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IN THE MATTER OF The Matrimonial Property Act 1976

BETWEEN

COUPER

of Rotorua, Motor
Camp Proprietor

Applicant

A N D

COUPER

of Palmerston North,
Motor Camp Proprietor

Respondent

Hearing: 17 August 1984

Counsel: C.J. Rushton for Applicant,
J.H. Williams for Respondent

Judgment: *Delivered* 12 SEP 1984


G.W. ENTWISTLE
Deputy Registrar

JUDGMENT OF GALLEN J.

The applicant whom it will be convenient to refer to as "the husband" seeks an Order under the provisions of the Matrimonial Property Act 1976 defining certain property as matrimonial or separate property; determining whether or not a dwellinghouse is a homestead; an Order determining the interest of the parties in the property; a subsequent Order vesting it in such proportions as the Court considers just; an Order directing the method by which the respondent is to receive

her share of the matrimonial property and an Order granting to the applicant possession of a motor camp property pending payment to the respondent of her share of that property.

The applicant grew up on a family farm and has testified that from the age of 15 on, it was his intention to acquire the family farm. This was a sheep and cattle property and the applicant had a preference for a dairy unit. Accordingly, the original family farm was at some stage sold and a dairy unit purchased, specifically to meet the preference of the applicant. The husband then worked for his father on the family farm and took the opportunity to begin building up his own dairy herd. In 1966 the husband leased the family farm from his father and bailed the majority of the stock from his father. In order to make additional income to establish himself, he was involved in shearing as well. It was apparently decided that the leasing scheme was not to the financial advantage of either the husband or his father and arrangements were entered into for the purchase of the farm by the husband from his father. The purchase was financed by the husband borrowing \$18,400 from the State Advances Corporation and owing \$14,990 to his father. He paid interest to his father at the rate of 5% p.a., all this taking place on 3 February 1968.

On 16 March 1968 the husband and the wife were married. There are three children of the marriage, the first being born on 27 August 1969, the second on 17 January 1971 and the third on 28 April 1973. On 31 March 1970, the father

gifted the sum of \$2,990 to the husband by forgiving in part the debt owing. In 1971 the husband's father died and the sum of \$12,000 remained as a liability owing to his estate.

Initially the parties lived in a small cottage on the farm property which had been fitted out before marriage. The husband claims to have purchased all the furniture before marriage, but the wife assisted with some of the decorating of the cottage and also assisted with an onion crop before the marriage. When the wife was pregnant with the first child, the husband's mother moved from the farm and the larger farmhouse was then available to the husband and the wife. The husband maintains that he did not want the wife to work on the farm or to go out to work. He accepts that she worked around the house and the garden and concedes that at times she assisted with tasks on the farm, such as feeding out, but he maintains this was spasmodic. He accepts that on one occasion when he was contracting for hay making and unable to return in time to milk, the wife got the cows in and milked them. I think it is clear that the wife played her part as a farmer's wife accepting the responsibilities which that normally entails and at least on some occasions moving beyond her first sphere of responsibility in the house and garden into general assistance on the farm. The husband concedes that the wife was an exceedingly good housekeeper and drew attention to the fact that she was able to provide clothes for the children and ran the house exceptionally well. Both parties were substantially

involved in community activities and it appears that some difficulties arose in the marriage because of this, around 1972.

By 1972 the husband was looking for a larger area. He had acquired grazing rights over Catchment Board land but was unable to secure the lease subsequently and decided that it was necessary for him to sell his existing property and buy a less-developed but larger property. The husband says that he had always had an idea at the back of his mind that at some time he would be interested in running a motor camp so that once the decision had been made to sell the farm and acquire a larger property, he went to North Auckland and looked at both farms and motor camps. He then went to the Rotorua area, specifically to look at farms at Reporoa, but while there saw an advertisement for the sale of the Cosy Cottage Motor Camp. He visited this and considered on the balance sheet it was a good proposition but that it had an unimpressive appearance. At the same time he had obtained an option over a farm at Reporoa. He then returned home and discussed the matter with his wife who was apparently willing to look at both farm and motor camp. After inspecting the motor camp, they decided to acquire it and did so, selling the farm in order to finance the purchase. The husband was able to sell the farm to advantage because his family were prepared to allow the \$12,000 owing by the husband, to remain on loan to the purchaser of the farm. The husband was therefore not obliged to borrow quite so much money and had an additional sum to put into the purchase of the motor camp.

Neither the husband nor the wife had any experience with running a motor camp, but they commenced running it on the same lines as the previous owner and at the same time endeavouring to improve it. The wife at this time obviously had extensive responsibilities in respect of the young children of the marriage but there is no doubt she made her contribution to the running of the camp as well. In addition to running the family household, she accepted responsibility for correspondence, assisted with the camp shop when needed and assisting with the office.

The husband immediately commenced a re-building programme which was delayed as a result of planning problems. After coping with financial difficulties, the re-building commenced and a home was built for the parties. This was done on a labour only basis - the husband working on the property himself and again the respondent played her part. Without going into detail, it appears from the papers that the husband and the wife between them completely transformed the motor camp with the construction of new and better buildings and a very substantial amount of the work involved was done by the husband directly on the building work, but I also consider, by the wife in freeing him to do this and in carrying out her side of the responsibilities of the motor camp.

During 1979/80, arrangements were contemplated to transfer a share in the motor camp to the wife, this having been so far retained in the name of the husband and a series

of legal transactions were entered into, to result in the wife obtaining a one-half share in the land, a Deed of Acknowledgment of Debt and a Deed of Forgiveness of Debt. A partnership agreement was also entered into and a transfer signed but this has never been registered and continuing difficulties in the marriage resulted in a separation before this could be effected.

The separation finally occurred on 1 August 1981. A Manager was appointed to run the motor camp and the husband began the operation of a small fishing venture, purchasing a boat in order to assist with this. The husband supervised the running of the camp which continued to pay fixed outgoings such as life insurance premiums and building society contributions and three small accounts which the husband charged to the camp. However, he did not draw any money from the camp. The husband claims that the camp was not well run; that there was a substantial fall-off in income and that the deterioration in the operation of the camp was resulting in a substantial reduction in goodwill. Against the wishes of the wife, the husband therefore took over the management of the camp himself and has continued to run it until now.

It was conceded for the husband that although the motor camp may initially have been separate property, it became matrimonial property by virtue of the arrangements entered into between the parties as to partnership and transfer.

There are effectively three questions for determination. The first relates to whether or not the homestead provisions of s.12 of the Act should apply and if so, having regard to the unusual circumstances of this case, how they should be applied.

Secondly, an assessment of the shares of the husband and the wife in the motor camp business.

Thirdly, any recognition of a post-separation contribution by the husband with a contention for the husband that the valuation should be made not at the date of the hearing, but at the date of separation or by making some adjustment in respect of the contributions made by the husband since the separation.

Complex and difficult problems arise in relation to the matrimonial home. I am satisfied that on the material before me, the matrimonial home at the motor camp is to be regarded as a homestead and to be dealt with under the provisions of s.12 of the Matrimonial Property Act 1976. This section is effectively a Code which provides that the valuation and the apportionment of value shall be made by the Valuer-General. There are of course special appeal rights contained within the section, but subject to that, the Court is obliged to accept the material so provided.

In this case, the parties were unable to agree on either apportionment or value and as I read the section, I am

not entitled to resolve this question except within the terms contemplated by s.12. I find therefore, that the residential premises at the motor camp are a homestead for the purposes of the Matrimonial Property Act and the value is to be divided equally between the parties. The establishment of that value is to be carried out in terms of s.12 of the Act.

The principal asset for division after taking into account the homestead, is the motor camp property. The parties have accepted that this is matrimonial property. The difference between them is as to the appropriate division.

In this case, the husband had acquired substantial separate property before the marriage. Undoubtedly his opportunity to acquire the family farm occurred as a result of special arrangements made within the family and followed on a substantial period of involvement in what seems to have been a family enterprise. Although the actual transfer of the farm took place in close proximity to the marriage, in my view it was not a transaction made in contemplation of marriage and the husband must be regarded as having made a very substantial contribution to the marriage enterprise. I accept that during the period the parties were farming, the wife made her contribution as an exceedingly and unusually competent housewife and mother and that she made some contribution as a farmer's wife. I find that the husband made a further special contribution when the farm was sold and motor camp bought because of the special family arrangement that was made with regard to finance.

There was a dispute between the parties as to the extent of contribution made after the motor camp had been acquired. In my view, there is no doubt that both parties made very substantial contributions to what was genuinely a matrimonial enterprise and one which had the unusual factor that the parties lived on the premises and were involved in it 24 hours a day. I accept that the husband made major contributions in developing the motor camp, but I also accept that the wife accepted responsibilities in connection with it which allowed the husband to extend the range of his activities within the camp and that she played her part both in accepting sub-standard accommodation for a period and in assisting with the development of the motor camp.

I do not consider that the arrangements which the parties were about to enter into before the break-up of the marriage were in any sense decisive. There is a clear recognition in the documents that the husband was making a contribution of what appears to have been considered to be separate property, but the Act itself over-rides any arrangement which the parties may have made of a legal nature. These can be no more than an indication of the approach which they adopted and having regard to the time at which the arrangements were made, I do not think it can reasonably be said that they represent a considered assessment of matrimonial property rights.

In my view, the special contribution of the husband made through his family assets should reflect in the division.

At the same time, I think that the efforts made by the wife should not go unacknowledged. In my view, it is appropriate that the husband should be entitled to 60% of the value of the motor camp and the wife 40%.

There was a considerable dispute as to the value of the camp. If it were simply to be sold, then this would not matter as it would be the proceeds which would be divided. The husband however, wishes if possible to retain the asset and in my view where so much of a family's life and effort has gone into a particular enterprise, if one member of the family does wish to retain it, that person should be given an opportunity to do so.

The husband entered into a conditional agreement for the sale of the property as a going concern earlier this year. The agreement is undated but provided for a possession date of 1 June 1984. This was for a purchase price of \$430,000. In the event, the conditions were not satisfied and the agreement did not proceed. A Mr Bell had carried out a valuation in March 1983 assessing the total value of the business but excluding goodwill, at \$275,000. The motor camp as an asset is a business enterprise. I think it unrealistic to assess it without reference to goodwill. Some comment was made as to the inclusion of chattels in the agreement, but in so far as these are a part of the business enterprise, then they too should be taken into account.

The agreement entered into earlier this year was not completed because the purchaser was unable to sell a farm property which was a condition of the agreement. There is no suggestion that the amount offered was unrealistic. Having regard to all the circumstances, I think that it provides a reasonable assessment of the value of the property and I accordingly accept that it should be valued at \$430,000. From this should be deducted whatever sum is ultimately assessed as being the value of the homestead, as well as any outstanding liabilities relating to the land or the business.

The husband claims to be entitled to some recompense which would reflect in the value for the period he has managed the property since the manager gave up. In my view, having regard to all the circumstances, this is reasonable and I think from the value as found by me, a sum should be deducted equivalent to the amount which would have been paid to the manager as salary during the period the husband accepted responsibility for management of the camp. This period will commence with the commencement of the acceptance of responsibility and should terminate with the date of hearing.

Following the view I have earlier expressed, the husband should in my view have an opportunity to buy out the interest of the wife and he should have a reasonable period in which to make any financial arrangements which are to be regarded as necessary. I direct therefore that payment to the wife of her share is to be made within 6 months of the date hereof. Before payment, she is entitled to interest at the

rate of 11% p.a.. If payment is not made within the period specified, then the business is to be sold and the proceeds divided.

Family chattels should be reasonably readily identifiable and they or their value is to be divided equally. The wife has not yet brought into account the chattels in her possession. If the parties are unable to reach agreement on this aspect of the matter, then I direct an enquiry under the provisions of s.38, the Registrar to appoint an appropriate person in accordance with that section.

There was some dispute over a boat purchased by the husband after separation. In regard to the circumstances, I hold that that boat is not matrimonial property.

The husband asks for an Order that all accounting and valuation costs incurred as a result of the proceedings be paid by the partnership. In view of the dispute over the appropriateness or otherwise of the husband assuming management, the accounting fees were clearly justified and should be paid by the partnership.

Without in any sense wishing to criticise the valuation evidence which was placed before the Court, I have been unable to determine the matter on the basis of this, partly because of the special considerations relating to the homestead and partly because the valuation evidence was to some extent

superseded by the agreement of which evidence was given. Under those circumstances, I do not think it is appropriate that the valuation costs should be paid by the partnership.

Any undrawn profits of the business up to the date of this judgment and held allocated to the parties, will have been arrived at on the basis of the partnership agreement. Having regard to the circumstances, I do not think this should be re-apportioned but should remain the property of the parties as they stand.

Leave is reserved to any party to apply in respect of any matters which require further consideration.

R. D. [Signature]

Solicitors for Applicant: Messrs Hannah, McKechnie and Morrison, Rotorua

Solicitors for Respondent: Messrs Potter and Wi Rutene, Rotorua
