

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Civil Appeal No. 183 of 2010**

**Claim No. CV 2008-04537**

**BETWEEN**

**ANTHONY ADRIAN AMBROSE SHARMA**

**Appellant/Defendant**

**AND**

**ESAU MOHAMMED**

**Respondent  
/Claimant**

**Before The Hon. Madam Justice C. Gobin**

**Appearances:**

**Ms. Suzette A. Bullen for the Defendant**

**Mr. B. Dolsingh instructed by Ms. M. Tiwary  
for the Claimant**

**REASONS**

**Background**

1. The Claimant and the Defendant are the joint owners of property situate at No. 22 Church Street, St. James. The Claimant was formerly married to the Defendant's mother. The marriage took place in August 1979.

2. The Defendant's half share was formerly held by his mother, Lynette Mohammed. The property had been acquired by the couple in February 1999. The Claimant alleges that his former wife transferred her half share to the Claimant, her son, without his (the Claimant's) knowledge and consent. The marriage was dissolved in January 2005. In the course of the divorce proceedings, the Claimant/husband at some point, sought a property

settlement order in relation to the subject property, but the application was later withdrawn.

3. In the witness statements filed on behalf of the Defendant, he and his mother attempted to raise two issues. In tracing the history of the acquisition of the subject property, the Defendant appeared to be questioning the entitlement of the Claimant to a beneficial interest in the property. The mother, however, at all times confirmed that the premises were purchased by herself and the Claimant during the marriage and that she had transferred her  $\frac{1}{2}$  share in the property to her son. (At paragraphs 16/17 of her witness statement filed 21/6/10, Lynette Mohammed states:—

*“16. The subject premises at 24B Church Street, St. James, were subsequently purchased by both the Claimant and myself on the 3<sup>rd</sup> February 1999 for the sum of \$450,000.00 and \$55,000.00 respectively.*

*17. On the 6<sup>th</sup> day of October 1999 I transferred my undivided  $\frac{1}{2}$  share in the subject premises to the Defendant. When I transferred my  $\frac{1}{2}$  share in the premises at Church Street to my son it was with the knowledge and acquiescence of the Claimant.”*

The second issue arose out of the Defendant’s claim that he had expended over \$250,000.00 on the subject property since 2003. This, if it were accepted, may have been relevant to the question of whether the Defendant was entitled to an enhanced share in the property or in the event of a sale, to an increased share of the purchase price.

4. The parties agreed early on that there should be a sale of the property and they indicated that they were working on a formula for settlement. They

agreed that the only issue I needed to decide was who should have the first option to buy the other's share. When, on further probing from me, it became clear that the issue of the quantum of money allegedly spent by the defendant as well as claims to rent and for repairs by the claimant remained unsettled, the parties were invited and further encouraged to exchange their documentary evidence in support of those matters and to confer, with a view to narrowing the gap between the respective figures they had produced.

5. Following their discussions, the parties returned to me with an agreement as to the purchase price. They advised that in the event that I gave the Claimant the first option to buy, he was to pay the sum of \$482,500.00. They indicated expressly that that figure took account of a credit to the Defendant of \$55,000.00 for the repairs. This figure was what the parties had agreed after their accounting exercise. The purchase price reflected on the order was entered with the active agreement of the parties. In those circumstances, an assertion that the Court neglected to take into account the claims to moneys for improvement works to the property is somewhat surprising.

6. The Court was left to decide which of the two interested parties should be allowed the first option to purchase the property. The Claimant claimed to require it as a home. The Defendant claimed in his evidence that his mother had remained in occupation of the premises. She was elderly and infirm. While this was a matter which remained in dispute, I did not consider the mother's occupation, even if she were actually there, to be a determinative factor. The mother was no longer a legal owner or beneficial owner of the premises. She confirmed she remained in occupation as the agent of her son.

7. I preferred to lean in favour of the owner who had closer ties to Trinidad. The Defendant's evidence established that since as early as 1991 his status i.e. as to his citizenship in Canada allowed him to sponsor the

Claimant, his mother, and the Claimant's sons in acquiring citizenship in that country. The proceedings were served on the Defendant at his residence outside of Trinidad. His witness statement was signed and notarized in Canada. He had only returned to Trinidad for the trial.

8. The Claimant on the other hand had clearly habitually resided in Trinidad. If as alleged, he was residing in premises owned by a woman with whom he had a relationship that would not have influenced my decision. His requirement for his own home, given his age was not unreasonable. Even if he enjoyed dual citizenship in Canada and was required to return there from time to time, that did not change the fact that he enjoyed a more permanent presence in Trinidad than the Claimant. The mother confirmed in her witness statement that other than the time when he was prevented from returning to the premises through a protection order which she had obtained, the claimant had always enjoyed unhindered access to the premises.

9. In the course of the proceedings, Counsel for the Defendant attempted to introduce what appeared to be a claim to some kind of equitable interest by the mother. I rejected the attempt for the following reasons:

- (a) The mother was not a party to the proceedings. Her own evidence clearly established that she had transferred her half share in the property to the Defendant. This was also reflected on the deed which she had executed in favour of her son.
- (b) She had made no claim to the husband's remaining half share in the matrimonial proceedings. The Defendant's evidence of the history of the acquisition of the subject property confirmed that the Claimant had a half share and no less. It would have been unfair and an abuse of the process to allow her to raise such a claim in the instant proceedings.

10. In the circumstances I considered it just and appropriate to allow the Claimant the first option to purchase. After I indicated my intention, I invited the parties to jointly assist in the settling of the terms of the order for the sale to include directions in the event of the Claimant's default for the purchase by the Defendant. Other than the grant of the first option to the Claimant to purchase, the order reflects the terms which were agreed by the parties and which I considered sufficiently comprehensive to dispose of the matter and to avoid a return to the court.

**Dated this 8<sup>th</sup> day of September 2010**

**CAROL GOBIN  
JUDGE**