

13/2

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M. 1941/89

UNDER THE Matrimonial Property
Act 1963

IN THE MATTER of the Estate of
ROY JOHN JACKSON deceased

2909

BETWEEN FRANCES JACKSON

Plaintiff

AND

RONALD NORMAN JACKSON,
SUSAN MARY JACKSON and
CHRISTOPHER JAMES PARR

Defendants

**LOW
PRIORITY**

Hearing: 7 December 1990

Counsel: Ms S.E.F. Hanley for plaintiff
J.F. Mather for defendants

Judgment: 7 December 1990

(ORAL) JUDGMENT OF BARKER J

This is an application under the Matrimonial Property Act 1963 ('the Act') by a widow against the estate of her deceased husband. The plaintiff and the deceased were married in 1935 and were living together at the date of the deceased's death on 11 October 1988.

This was a marriage of 53 years duration. There are two surviving children of the marriage, neither of whom has taken any steps in these proceedings. Counsel for the

plaintiff informed me that the children support the plaintiff's application. There are no infant beneficiaries.

The deceased left the plaintiff only the income from his estate to cease on her death or remarriage. She was not even left household or personal effects; she did succeed to the matrimonial home by survivorship, it being registered as a joint family home. There is no opposition to the application by the trustees of the estate.

The plaintiff in her affidavit details a familiar story of a couple working hard over the years on a number of farms, the couple eventually retiring to a matrimonial home in Te Atatu. It seems clear that the plaintiff did more than her share as a farming wife over the years; there is no doubt that she is entitled to relief under the Act.

Counsel have referred me to similar cases where a 50% share was given; namely, decisions of Gault J in McKnight v NcKnight & Bull (Gisborne Registry, SC.2/88, 3 June 1988) and Colgan v Colgan (Auckland Registry, 9 February 1990, M.1831/89). In the Court of Appeal decision of Re Mora [1988] 1 NZLR 214, the widow, who received her statutory entitlement on the husband's intestacy, had been married for 26 years; she was described as an exceptionally hard working wife; she received 40% of the estate after account had been taken of her own separate

3.

matrimonial property and the benefit she received under the estate.

In this case the only property owned by the plaintiff at the date of the deceased's death consisted of a small sum inherited from her mother's estate which had always been kept separate from matrimonial property. Counsel for the plaintiff, quite properly in the order she suggests the Court makes, has given allowance for 50% of the value of the home which the plaintiff now has.

The deceased's estate has now a nett balance of \$476,419. Taking half that figure, then subtracting 50% of the value of the home assessed at date of death at \$178,000, the balance which the plaintiff should receive on this application is \$149,209.

I make an award to her under the Act in respect of that sum.

There will be no order as to costs.

R. J. Barker J.

Solicitors: Hanley Irving McWha, Henderson, for plaintiff
Earl Kent Alexander Bennett, Auckland, for
defendants

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M. 1941/89

UNDER THE Matrimonial Property
Act 1963

IN THE MATTER of the Estate of
ROY JOHN JACKSON deceased

BETWEEN FRANCES JACKSON

Plaintiff

AND

RONALD NORMAN JACKSON,
SUSAN MARY JACKSON and
CHRISTOPHER JAMES PARR

Defendants

(ORAL) JUDGMENT OF BARKER J
