

IN THE FULL COURT OF THE HIGH COURT OF THE SUPREME COURT
OF JUDICATURE ON APPEAL FROM A JUDGE OF THE SUPREME
COURT (IN CHAMBERS) IN SUIT NO. 463-SA OF 2010

CIVIL APPEAL NO. 40 OF 2013

BETWEEN:

BASDEO SAHODAR

Appellant/ Respondent

-and-

PARBATTY SEWNANNAN aka

PARBATTY SAHODAR

Respondent/ Applicant

The Honourable Justices Nareshwar Harnanan and Navindra Singh, Puisne Judges.

Messrs. P. Mohanlal and R. Satram representing the Appellant.

Ms. M. V. Puran representing the Respondent.

Heard April 29th and May 27th 2015.

DECISION

Civil Action No. 463/ SA of 2010 was instituted by the Respondent on June 30th 2010 by way of an originating summons seeking *inter alia* an Order that property jointly owned by the Appellant and Respondent and held by Demerara Transport numbered 69 of 2004 be sold and the proceeds divided equally between them in accordance with the Immovable Property (Sale of Interest) Act, CAP 60:01 of the Laws of Guyana.

The Honourable Justice Insanally conducted a trial in the matter wherein viva voce testimony was received from both parties and witnesses and on May 24th 2013, her Honour Justice Insanally gave a decision ordering that the said property be sold by private treaty for \$30 000 000.00 (thirty million dollars) or at a value determined by the Government Valuation Office, whichever is greater and the proceeds of the sale be divided equally between the parties after the deduction of all lawful and reasonable expenses.

The Appellant contends that the learned trial Judge erred in applying the law and principles applicable under the Married Persons' Property Act, CAP 45:04 in arriving at her decision and further her conclusion that the Respondent is entitled to a half (1/2) share or interest in and to the building is wrong in law.

The Appellant contends that the Respondent is only entitled to a half (1/2) share or interest in and to the land and such share in and to the building based on her contribution to its construction.

ISSUE I

What is the nature of the ownership of the building?

FACTS

The undisputed facts are that the Appellant, Basdeo Sahadar, commenced divorce proceedings against the Respondent, Parbatty Sahadar, in the year 2001 and the marriage was dissolved by the Court on February 11th 2002.

On January 12th 2004 the said Basdeo and Parbatty became the joint owners of lot X33, Block X, Anna Catherina, West Coast Demerara by virtue of Demerara Transport numbered 69 of 2004, having occupied the said land since their marriage in 1984 and continuing after their divorce.

Some years thereafter, between 2007 and 2010, a building was constructed on the said land.

It has not been suggested nor is there any evidence that the joint tenancy has been determined.

In addition to these undisputed facts the Learned Trial Judge found that the evidence established that the Respondent contributed to the construction of the building.

Further, the Learned Trial Judge in her decision found that the Appellant was an incredible witness and more importantly she found the Respondent to be a very credible witness.

The Learned Trial Judge explained at length her reasons for these conclusions. Her reasons were pellucid and unambiguous and further I, having perused the evidence, can find absolutely no reason to differ with her findings.

I therefore find that this Court would not be justified in finding that she had formed a wrong opinion with respect to her findings of facts.

LAW

Cases referred to

Seugobin and Another v Walrond [1958] LRBG 45

Cases considered

Jones v Kernett [2011] UKSC 53

Sumair Singh v Chase Manhattan Bank [1991] 45 WIR 220

Beharry v Mendonca [1923] LRBG 107

Lillia v Beharry Lall [1916] LRBG 14

ANALYSIS

In this case, the Respondent asserted and the Learned Trial Judge accepted as the truth, that the building was built through the joint efforts of her and the Appellant to be a residence for them and their children and that she in fact resided there after its completion for some time until the Appellant's behaviour towards her made her leave after which this action was commenced.

Based on this evidence, that is to say, the joint owners of a parcel of land jointly constructs a building thereon without any agreement altering their interest in the property then it logically follows that the ownership of the building is the same as the land, the building having become a fixture upon the land.

In fact Counsel for the Appellant has insisted in this appeal that there is no evidence of any agreement between the parties with respect to the allocation or division of interest in the building.

Notwithstanding the above, assuming that the Respondent neither contributed to the construction of the building on the land jointly owned by the Appellant nor did she consent to or permit the construction of the building then the law is clear that the Appellant would have had no legal right to construct that building on the land as it would have infringed on the Respondent's, a beneficial co-owner's, right to occupy the land. (Seugobin and Another v Walrond [1958] LRBG 45).

The question would then be whether the building is immovable property. Based on the evidence the concrete structure erected on the parties' jointly owned land is clearly immovable property. From its physical qualities alone it clearly satisfies the criteria for permanency to make it immovable property.

It is well established law that whatever is built as a fixture upon a particular portion of land becomes part and parcel of that land and as such becomes the property of the owner/s of the land; *Quicquid plantatur solo, solo cedit* applies and in fact I agree with Counsel for the Respondent that *Omne quod solo inaedificatur solo cedit* applies equally.

The obvious result is that the Appellant and the Respondent are joint owners of the land and building situate at lot X33, Block X, Anna Catherina, West Coast Demerara.

Assuming that the Respondent did not contribute to the construction of the building on the land jointly owned by the Appellant and her but did consent to its construction, whether expressly or impliedly, the result is the same, that is to say that the Appellant and the Respondent are joint owners of the land and building situate at lot X33, Block X, Anna Catherina, West Coast Demerara since

improvement to property jointly owned, in the absence of an agreement to the contrary, cannot change the parties' interest in that property.

Nowhere in the evidence has the Appellant established or for that matter even asserted that the Respondent had agreed to surrender her rights as a co-owner to him or in any way abandoned such rights or he had lawfully acquired her rights.

Counsel for the Appellant argues that the land is jointly owned but the building is not since the four unities which characterize joint ownership were not present with respect to the house when that was built, therefore, the building could not be jointly owned.

It appears from his written submissions that he supports this argument by implying that the building built is a chattel house despite the fact that he immediately goes on to describe the house as an "**improvement**" to the land.

Firstly, he does not state which of the four unities was missing when the building was constructed, secondly, as has been explained above, the building is clearly a fixture on the land; it is immovable property. It most certainly is not a chattel.

Counsel for the Appellant further argues that the Appellant had a dire and immediate need of somewhere to live and so decided to build the house for him and his children.

This, Counsel for the Appellant argues, shows that the parties did not have a common intention to own the building jointly and cites the case of Jones v Kernett [2011] UKSC 53 as authority for this argument.

Firstly, the argument is contrary to the evidence. The unchallenged evidence of Parbatty Sahodar is that the parties and their children were living on the land in a zinc house and decided to move to the Respondent's (Parbatty Sahodar) mother's house while they built a bigger house.

Secondly, Jones v Kernett [2011] UKSC 53 has no application to the fact situation in this case.

CONCLUSION

The Appellant and the Respondent are joint owners of the land and building situate at lot X33, Block X, Anna Catherina, West Coast Demerara and therefore each co-owner/ party has the same interest and right in and to the property and will therefore be entitled to an equal share of the proceeds of any sale of the property.

ISSUE II

Did the Learned Trial Judge err in ordering that the property be sold at private treaty for \$30 000 000 (thirty million dollars) or at a value to be determined by the Government Valuation Office?

FACTS

There is no evidence as to the true market value of the property (land and building).

ANALYSIS

In the absence of evidence of the true market value of the property the Learned Trial Judge ought not to have blindly set such a value, since this may result in an inability of the parties complying with the Order or the parties not benefitting from the full value of the property being realized.

CONCLUSION

In the absence of evidence of the true market value of the property, the Order of the Learned Trial Judge will be varied as follows;

By deleting the words “*\$30,000,000.00 (thirty million dollars) or*” and “*whichever is greater*”.

By inserting the words “*not less than a value to be assessed by a competent property valuator chosen and agreed to by both parties and in the event that the parties cannot agree on such a property valuator then*”.

Finally, it has been asserted by the Appellant that the Learned Trial Judge treated the property as matrimonial property in arriving at her decision. I did not find that the Learned Trial Judge did in fact do that.

In the circumstances and for the reasons stated above the appeal is dismissed. The Order of the Hon. Justice D. Insanally is amended as stated above. Costs in the sum of \$300,000.00 against the Appellant.

Justice N. A. Singh

I concur.

Justice N. Harnanan