F v F

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Finlay C.J.
Henchy J.
Kiernan J.

THE SUPREME COURT

1979 No. 7580P

R. F.

v.

M. F.

Judgment of Henchy J.
delivered the 24 October 1985 Nem. diss.

The husband and wife in this case were married in 1956. He was an agricultural instructor and she was a clerk. It did not turn out to be a happy marriage. Over the years it passed through a series of vicissitudes which I need not recount. It is sufficient to say that the marriage, of which there is no issue, is now irretrievably broken down for some years.

The present proceedings were commenced by the wife in the High Court in 1980, following on the breakdown of the marriage, and in them she sought a series of reliefs against the husband. When the proceedings came on for hearing before D'Arcy J. in December 1982 he made an order dealing with the several issues raised in the

pleadings. I need not go into the various matters that were in dispute, for this appeal, which has been taken by the wife against the order of D'Arcy J., is limited to two matters,namely, the findings made by the judge as to the ownership of a farm in north Co. Dublin, and of a house in Malahide, Co. Dublin.

When the parties married in 1956 they first lived in Santry, Co. Dublin. In 1961 they decided to purchase the farm in north Co. Dublin. It was a farm of some 35 acres and the purchase price was £4,200. Between money given by an aunt and money lent to her by a bank, the wife put up £4,100 of the purchase money. The husband's contribution was £100. With the aid of an advance from the bank - as a security for which the title deeds of the farm were lodged - they stocked the lands with cows and began dairy farming. The farm had been acquired in the wife's name.

Meanwhile, relations between the parties were steadily deteriorating. They intended to leave Santry and go to live on the farm, but the wife refused to do so. She has complained of physical ill-treatment by him, due, according to the judge, to persistent nagging by her. Her nervous health deteriorated and

she had to get psychiatric treatment. Because it was he who was effectually running the farm he felt that she should assign it to him. In April 1963 he had transferred the house in Santry to her. The running of the farm was financed out of a joint bank-account. When she froze that account, he pressed her to assign the farm to him. Eventually she did so, by a deed executed in May 1965.

D'Arcy J. held that this deed was a valid transfer. The wife contests that finding and asks this Court to hold that the deed should be set aside on the ground that she executed it under undue influence by the husband. In my opinion, that contention is unsound.

In the first place, the deed was not a voluntary one. While the transfer is expressed in the deed to be in consideration of natural love and affection, the reality was, as the judge held, that she was to be repaid everything she had expended on the purchase of the land, and he was to take over her liability to the bank for the amount the bank had advanced in respect of the purchase and stocking of the land. It was, therefore, an assignment for valuable consideration. But even if it could be said that the consideration

was inadequate or illusory, she had been independently advised as to her rights by two separate firms of solicitors. In the circumstances, there is no equitable principle on which she could claim that the transaction could be set aside. It was not an improvident transaction. As well as that, the fact that she allowed eight years to pass before making any complaint that her execution of the transfer was oppressive or unfair was, as the judge held, so tainted with delay as to be inconsistent with her claim that she had acted under undue influence when she executed the transfer. I entertain no doubt that the judge was correct in holding that the transfer is valid and is binding on the wife.

The second ground of appeal argued is concerned with a house at Oakley Court, Malahide, Co. Dublin. This was a house acquired in the joint names of the husband and wife. The judge held that the wife's interest thus acquired was acquired as trustee for the husband. Whether that finding is correct is the issue that has mainly exercised the Court in this appeal.

It is common case that the wife made no contribution towards the cost of the purchase of the house at Oakley Court and that, although she had promised to do so, she never resided there. The

matrimonial home was the house in Santry, but the marital relationship there was poor. In 1974 the husband bought another house, in Malahide, in his own name and went to live there. The marriage had now virtually collapsed, but the parties kept up desultory contacts. He pressed her to go to live with him in his house in Malahide. She at first agreed to do so, but then refused because that house was not in their joint names. Instead of living together there, she suggested that he sell that house and buy a new house at Oakley Court in their joint names. If he did so, she would go to live with him there. Being anxious to attempt to revive the marriage in a new matrimonial home, he agreed to do so.

The husband thereupon proceeded in 1976 to buy the then unbuilt house at Oakley Court for £26,750 and the conveyance was taken in their joint names. He then sold his other house in Malahide for £18,750. The financing of the purchase of the house at Oakley Court was arranged by the husband getting a bank loan.

When the house at Oakley Road was built, the husband moved in and asked the wife to join him there. Despite her earlier promise, she was reluctant to do so. As an added inducement to her to

honour her agreement to live with him in that house, he bought her a motor car which cost £1,600. All to no avail. She continued to live in the original matrimonial home in Santry. Despite all entreaty by him, she resolutely refused to go and live with him at Oakley Court. She has never gone to live there. Nevertheless, she claims that, because the conveyance was taken in their joint names, she is now beneficially entitled to a half share in that house. D'Arcy J. rejected that claim and the wife's second argued ground of appeal is that the judge was wrong in so deciding.

The equitable doctrine of advancement, as applied to transactions between husband and wife, has the effect that when a husband (at least where the circumstances show that he is to be expected to provide for the wife) buys property and has it conveyed to his wife and himself jointly, there is a presumption that the wife's paper title gives her a beneficial estate or interest in the property. Unless the presumption is rebutted by evidence showing a contrary intention on the part of the husband at the time of the transaction, he will be deemed to have entered into the transaction for the purpose of conferring a beneficial

estate or interest on the wife. That estate or interest is treated in law as an advancement, that is to say, a material benefit given in anticipation of the performance by the husband of his duty to provide for the wife.

The presumption of advancement in those circumstances is, of course, rebuttable. For a rebuttal to be made out, it is for the husband to show, by reference to acts or statements before or around the transaction, that a beneficial interest was not intended to be conveyed in the circumstances relied on. As to subsequent acts or statements, the authorities show that they are admissible in evidence against the party making them, but not in his or her favour. Thus, subsequent acts or statements on the part of the wife are admissible in evidence to rebut the presumption of advancement.

The essence of the transaction in regard to the house in Oakley Court was - and the judge has so held - that the husband was to buy that particular house and take the conveyance of it in the joint names of the wife and himself, provided the wife was prepared to live there with him. The latter condition, from his point of view, was paramount. He was anxious to revive the

faltering marriage. He had asked her to leave Santry and come to live with him in his other house in Malahide. She had refused because that house was in his sole name. That was the sticking point. She countered by agreeing to a resumption of normal marital relations if he bought the Oakley Court house in their joint names. This condition emanated from her and he fell in with it. It was the cornerstone of the transaction as far as he was concerned. Nevertheless, she has repudiated it and contends that the presumption of advancement stands unrebutted.

In construing conduct alleged to amount to advancement, the court's task is essentially a fact-finding one. It has to ascertain, from the admissible matters relied on by the parties, the true intention behind the transaction which has given the wife a paper title. If the relevant circumstances show that the paper result produced by the conveyance conceals the real intention of the husband in entering into the transaction, so that the benefit contended for by the wife was not intended, the court will hold that the presumption of advancement has been rebutted.

In the present case, I am satisfied that the presumption of advancement, arising from the terms of the conveyance, was clearly

rebutted. It is plain that the husband would never have agreed to the transaction if the wife had not promised to live in the house. That promise was an integral part of the arrangement. The wife cannot cast aside that promise and take the benefit of the conveyance. It is a fundamental rule that a person who comes to court seeking the benefit of an equitable doctrine will be denied that benefit if the grant of it would amount to a reward for unfair, unconscionable or inequitable conduct. To hold in this case that the wife acquired the beneficial interest she claims would, apart from being based on a false interpretation of the arrangement made by the parties, allow the wife to profit by her bad faith. That is something the court should not do. The position would be less clear if it were a question whether the wife had in reality or in substance performed her part of the agreement. For example, if she had gone to live with the husband in the house for only a short or nominal period, it might be difficult for the husband to contend successfully that she had not complied with her promise that she would go to live with him in the house if he bought it. But that is not the case here. She has made no attempt

to live there. What she wants is to be allowed to renounce totally her promise to live in the house and at the same time to be allowed to get a beneficial interest in the house, when it is plain that the passing of such an interest was made conditional on the performance by her of the promise. In such circumstances it must be held that the presumption of advancement has been rebutted and that she has not acquired under the deed any beneficial interest in the house.

Being of opinion that the two grounds of appeal argued have not been made out, I would dismiss this appeal.

Approved
S.H.

FERNANDET

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THE HIGH COURT

JOSEPH FERNANDES

APPLICANT

AND

ANTHONY BERMINGHAM

RESPONDENT

Judgment of Mr. Justice Barron delivered the 22nd day of May 1985.

At the conclusion of the hearing of this matter I indicated that the District Justice might have no jurisdiction to state a case other than at the termination of the proceedings before him. This is the position in relation to a case stated by a Circuit Court Judge under section 16 of the Courts of Justice Act 1947: see Corley -v- Gill 1975 I.R. 313; or by a High Court Judge under section 38 (3) of the Courts of Justice Act 1936: see Dolan -v- Corn Exchange Buildings 1975 I.R. 315.

The relevant sections relating to the stating of such cases provided that the Judge might "adjourn the pronouncement of his judgment or order" pending the determination of the case stated. It was held that since the Judge would not be in a position to pronounce his judgment or order until the termination of the case that likewise he could not state a case until such stage had been reached.

Section 52 of the Courts (Supplemental Provisions) Act 1961 does not contain any similar reference to adjournment of the Courts