's evidence that he spent some \$83,005.00 on maintaining the matrimonial home and find that this is an effort to account for the sums of money

received by him as rent. I accept the evidence of the Wife as to the conduct of the Husband during the marriage and find that this conduct is such as to enhance the entitlement of the Wife in her claim for financial relief.

The only matrimonial asset is the matrimonial home. The Husband has stated that he has at all times been willing to give to the Wife her half share of the home and in response to the Court indicated that it was his intention to sell the house in order to satisfy the Wife's entitlement. To my mind this is indicative of the fact that the Husband does not need the matrimonial home to maintain a roof over his head and inclines me to accept the Wife's evidence, albeit denied by the Husband, that he is the owner of another parcel of land in the National Housing North Eastern Settlement Sangre Grande.

There is no application before me for the sale of the matrimonial home and I have no jurisdiction to do so in the applications before me unless the parties so consent. There has been no consent to the sale.

In all the circumstances and in order to achieve a clean break between these parties and in the absence of any agreement as to the sale of the matrimonial home I order that the Husband transfer to the Wife all his interest in the matrimonial home in full and final settlement of all her claims pursuant to the said marriage. The Husband is to vacate the said premises on or before the 31st August 2004. In all the circumstances I will make no order as to costs.

The order of the Court is as follows:

1. The Respondent/ Husband is to transfer to the Petitioner/Wife all his interest in the premises situate at Ebonite Drive Adventist Street Sangre Grande in full and final settlement of all her claims pursuant to the marriage;
2. The Respondent /Husband to execute the necessary documents of transfer within 21 days of the presentation of same to his Attorney at Law in default thereof the Registrar of the Supreme Court is empowered to execute same on his behalf;
3. The Respondent/Husband is to vacate the matrimonial home on or before the 31st August 2004
4. No order as to costs.

Dated this 20th day of July 2004

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Judith A.D. Jones
Judge