

IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY

M. 22/83

332

No Special
 Consideration

BETWEEN N EVANS of Taupo
 Married Woman

Applicant

A N D G EVANS of
 Palmerston North, Retired

Defendant

MINUTE OF GREIG J

The application by motion filed in the Court on 1983 seeks an order declaring void the agreement made between the applicant and the defendant on 11 June 1981 and for orders determining and dividing the matrimonial property of the parties. There is an affidavit on the file by the applicant which sets out some background matters as to the marriage, the separation and the matrimonial property. The agreement made, dated 1981, was prepared by the solicitors who now appear to act for the applicant and on its face appears to comply with the formal requirements of s 21 of the Act. In particular both parties appear to have been independently advised and their solicitors appended certificates accordingly to the agreement.

The agreement deals on its face with the matrimonial home and provides for a payment to the applicant of \$34,000 by instalments. All the other property which is not detailed is to be divided by retention by the party in whose name or possession the property was at that time.

In her affidavit the applicant alleges that she was under emotional pressure and in ill health and was therefore unable to deal properly with the division of

the matrimonial property. In any event she alleges that she did not then and does not now know the full details of the matrimonial property, particularly the property which the defendant had. She alleges further that she completed the agreement contrary to her solicitor's advice.

The only evidence before me as contained in the applicant's affidavit is sketchy insofar as it deals with the matrimonial property. No details at all are given as to the matrimonial home and its possible value or as to the defendant's interest or the value of that in a business in which he was concerned. There is reference to a farmlet owned by the defendant and a statement, unsupported by any confirmatory evidence, that that farmlet was worth approximately \$150,000 in June 1980. It appears, however, that there were mortgages registered against the title to that farmlet and no details are given as to the amounts that might have been owing at any relevant time. It is alleged that there were life insurances in the defendant's name and stock on the farm but again no references are made to the value of these.

On the face of that evidence there is not sufficient to satisfy me that it would be unjust to give effect to the agreement and there is insufficient evidence to enable me to make any order under the Act, if the agreement was to be voided, by way of determination or division of matrimonial property.

Against that background there is now on the file a memorandum signed by counsel for the applicant and counsel for the defendant advising that the matter has been settled and seeking a consent order. The orders sought are to declare void the agreement and that the applicant's claim to a share in the matrimonial property be settled by payment by the defendant to the applicant of the sum of \$34,000. That sum is the same amount as is mentioned in the agreement itself but there is an implication in the applicant's affidavit that some payments

have already been made to her and I am certainly not clear whether the order now sought includes the payments made or is an additional amount.

At all events no order is sought as to other parts of the matrimonial property, for example motor vehicles, which were specifically dealt with in the agreement. Once an agreement is void then the whole of the matrimonial property has to be dealt with under the Act.

I am inclined to the view that in any case it is not appropriate that a Court make an order by consent voiding an agreement made under s 21. The Court has to be satisfied that it would be unjust to give effect to the agreement and I find it difficult to see how the Court can be so satisfied merely by the consent of the parties. In this case the evidence does not so satisfy me and in the face of that the counsels' consent cannot lead me to the satisfaction required. This is particularly so when, as here, the order sought in replacement of the agreement appears to be identical at least in money terms.

Likewise, on the facts as put before me, or I should say the lack of facts put before me, I am not prepared to make an order by consent which does not completely determine the matrimonial property and which provides a division which on its face the applicant complains is unjust.

In the result then I refuse to make the order sought.

DATED at Wellington this 21st day of June, 1983.

Solicitors for the applicant: Fitzherbert, Abraham & Co
(Palmerston North)

Solicitors for the defendant: Jacobs, Florentine & Partners
(Palmerston North)