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NZLR

IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

M.205/84

1701

IN THE MATTER OF The Matrimonial Property Act 1963

BETWEEN M TWYMAN
of Ngakuru, Farmer
Applicant

A N D THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED
formerly The New Zealand Insurance Company Limited as Executor and Trustee in the Estate of P TWYMAN late of Ngakuru, Deceased
Respondent

Hearing: 21 November 1984

Counsel: C.J. Rushton for Applicant
M.T. Crowley for Respondent
G.R. Joyce for Children

Reasons For Judgment: Delivered 27 NOV 1984

C.W. ENTWISTLE

REASONS FOR JUDGMENT OF GALLEN J.

The applicant Mrs M Twyman trained as a landgirl in England from the time she left secondary school; spent 2½ years as a trainee in a scheme similar to the farm cadet scheme in New Zealand and attended a School of Agriculture gaining the National Certificate of Agriculture and a cup for the best dairy student at the Dairy School of Agriculture. She also gained a certificate in shearing and was in charge of a

herd of cows for a period before coming to New Zealand which she did in March 1960. I mention these matters because she clearly had an unusual amount of experience in farm work as well as quite valuable qualifications in this area.

On arrival in New Zealand, she worked on a sheep farm before going to work for a Mr W.A.H. Twyman, working as a landgirl. Mr Twyman's two sons had acquired a Crown leasehold block and the applicant worked also on this land in various ways, including the construction of capital improvements. She was involved in all forms of farm work, including hay baling.

In September 1962 she became engaged to P Twyman, one of the sons of Mr W.A.H. Twyman and then returned to England for a short period to see her family. She came back to New Zealand in March 1963. She and Mr Twyman were not in a position to be able to afford to marry and she continued working for Mr W.A.H. Twyman for a further 12 months. The applicant and P Twyman were married on 1964. For the first 3 months following their marriage, they lived with Mr Twyman's parents while another house was built for them on a section owned by Mr W.A.H. Twyman. During this period, she milked Mr W.A.H. Twyman's herd of dairy cows with her husband and attended to general farm work. In the year ended June 1965, Mr Peter Twyman and his brother sold the Crown leasehold block of land and the stock running on it and subsequently the applicant and her husband began sharemilking on a 39% basis with Mr W.A.H. Twyman who owned the stock.

Mr P Twyman (hereinafter referred to as "the deceased) then began buying stock of his own. During the same year he bought the next door farm for which he paid $24,300. The purchase price was made up of a loan of $1,500 from his father and the balance was borrowed from his bankers.

The applicant's first child was born in 1965. The applicant continued to work on the farm during the whole of her pregnancy and returned to work very shortly after the birth of her son. It was the intention of the applicant and the deceased to acquire their own dairy herd and to buy the farm from Mr Twyman Snr.. They therefore continued to sharemilk on that property and in 1971 the farm was purchased by the deceased for $35,500. This was financed by way of a mortgage of $15,000 to the AMP Society and a mortgage back on demand to Mr Twyman Snr. for $27,500 at 7½% reducible to 6% interest. There was a further unsecured loan of $6,500. It is accepted by all parties that this was a family transaction and that there were special advantages to the deceased in the arrangement. However, there is another special circumstance relating to the transaction which should be referred to here. An affidavit was filed by Mr Twyman Snr. in which he deposed to the fact that he regarded the transaction as being one not just between himself and his son, but between himself and his son and daughter-in-law. The affidavit is sufficiently detailed to make it clear that this was undoubtedly the case and any element of family advantage was therefore equally

to the applicant.

There were 4 children of the applicant's marriage, the youngest being born in 1970. The applicant continued to work on the farm as well as accepting the responsibilities imposed upon her in connection with the children, but she had a particular interest in the improvement of the milking herd by selective breeding and the building up of a herd of stud stock. The evidence makes it clear that the contribution which the applicant made in this regard was exceptional and it appears that not only did she make an unusual contribution to the farm operations generally, but made a special contribution to the development of what was established to be a substantial and profitable pedigree herd.

The applicant stated that some 5 years after her marriage with the deceased, the accountant to the farming venture was consulted with a view to entering into a formal partnership recognising the equal contribution of both parties. This was considered unnecessary by the accountant concerned who effectively dissuaded the parties from proceeding with a formalisation of an arrangement which it is now said had been accepted throughout. The evidence of Mr Twyman Snr. would confirm the fact that all involved did regard the venture as a partnership pursued on a basis of equality although the books kept do not reflect this. The records relating to the stud stock do however recognise the interest of the applicant and this confirms the general contention upon which this application is based.

In November 1981 the applicant's husband became ill and his illness was diagnosed as cancer. After operative treatment there was some improvement but then a rapid and marked deterioration and it became clear that his illness was terminal. In February 1982 the applicant and the deceased discussed the question of a formalisation of the partnership and a recognition of what was accepted by both as an equal interest of the applicant in matrimonial property. They did not take this further because it was their belief that for such an arrangement to be effective, the applicant would have needed to commence proceedings against her husband in Court and pursue them to a conclusion. In his condition, she was not prepared to do this. The deceased died at Rotorua on 1982.

The applicant now seeks an order under the provisions of the Matrimonial Property Act 1963. The provisions which apply to such applications are clear and there is no doubt whatever in my mind that the applicant made major contributions to the acquisition, development and retention of the matrimonial property, most of which remained legally in the name of the deceased. All of the significant property was acquired after marriage and although there were special advantages of a family nature relating to the acquisition of both farm properties, there is clear evidence that this advantage was directed by Mr Twyman Snr. equally to the applicant. I do not think therefore, that this can be regarded as a separate contribution of the deceased. While

in the earlier authorities an assessment of contributions tended to result in conclusions which favoured those made by the husband on a percentage basis, the position in Haldane v. Haldane (1976) 2 N.Z.L.R. 715 reinforcing as it did the approach towards the valuation of contributions which appeared in the earlier case of Hoffman v. Hoffman 1965 N.Z.L.R. 795, restored the approach of that case. Since that time, there has been a perceptible move towards that equality which the 1976 Act imposed as a starting point.

In this case, I think the evidence is overwhelming that the contributions made by the applicant and the deceased were equivalent and recognised by them and by others within the family as such. The respondent Trustee indicated through counsel that it did not intend to make submissions, but would abide the decision of the Court.

The 4 children of the marriage were represented by Mr Joyce who had interviewed the children and ascertained their views. While these would not necessarily be relevant to an assessment of the applicant's interest, it is heartening to note that they strongly supported the contentions of their mother and Mr Joyce felt after a careful examination of the position, that he was in a position where while not of course consenting to the orders sought by the applicant, he did not feel obliged to oppose them. I note too, that it is the intention of the applicant to ensure that the position of the children of the marriage is protected in relation to any

subsequent marriage she may contract, but this of course is irrelevant to an assessment of her interest in the existing matrimonial property.

I therefore declare that the applicant and her late husband were entitled to equal shares and interests in that property set out in the First Schedule to the notice of motion for orders and that consequently the proceeds of sale of any such property is to be divided equally between the applicant and the estate of her late husband. In particular, there is a declaration that the proceeds of sale of the stud stock and pedigree herd sold, are held and are to be divided on this basis. I make this declaration on the basis that there is the clearest possible evidence the parties treated this stock as being owned equally by them and the declaration is intended to reflect this.

Mr Joyce is entitled to his costs which should be borne by the respondent, but I think it is inappropriate that there should be any further order for costs. The parties may submit an order in terms of this judgment.

R Ballo

Solicitor for Applicant: J.D.L. Corry Esq., Atiamuri

Solicitors for Respondent: Messrs Potter and Wi Rutene, Rotorua

Solicitor for Children: J.D.L. Corry Esq., Atiamuri