Neutral Citation Number: [2023] EWHC 304 (Fam)

Claim No: FD22F00059

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
IN THE MATTER OF THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS ACT) 1975
IN THE MATTER OF THE ESTATE OF KARNAIL SINGH (DECEASED)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 February 2023

Before :

MR JUSTICE PEEL

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Between :

HARBANS KAUR **Claimant**

- and -

(1) THE ESTATE OF KARNAIL SINGH (Deceased)
(2) AVTAR SINGH LALLY
(3) JAGTAR SINGH LALLY **Defendants**

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Oliver Ingham (instructed by **Meadows Ryan Solicitors Ltd)** for the Claimant
The Second Defendant attended in person
The Third Defendant did not attend and was not represented

Hearing date: 1 February 2023

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Approved Judgment

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MR JUSTICE PEEL

This judgment was handed down remotely at 10.30am on 14 February 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

Mr Justice Peel:

1. This is a Part 8 claim under the Inheritance Act 1975 dated 7 July 2022. The Claimant ("C") seeks reasonable financial provision from her deceased husband, who died on 21 August 2021. Her claim is brought under s1(1)(a) of the Act as "the spouse or former spouse of the deceased".

Procedural rules and Practice Directions

2. Claims brought under the Inheritance Act 1975 must be issued in (i) the Chancery Division or the Family Division; CPR 57.15(1), or (ii) in County Courts where there is a Chancery District Registry; CPR PD57.2.

3. By paragraph 14 of the Chancery Masters' Guidelines for the Transfer of Claims, issued by the Chief Master on 20 May 2015: "Inheritance Act claims by a spouse will usually be suitable for transfer to the Family Division". That is reiterated at bullet point 9 of paragraph 30 of the Business and Property Courts Advisory Note issued by the Chancellor of the High Court on 13 October 2017.

4. The CPR rather than the FPR apply to an Inheritance Act claim, even if it is issued in the Family Division or transferred there: CPR 57.15(2).

5. However, if the claim is issued in the Family Division, or transferred there, the parties must comply with the requirements as to bundles and preliminary documents set out in PD27A of the FPR 2010, as stated by Williams J, with the approval of the President of the Family Division, in **Re XY Claims under the Inheritance (Provision for Family and Dependants) Act 1975 [2019] EWHC 1610 (Fam)**. The value of compliance with PD27A was apparent in this case. C's counsel and solicitors complied with impeccable efficiency, enabling the court to get to grips swiftly with the factual background, issues, legal principles and suggested outcome. I am grateful to them for their exemplary conduct in this respect. I, and others, have had cause in financial remedy proceedings to criticise legal teams for non compliance with these requirements; see, for example, **WC v HC [2022] EWFC 22.** This Inheritance Act claim demonstrated to me precisely why it is so helpful, indeed essential, for the relevant rules, practice directions and efficiency statements to be scrupulously adhered to.

6. By CPR 39.2(1) "The general rule is that a hearing is to be in public", that is to say in open court. This, of course, applies to an Inheritance Act claim even if issued in, or transferred to, the Family Division. It follows that ordinarily any judgment will be unanonymised.

7. Within a family law context, it is only the Family Division which may hear an Inheritance Act claim. The Family Court does not have equivalent jurisdiction. That is a function of the CPR provisions to which I have referred, as confirmed by the President's Guidance of 24 May 2021 "Jurisdiction of the Family Court: Allocation of Cases Within the Family Court to High Court Judge level and transfer of cases from the Family Court to the High Court". The consequence is that such cases, when heard

in the Family Division, must be before a judge of High Court level. That is the case whatever the value of the estate. Thus, in **Paul v Paul [2022] Fam 1638**, Moor J heard an Inheritance Act claim brought by a widowed spouse where the Grant of Probate put the net value of the estate at £429,963, although on the judge's findings the actual monies available, on one view, were as little as £98,688 before legal costs. By contrast, a financial remedies dispute generally requires assets of not less than £15m to justify allocation to High Court level within the Family Court (see paragraph 3 of the 2016 Statement on the Efficient Conduct of Financial Remedy Hearings allocated to a High Court Judge whether sitting at the Royal Courts of Justice or elsewhere).

8. It is anomalous that all Inheritance Act claims proceeding in the Family Division must be heard by a judge of High Court level, no matter how modest the assets, whereas a financial remedies claim will ordinarily only be heard by a High Court Judge if the £15m threshold is met. Historically, District Judges of the Principal Registry of the Family Division (the long standing forerunner of the Central Family Court) held such jurisdiction; thus, in **Ilott v Mitson [2017] UKSC 17**, the first instance decision was made by District Judge Million in the Principal Registry. Arguably, Inheritance Act claims should be capable of being issued in the Family Court, not the Family Division, such that they can be allocated to the appropriate judicial level. A simple means of achieving this would be an amendment to s25(1) of the Inheritance Act 1975 so that the definition therein of "the court" should have added to it the words "or the family court" after "High Court", coupled with an amendment to CPR 57.15(1) to add "the family court" at a new sub paragraph (c). That, however, is a matter for lawmakers.

The background

9. C and the deceased married in 1955, so that by the time of his death they had been married for about 66 years. They had 7 children, of whom one sadly is deceased. All are adult; two are male and four are female. It is clear from the evidence that C played a full role in the marriage, both as wife and working in the family clothing business, albeit she had no direct stake in the business (which closed down a number of years ago) and did not receive a salary. She was dependent financially upon the deceased who met all family outgoings. She was, I am satisfied, a wife who made a full and equal contribution to the marriage in accordance with the seminal case of **White v White [2000] UKHL 54**.

10. C is now 83 years old. Her income consists of state benefits at just under £12,000pa. She has very modest assets. She has a number of medical conditions and is registered disabled. Since the death of her husband, she has moved out of the family home because one of the children, with whom relations are very strained, moved in. She currently lives with her daughter.

11. The entirety of the family wealth was built up during the marriage. C's estimated value of the estate, before tax and costs, is about £1,990,000. That comprises:
    a. The former matrimonial home;

b. Four residential properties, all of which are let;
c. A commercial property;
d. Some land and property in India.

However, D2 told me that he has obtained valuation evidence of the various properties and he thinks the estate is more likely to be worth about £1.2m gross.

The will

12. By will dated 25 June 2005, the estate was left in equal shares to two of the children, who are the named executors ("D2" and "D3"); they are the sons of C and the deceased. There is some talk of a further will in 2016, but it has not been found and the consensus is that it would have been in the same terms. The reason why the will was crafted in these terms, excluding C and the other four siblings (the sisters of D2 and D3), was because the deceased wished to leave his estate solely down the male line.

13. Accordingly, C receives nil provision under the will.

The proceedings

14. The claim, expressed in clear terms in the originating application, is for half of the estate. Based on C's estimate of the value of the estate, her claim was for £995,000. However, I was expressly assured by C's counsel at this hearing that if in fact the estate proves to be valued at about £1.2m (as D2 thinks likely) or indeed any other figure, her case is for half the estate, whatever the value, and the sum she ultimately receives will constitute reasonable financial provision.

15. The claim was served by registered mail on D2 and D3.

16. D2 has stated in unequivocal terms that he does not oppose the claim.

17. D3 returned the envelope marked "Return to Sender". It is he who has moved into the former matrimonial home which C has vacated. The relationship between him, C and the deceased deteriorated badly in recent years.

18. On 8 November 2022, C issued an application seeking:

    a. Appointment of D2 as personal representative of the estate for the purpose of these proceedings;
    b. An abbreviated final hearing on the basis of the claim being uncontested;
    c. Alternatively, if D3 were to contest the claim, summary judgment under CPR Part 24;
    d. Interim relief under s5 of the Act in the sum of £20,000.

19. D3 was served personally on 8 December 2022 with the Claim of 7 July 2022 and the application of 8 November 2022, in each case together with the relevant ancillary documents. The process server observed D3 throwing the documents in a wheelie bin.

22 December 2022 was the last possible date for D3 to file an Acknowledgment of Service. He has not done so.

20. On 20 January 2023, C's solicitors wrote to both Ds informing them of this hearing and the relief sought under the originating claim and the interim application. D3 has not made any attempt to engage or communicate with C, D2 or the court. He did not attend the hearing before me, and I decided to proceed in his absence. By contrast, C attended, represented by counsel, and D2 attended in person.

The law

21. Sections 1 to 3 of the 1975 Act require the court to ask itself two overlapping questions (para 23 of **Ilott v Mitson [2017] UKSC 17**):
    a. Does the will fail to make reasonable financial provision for C?
    b. If so, what should the financial provision be?

22. In so doing, it must have regard to the matters set out at s3(1)(a) to (g):

    (a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;
    (b) the financial resources and financial needs which any other applicant for an order under section 2 of this Act has or is likely to have in the foreseeable future;
    (c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
    (d) any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 2 or towards any beneficiary of the estate of the deceased;
    (e) the size and nature of the net estate of the deceased;
    (f) any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased;
    (g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

23. S3(2) additionally provides, where an application is made under s1(1)(a) or (b) of the Act by a spouse/civil partner or former spouse/civil partner, that the court shall also have regard to:

    (a) the age of the applicant and the duration of the marriage or civil partnership;
    (b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.

    In the case of an application by the wife or husband of the deceased, the court shall also, unless at the date of death a judicial separation order was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the marriage, instead of being terminated by death, had been terminated by a divorce order; but nothing requires the court to treat such provision as setting an upper or lower limit on the provision which may be made by an order under section 2.
    [An identical provision is made in respect of a civil partner].

24. This latter provision is sometimes referred to as the "divorce cross check". The surviving spouse should not ordinarily be worse off as a widow than as a hypothetical divorcee, as explained at para 13 of **Ilott**.

The merits

25. Weighing up all the factors in s3, it seems to me that this is the clearest possible case entitling me to conclude that reasonable provision has not been made for C. It is hard to see how any other conclusion can be reached. After a marriage of 66 years, to which she made a full and equal contribution, and during which all the assets accrued, she is left with next to nothing. The divorce cross check points unerringly towards an equal division of the assets. C expressly avers that such a division would meet her needs; she does not pursue a case, sometimes advanced in financial remedies proceedings, that she should receive a greater share than 50% in order to meet her needs. Her intention is to purchase a modest property near her daughter. Her income requirements are modest, and C accepts that all her capital and budgetary needs can comfortably be met within the sums available if she receives an equal share, whether her half share is of a gross estate value at £1.99m, or a gross estate value at £1.2m.

Abbreviated inquiry

26. This is a Part 8 claim. Part 8 is designed "for the determination of relevant claims without elaborate pleadings"; see the Editorial Introduction to Part 8 at 8.0.1 of the White Book 2022. At 8.0.9 of the White Book, the notes state: "A Part 8 claim is determined at a disposal hearing: see para 8.1 of PD8A. If there are no issues of fact, then the claim will be determined on the written evidence". The court has the power to require or permit direct oral evidence (CPR 8.6(2)) but in practice the court will rarely do so unless it has been foreshadowed in earlier written evidence (8.6.1 of the White Book) and there is an obvious and material evidential dispute. Thus, in **Re H [2020] EWHC 1134 (Fam)** Cohen J proceeded to dispose of an Inheritance Act claim without receiving oral evidence. Part 8 entrusts the court with considerable flexibility of case management. To that, I add that I have borne in mind the overriding objective at CPR 1.1 and case management powers at CPR 3.1.

27. It seems to me that it is just and reasonable to dispose of the issues to the extent possible at this hearing. D2 does not resist the claim, no doubt seeing the injustice which would be done to his mother were she to exit with nil provision. D3 has not participated. Neither have put in written evidence to challenge the two witness statements from C. I treat the claim as undefended. The facts do not appear to be in dispute. It would not be proportionate in the circumstances to await further clarification of the value of the estate pending final decision on the claim. C is elderly and impoverished, and it is unreasonable to prolong proceedings unless there is clear justification for doing so. I am satisfied that in the circumstances of this case I can, and should, make a decision summarily. It should be well understood by all concerned that a "summary" decision does not mean that I have not given the case careful and anxious consideration. I have. I have read the bundle in full, as well as the skeleton argument on behalf of C. I have listened to oral submissions. "Summary", in this context, means that I do not consider it necessary to embark upon more detailed inquiry into the substantive merits, whether through more written evidence, or a detailed disclosure exercise.

28. In the circumstances, I do not need to consider the summary judgment application under CPR Part 24. The test for summary judgment is whether the Ds "have no real prospect of successfully defending the claim or issue". That seems to me to be a higher threshold than simply determining the claim by way of an overall evaluation of the case in an abbreviated fashion, as I have done in preceding paragraphs. That the summary judgment procedure can be invoked in the right case is beyond doubt. It was deployed in **Dellal v Dellal [2015] EWHC 907** although not in fact adjudicated upon. In the light of my findings, it will perhaps be apparent that this seems to me to the sort of case where a finding of summary judgment could be safely and properly made. But I have already dealt with it under my wide powers of case management, and do not need to venture into summary judgment territory.

Conclusions

29. I am satisfied that:
    a. The deceased's estate did not make reasonable provision for C;
    b. C should receive 50% of the net value of the estate, and the disposition of the estate effected by the will should be varied to that effect;
    c. The sum of £20,000 shall be forthwith paid to the claimant from the estate by way of monies on account of final distribution to her;
    d. C's legal costs should be paid out of the estate, and shall be deducted from the gross value of the estate before the equal division for which I am providing;
    e. D2 should be formally appointed as personal representative of the Estate.