

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Cv2012-04735**

**BETWEEN**

**RIA MANSOOR**

**Claimant**

**AND**

**NESSIM MANSOOR**

**Defendant**

**CV 2012-0256**

**NESSIM MANSOOR**

**Claimant**

**AND**

**RIA MANSOOR**

**Defendant**

**BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR**

**APPEARANCES**

Ms. Tamara J Sylvester for the Claimant

Ms. Annabelle Sooklal for the Defendant

## Oral Decision

### Background

1. This matter began as a claim by Nessim Mansoor, (whom I will refer to as the son), for sale in lieu of partition of a property known as No.5 De Verteuil Street, Woodbrook in which his mother, the defendant, lives.
2. He so claims based upon the fact that he has a 1/6 share. His mother resists the sale, contending that she is entitled to reside in the property for life, based upon express, and/or implied promises and agreements between her and her ex husband, with the knowledge of all her sons, including the son.
3. The mother has a 1/2 share in the property. The property is the subject matter of a property settlement and property adjustment order, made by consent between the claimant and her ex husband. The claimant's two brothers, who each owned 1/6 share, have not participated in this action. The claimant and his brothers, all sons of the defendant, all live abroad.
4. The defendant contends that she was led to believe that, despite the express wording of the deed of separation agreement, and consent order that she entered into, under which she obtained 1/2 share, she had, additional thereto, a right to occupy that property for the rest of her life.
5. She resides there with her 93 year old mother, who is the grandmother of the claimant in the instant action.
6. She contends that, based upon this belief, she acted to her detriment in foregoing her entitlement to alimony payments from her ex husband, (who is the father of the claimant), and expended monies in constructing apartments on the property, from which he was to have secured income when she retired, as she has now done.

## **Issues**

7. At issue is:-

- i. Whether or not the property should be sold on an application under the Partition Ordinance, and,
- ii. Whether the mother is entitled to remain on the property for the duration of the lease, including any renewal thereof, or for the duration of her life, whichever is the shorter term.

## **Findings/Analysis and Reasoning**

8. My findings are as follows:

(i) The claimant's ex husband Ramon, in answer to a query from the court, conceded that **he knew that she had constructed apartments** for that purpose (that is, his ex wife).

### **Whether Express Promise made**

(ii) He expressly denied the express promise of a life interest that the defendant insisted had been made.

(iii) I accept his evidence that he did not make any such express promise. I find that it is unlikely that there was any such express promise. There would have been no need. As owner of a half share in the property the mother Ria Mansoor was entitled to live there.

(iv) I accept the evidence of Ramon that he made no such promise. The agreements entered into between him and the claimant made no reference to any interest additional to that of the legal entitlement to ½ share.

(v) The claimant herself testified both that there was an express agreement that she would be entitled to live there for the rest of her life, and that it was understood that she could.

(vi) I find that the documentary evidence does not support the allegation of an express promise having being made to her.

(vii) I find however, that, as she claimed, it was understood that she could do so. This is clear from the evidence of Ramon when he testified that the term or the period of occupation by the claimant of the property was never discussed.

(viii) I find that this is, in all likelihood, the reality. The claimant believed that, as owner of ½ share in the property, her rights in the property were secured. Ramon had given up his share in the property. It was clearly contemplated by all at the time, including the defendant, that, his mother would continue to live there.

(ix) Clause 1 (c) of the Separation Agreement clearly stipulated that the husband (Ramon) shall vacate the matrimonial home, and the wife (the claimant) and one child of the marriage shall continue to occupy the matrimonial home at No.5 De Verteuil Street. No restriction or time limit was stipulated.

(x) They continued to live there. Ramon, the defendant, and her other sons were all welcomed and were never excluded from the premises.

(xi) They were all fully aware that:

- (a) the claimant treated the property as her own;
- (b) that her mother, the grandmother of the defendant, lived with the claimant;
- (c) that she had voluntarily given up her right to alimony; This was intended to alleviate the burden on Ramon in maintaining one son at university.
- (d) that she gave up entitlement to alimony on the basis of the income she expected to receive from those rents. The claimant intended to secure an income when she retired, from the rents that she received from the apartment that she constructed, and that she had modified the premises to contain;
- (e) that, having retired, she had no other significant source of income;

(f) further, that she maintained the premises at her own expense;

All of this was known to Ramon and to her other sons, including the defendant. She ordered and arranged her life according to the belief, acquiesced in by the defendant and the other co-owners, that she was and would be, entitled to live in the premises without any limit on the term or the period that she could do so.

(xi) There was no reason to believe otherwise. The separation agreement, the consent order, and the actions of all the legal owners of the property, were consistent with their recognition of her right to continue to live in the property and treat it as her home.

(xii) The defendant encouraged the claimant to believe that she had the right to reside in the property for the rest of her life by standing by and allowing her to treat the property as hers to live in indefinitely, and by permitting, without objection or comment, her expenditure thereon, which was based upon her belief, (so encouraged), that she been entitled solely to the rents from those apartments.

(xiii) In fact she did collect the rents from those apartments without objection from anyone. This is all consistent with the claimant's belief that the arrangement was that she would be entitled to live indefinitely in the premises, of which she owned the largest single share.

(xiv) In fact I find that belief, though not expressed in writing, is based upon the reality of the arrangement. The claimant clearly acted to her detriment in reliance upon that belief that she was entitled to remain in the property, and treat it as her home for the rest of her life. It would be unconscionable for her to be denied the right to continue in the premises for as long as she chooses.

(xv) I find that no one ever told the claimant before the inception of these proceedings that she could not live in the premises for as long as she chose. The claimant always intended to live in the premises, and this was no secret.

(xvi) As she gets older her earning capacity has been significantly reduced, and the rent from the apartments is now her main, if not sole, source of income.

(xvii) I also accept that the clear effect of the evidence is that such a promise was also implied. This was clear from the response of Ramon, which I form the view is the truth of the matter, and the basis for reconciling the disparate versions of the three witnesses.

(xviii) The claimant and her ex husband never discussed how long she would live in the house. However his ex-wife, the mother, did in fact understand from all the written agreements, and the behavior of all her sons and ex husband, that she could live there for life.

(xix) There was therefore **no need to discuss it**. She arranged her affairs based upon that understanding. Her ex husband visited her at the premises .So did the son and the other sons. No one told her that she could not renovate or convert the house, or convert it into apartments. No one told her that she could not do this, or that she was not entitled to live there indefinitely. And they could not. She owned the 1/2 share and she was entitled to live there.

(xx) For some reason her right to live there for life has now become an issue. I find that it was not an issue for the majority of the period that she lived there. **I find that it was the clear understanding that the defendant could have lived on the property indefinitely with no period specified for her to vacate it, and the distinction between this arrangement, and her understanding that she was entitled to live there for life, is so fine as to be nonexistent.**

(xxi) I find that she legitimately believed, and was entitled to believe, that she had the right to order her life based upon the right to live in the premises for life. She did so, and she clearly acted to her detriment in so doing so. This was known, and not objected to by the claimant.

(xxii) Whatever the issue is between the members of this once close family it is not to be played out in what purports to be a Partition action.

## **Partition – Law**

9. The case of **Pena v Pena (HCA 258/ 99 per the Honourable Beraux J** as he then was **citing Drinkwater v Ratcliffe [1875] LR Eq 528 at 530 per Jessel MR and Pemberton v Barnes [1871] 6 Ch app 685 at 692 per Lord Hatherly LC)** clearly sets out the principles as to the basis on which a court could act to order the sale of property in a Partition action.

10. There is a distinction drawn in the Partition Ordinance between the case where a party requesting the sale owns a moiety which is  $\frac{1}{2}$ , or greater - and where he does not. In **Pena** the applicant in that case owned a  $\frac{2}{3}$  share and the action was brought under Section 4 of the Ordinance, which requires the court in most cases to order a sale.

11. In this case the action must be brought under Section 3 of the Ordinance, as **Nessim owns only a 1/6 share**. This is clearly less than a moiety. He has not established that he has the concurrence of the owners of the other  $\frac{2}{6}$  share, his brothers.

12. I find that he **does not have the concurrence of the owners of the other 2/6 share**. It would not be surprising that they would choose, as they have done, to maintain their distance from litigation against their mother. That being so I have to consider whether a case has been established based upon the principles set on the Partition Ordinance for the sale of the subject property.

13. When one considers the respective cases of hardship, on the one hand of-

(a) (i) the very gainfully employed son, with his own place to live in Canada, with

(ii). relatively minimal financial obligations in relation to his income, on the one hand, and on the other hand,

(b) that of his mother, who is

(i). **unemployed**

(ii). with her sole income being from **apartments constructed at her own expense** on the subject property,

iii. with the **responsibility of looking after her own 93 old mother** with Alzheimer's disease, there can be no legitimate justification for an order for the sale of this property.

14. The mother has established that:-

- a. she was led to order her life, and expend her own monies, and to forego entitlements under the property settlement, based upon a legitimate expectation that would be living on that property without interference, and without a further need to seek accommodation, for the rest of her life, and especially at this stage of her life, when she is now unemployed and retired.
- b. This was the clear purpose behind the separation agreement, and the consent order.
- c. This was known to her son. To the extent that it is relevant, it was also known by his father.
- d. The disposition of shares to the son was for the purpose of ensuring that the father's shares in the property were not put at risk by subsequent claims arising from another relationship.
- e. The sale by any of the sons of their 1/6 shares was not contemplated.

15. While an express promise that Ria Mansoor would live in the premises for the rest of her life was, on a balance of probabilities, not made, I find that it did not need to be. That was the very purpose of transferring the majority share in the property, and providing by the separation agreement that she will continue to reside there.

16. It would be completely inequitable to now contend or pretend otherwise. The mother made her expenditures and acted to her detriment.

17. The claimant owns a 1/2 share in the property. She is entitled to live there.

18. The lacuna in the consent order and the separation agreement centers around what happens when one of the minority share owners wants to realize the value of their share by



requiring a sale. The answer to that is that he has to satisfy the court to exercise its discretion under the Partition Ordinance, to order a sale.

19. Under Section 3 the court has a discretion. It is not necessary to go into fine detail on the respective balances of hardship. They are found in the submissions in reply by attorney at law for Mrs. Mansoor and I accept them. I referred to some of them previously.

### **Conclusion**

20. But the bottom line is the orders that I have to make in the circumstances, based upon the findings that I have made, are that:

i. **The claim for Partition in the Partition action is dismissed.** The claimant in the Partition action (that is Nessim Mansoor), in the related action which is CV 2012-04735, is to **pay to the defendant costs of that action in the sum of \$14,000.00.**

ii. **It is declared** that the claimant, in addition to her legal rights in the subject property, has an irrevocable licence to occupy the said property for life, or for the duration of the lease including any renewed term thereof, whichever is the shorter.

iii. **It is further declared** that the said licence precludes the sale of the property without the express written consent of the claimant Ria Mansoor.

iv. The defendant is to pay the claimant in HCA 2012-04735 the costs of that action, also in the sum of \$14,000.00.

Dated this 18<sup>th</sup> day of July 2013.

**Peter Rajkumar**  
**Judge.**