

IN THE SUPREME COURT OF BELIZE A.D. 2011

ACTION NO. 3 of 2008

DOUGLAS LENARTZ

APPLICANT

AND

RAMONA E. LENARTZ

RESPONDENT

Hearings

2011

18th March

24th June

2nd August

28th September

2nd November

15th December

Mrs. Agnes Segura-Gillett for the applicant.

Mr. Hubert Elrington SC for the respondent.

LEGALL J.

JUDGMENT

1. The applicant, a Caucasasia American citizen, was employed for many years as a pyrotechnician transportation specialist with a company located in California, U.S.A. Due to poor health, brought about by

severe illnesses, including a missing left, and an enlarged right, kidney, portal hypertension and chronic pain, he retired from his employment in May, 2003, sold his home in California USA and decided, because of the high cost of health care in the USA, to take up residence in Belize. In October 2003 he came to Belize owning about US\$200,000 and began living at San Ignacio, Cayo District. In February 2004 he met the respondent a Belizean national who worked as a bartender and waitress and who had two minor children from a previous relationship. He apparently fell in love; for about four months after their first meeting, they were married on 28th June, 2004. He was forty years old and she was 32.

2. Sometime after the marriage, he met the father of the respondent, Gilbert Miralda, who was the owner of land situate at Block 23, Parcel 89 Esperanza Village, Cayo District, containing an area of 8.445 acres. Mr. Miralda transferred ownership of Parcel 89 to the applicant and the respondent jointly; and land certificate no. 523 of 2005 for the parcel was issued on 1st February, 2005 in their names jointly. There is a dispute between the parties as to the circumstances of the transfer. According to the applicant, prior to meeting his wife's father, and before the marriage, he was the owner of a parcel of land No. 2023 measuring one acre in Santa Elena Town in Cayo District, about one mile away from Parcel 89. He testified that he paid ten thousand dollars for Parcel 89, not in cash, but by swapping parcel 2023 to Mr. Miralda for Parcel 89; and in this manner, according to him, he paid \$10,000 for Parcel 89. Evidence of the full geographical

features of both parcels of land and of the surrounding environment to further rationalize the alleged swap is missing.

3. The respondent gives a different version. She testified that it was not true that there was a swapping of the Parcel 2023 for Parcel 89. Rather, according to her, Parcel 2023 belonged to her, and she tendered a document 308/2004 dated 3rd August, 2004 entitled Lease Approval which shows that a lease for the said Parcel 2023 was approved in her name by the Minister of Natural Resources on 27th July, 2004. She further testified that she sold the said Parcel 2023 to a friend, named Betty August, for three thousand dollars. But the applicant claimed that Parcel 2023 was in his wife's name because he was an "alien" and she held it on trust for him. His wife, according to him, was "penniless prior to her marriage to the applicant," and did not have the financial means to acquire the lease.

4. The applicant, on whom the burden of proof lies, has failed to produce particulars of the creation and terms of the alleged trust; and in addition there is also no evidence that the respondent was penniless before marriage. In addition, the applicant agreed that the conveyance documents transferring Parcel 89 to both of them stated the price for the parcel as \$5000, and the document entitled Transfer of Land dated 1st February, 2005 is signed by both the applicant and the respondent before a justice of the peace and states that the consideration for Parcel 89 was five thousand dollars. In his first affidavit in this matter dated 10th January 2008, the applicant did not state that he paid the purchase price for Parcel 89 by swapping Parcel 2023. He simply

stated that he bought Parcel 89 for \$10,000 which contradicts the above evidence that the price for Parcel 89 was \$5000.

5. On the other hand, the respondent testified that the reason Parcel 89 was in both of their names was because she convinced her father to convey the said parcel jointly because she wanted to apply for a US visa. According to the respondent, the oral agreement was that after she obtained the visa, Parcel 89 was to be returned to Mr. Miralda, except one acre which was to be used by both of them to establish a resort. The resort was to provide income to support both of them: she would manage the resort and he would simply oversee things due to his illness.

6. The question arises whether ownership of the whole of Parcel 89 was intended to be transferred to both of them jointly or whether the agreement was that Parcel 89 was to be transferred to both of them for visa purposes, after which the Parcel 89 was to be reconveyed to Mr. Miralda, except one acre for the use of the applicant and the respondent as a resort. The other disputes between the parties are allegations by the applicant that the respondent, without his permission, withdrew \$3,635.00 from his account at Belize Bank; and also that the respondent took and carried away certain items belonging to him valued \$32,330.94. The applicant therefore issued a summons dated 10th January, 2008 under section 16 of the Married Women's Property Act Chapter 194 for the following:

- “1. A declaration under section 16(1) of the Married Women’s Property Act, Chapter 176 Revised Edition 2000, that the applicant is beneficially entitle to a 75% share in Parcel 89, Block 23, Esperanza Village Registration Section, which is presently registered in the joint names of the applicant and the respondent, or to such shares as the court deems just.
2. A declaration that the applicant is entitled to three thousand six hundred thirty five dollars (\$3,635.00) being one half of the sum unilaterally withdrawn by the respondent from the parties’ Belize Bank Limited Joint Account No. 650-2-1-101151.
3. A declaration that the applicant is entitled to all of the items listed in the schedule hereto or to the recovery of the sum of thirty two thousand three hundred thirty dollars and ninety four cents (\$32,230.94) being their equivalent value.
4. An Order that Parcel 89, Block 23, Esperanza Village Registration Section be partitioned in accordance with section 107 of the Registered Land Act, Revised Edition 2000 so as to reflect the parties’ beneficial entitlement, and allowing the applicant to retain the portion of the property to which he has made substantial improvements.
5. An Order that the respondent pay over to the applicant the sum of three thousand six hundred thirty five dollars (\$3,635.00).
6. An Order that the respondent return to the applicant all of the items listed in

the schedule hereto or in the alternative, pay to the applicant of the sum of thirty two thousand three hundred thirty dollars and ninety four cents (\$32,330.94) being the value of the said items.

7. Such further or other order of relief as the court may deem just.
8. Costs.”

7. The main statutory foundation on which the applicant rests his claim is section 16 of the Married Women’s Property Act Chapter 176 which states:

“16.-(1) In any question between a husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body or society as aforesaid in whose books any stocks, funds or shares of either party are standing, may apply by summons in a summary way to a judge of the court who may make such order with respect to the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he thinks fit.”

Under section 16 the court is authorized to make such order with respect to the title to or possession of property; and though it is a procedural section, it does not prevent actions between spouses for a declaration of rights. Under section 16 the judge is authorized to make an order as he thinks fit, but the section does not give the judge

the power to pass the property of one spouse over to the other. The section is also available to a husband and wife who are living together or where the marriage has broken down; and it does not suffer the limitation, as in section 148A of the Supreme Court of Judicature Act Chapter 91, of applying only to property acquired during the subsistence of the marriage or that the application must be made during divorce proceedings. In this matter before me the parties are not divorced, though there is in place an order for legal separation.

8. The title for Parcel 89 is registered in the names of both parties under the Registered Land Act Chapter 194 which registration results in absolute and indefeasible title in the parties, except in cases of fraud or mistake. The issue is whether it was agreed that the whole 8.445 acres of Parcel 89 would be the sole property of the parties, or just a part of Parcel 89 – the one acre that was allegedly orally agreed by the parties. Even if it is accepted that there was an oral agreement to convey one acre of Parcel 89, as was contended by the respondent, there is no evidence satisfying section 43 of the Law of Property Act Cap. 190 which requires a signed instrument in writing for the creation of an oral interest in land. Moreover, section 55 of the said Act states that no action may be brought upon any contract for the sale of land unless the agreement is in writing. There is no such evidence in relation to the one acre of Parcel 89.
9. Even if there was a valid agreement to convey the one acre of land, the court may only order rectification of the registration of land in the land certificate, where the registration had been obtained or made by

fraud or mistake. There is some evidence of fraud in the obtaining of the visa from the US Embassy, but there is no evidence that the registration of the land certificate was obtained by fraud or mistake. Since there is no evidence that the alleged agreement for the one acre of Parcel 89 satisfies section 43 or 55 of the Law of Property Act; and no evidence of fraud or mistake to obtain the registration of Parcel 89, grounds for rectification of the certificate of registration to convey the one acre of land to the applicant, as contended by the respondent, are absent. There are therefore no lawful grounds for rectifying or altering the ownership rights conferred on the parties by land certificate 523 of 2005.

10. Parcel 89 is held jointly by the applicant and the respondent. They are therefore joint owners or joint tenants of Parcel 89. As joint owners, they are seized of Parcel 89 per mie et per tout, that is to say, each joint tenant holds the whole or holds nothing, that is, they hold the “whole jointly or nothing separately”: see *Neilson Jones v. Fedden 1974 3 A.E.R. 38, at p 43*. The applicant by clause 4 of his summons above has asked for an order of partition of parcel 89 under section 107 of the Registered Land Act which applies to land owned in common. Under the said section 107 it is the Registrar, on an application, who is authorized to effect the partition. I have not been able to find any local legislation authorizing the court to order partition where land is owned jointly. But it seems at common law, the Court of Chancery possessed the jurisdiction to decree partition of lands owned jointly: see *Patal v. Premabhal 1954 AC 35*. In that case their Lordships considered the old case of *Turner v. Morgan*

(1803) 8 Ves 143; the principle of which case, their Lordships said, “may be succinctly stated as declaring that in a bill praying partition, the court must decree partition, however inconvenient and undesirable partition may be. Indeed the Lord Chancellor in that case adjourned the hearing in order that the parties might come to terms whereby one might sell and the other purchase, but in default of agreement, found himself compelled to decree partition.” It does not seem that a partition order has to include particulars of the division or subdivision of the land, see *Patel* above at page 46.

11. It seems that the court having made an order for partition, the parties may then apply under section 107 of the Registered Land Act to the Registrar for the land to be divided in such portions as described in the application. The court may at common law, make an order for partition in accordance with the claim and the evidence to support the claim. But I believe the Registrar is authorized to effect the partition in accordance with the application made under the above section, by making a division of the property, because a decree for partition of property and division are two different matters: see *Patel* at page 45.
12. In order to decide, for purposes of a partition order, as applied for by the applicant, the share of each joint tenant, I suppose the court should consider evidence of contribution made by each joint tenant, moreso in the case where they are husband and wife. The evidence is that, according to the document entitle “Transfer of Land” No. 523 of 2005, five thousand dollars were paid for Parcel 89. The names of both parties appear on the document as the persons to whom Parcel 89

was transferred. The applicant states he did not pay cash for Parcel 89 it was a swap, as we saw above. The respondent swears there was no swap. Even if there was a swap of Parcel 2023 for Parcel 89, some financial consideration had to be paid for Parcel 2023. But the difficult question is this: Was it paid for by both parties or one party and how much was paid. Let us look at the evidence again. The applicant states that he invested US\$200,000 in Parcel 89, and that his wife made no contribution to the purchase of Parcel 89. Before marriage the respondent was a bartender and waitress, and earned \$200 per week. She said she bought parcel 2023 for the price of “\$2000 to \$3000,” and that she bought it with her own money, one month after marriage to the applicant. She admitted that when she bought Parcel 2023 she did not have any money in the bank. She said she borrowed the money from a friend to buy Parcel 2023, but there is no evidence of the identity of the friend or any document as evidence of the loan. The respondent also admitted that the applicant opened an account at a bank in both of their names with a deposit of \$50,000.

13. The respondent cannot remember the purchase price she paid for parcel 2023. When the parcel was bought she did not have a bank account. She was employed but her salary was small. There is no evidence of the friend from whom she said she borrowed the money to purchase Parcel 2023. Moreover, I have seen both of them give their evidence and observed their demeanour. I do not, for the reasons above, believe the respondent that she paid the purchase price for Parcel 2023. Though there are discrepancies as shown above in the applicant’s evidence, I believe that he paid the purchase price for

Parcel 2023, and put it in the respondent's name. I hold that the respondent made no financial contribution to the acquisition of Parcels 89 and 2023.

14. The applicant states that, on Parcel 89, for purposes of the resort, he constructed a fifty foot wide palapa with two restrooms, three small palapa umbrella huts with concrete flooring walls and sidewalks. There were seats under the umbrellas, and in the large palapa there was a bar, but it was not operative. The applicant states that he paid for the construction and development on Parcel 89. The respondent admitted in cross-examination that the applicant paid for the entire cost of the construction. There is no evidence that she contributed by her work or labour in the construction of the structures on Parcel 89.
15. I have no evidence of any other contributions the applicant as wife made, such as house work and caring for her ill husband. But the respondent is the wife of the applicant and joint owner of Parcel 89. She perhaps did, as most wives do, some housework at least in the initial stages of the marriage which, on the evidence, broke down about a year after marriage. The magistrate's court issued a separation order on 17th February, 2006, on the grounds of the respondent's cruelty. On the basis of the evidence and reasons considered above, I declare that the parties have rights to Parcel 89 in the shares of the applicant 60% and the respondent 40%.
16. The parties had a joint account at Belize Bank. The applicant alleged that he issued two cheques No. 1003 dated 21st March, 2005 payable

to a business place named Hsi Fa Wu in the amount of \$2,270.00; and cheque No. 1032 dated 7th April, 2005 payable to Western Hardware, but did not have thereon an amount payable. The applicant further alleged that the respondent struck out the named payees on both cheques, inserted her name thereon and inserted the amount of \$5000 in the second cheque dated 7th April, 2005 and cashed both cheques in the amount of \$7,270.00. As the account from which the cheques were payable was a joint account, the applicant in the summons is asking for an order against the respondent for half of the amount of the cheques, namely \$3,635.00. The respondent, according to the defence, says she withdrew the money mentioned to pay rent, utility bills, food bill and other expenses. Specifics of these expenses were not given by the respondent, who did not file a witness statement nor affidavits in the matter; and in her oral evidence-in-chief and in cross-examination, she says nothing about using the money from the cheques for the above expenses. I accept the evidence that the respondent cashed the two cheques on which she admitted her signature appeared and received the payments. I believe the respondent deleted the payees names on the cheques and inserted her own unknown to the applicant for her own benefit.

17. The applicant states that in April, 2005 he visited the USA with the respondent, accompanied by one of her children and her brother, and he purchased several items of equipment required for the resort. These items are listed in the schedule to the summons. The applicant said he paid all expenses for the trip – tickets, food, accommodation and other expenses. Those items of equipment valued at \$32,330.94

were brought to Belize and stored at the matrimonial home. The applicant alleged that in September, 2005, the respondent took and carried away the items, except some “lawn and garden items.” From his evidence, it seems that he did not actually see the respondent carrying away the items. In her defence, the respondent states that due to threats of violence and abusive behaviour by the applicant, resulting, according to her, from his drinking and drug sprees, when he returned home she was unable to remain there, and it was during her absence therefrom that the items went missing. The respondent states that some of the items in the schedule were stolen because there was no watchman for the premises while she was away and that some were sold by the applicant. The respondent accepts that the applicant bought the items listed in the schedule, but she insists that she did not remove them. She swore in court that she did not have any of the items on the list. The applicant did not see the respondent carrying away the items, nor did he call any witness to prove by circumstantial evidence or otherwise that she did. The burden is on the applicant to prove on a balance of probabilities that the respondent took away the items or that she has them in her possession. I am not satisfied that the applicant has discharged this burden.

18. I therefore make the following orders:

- (1) A declaration is granted that the applicant is beneficially entitled to ownership of sixty percent share of Parcel 89 Block 23, Esperanza Village, Cayo District, and the respondent is entitled to forty percent of the said parcel.

- (2) A declaration is granted that the said parcel 89 be partitioned in the shares mentioned at (1) and that the structures on the Parcel 89 are owned by the applicant.
- (3) A declaration is granted that the applicant is entitled to the sum of \$3,635.00 from the respondent and an order is made that the respondent shall pay to the applicant the said sum of \$3,635.00.
- (4) Paragraphs 3 and 6 of the summons are dismissed.
- (5) Respondent shall pay to the applicant costs in the sum of \$1,500.00.

Oswell Legall
JUDGE OF THE SUPREME COURT
15th December, 2011