

ROYAL COURT

2nd August, 1988

Before:- The Bailiff and
Jurats Le Boutillier and Hamon

Between:

Mrs E

Plaintiff

And:

Mr E

Defendant

Summons issued by defendant to vary
injunctions obtained by Order of Justice
in order to allow defendant to re-occupy
part of matrimonial home

Advocate A.P. Begg for the plaintiff
Advocate S.J. Habin for the defendant

JUDGMENT

BAILIFF: When the Court last sat on this matter we were differently constituted, Jurat Le Boutillier has now replaced Jurat Gruchy. It is clear that when the Court gave its judgment, it was not aware of the details of the layout of the premises. The Court did have a plan of the premises but it was not a very full plan. It was for that reason that the Court applied its mind to the possibility of whether, because it appeared to be a large house, it might be possible to work out some scheme acceptable to both parties by which the husband could continue to live and conduct his business from there. We did

no more than suggest it down that we would necessarily agree to that kind of arrangement if the wife and daughter were to find it intolerable. That is perfectly clear from page seven of our judgment.

This morning we have had the opportunity of visiting the premises and the first thing I want to say is that we had not appreciated that the access is a common access through the back yard. The front yard and the outbuildings have been developed, but the back yard of the house appears to be the only way in for a car, and most people use cars and so for all practical purposes it is a common entrance. That in itself is something that militates against the arrangements which might otherwise have been applied. There is no doubt that, physically, it would be possible to divide the premises as was suggested to us: the little dower house which perhaps was to the East of the main house. Possibly there could have been a fence put up to hide the conservatory which was added; and no doubt the husband could make do with what he would have there by using what is now the place where there is a deepfreeze and a washing machine as his washing area. All those things could possibly be done without a great deal of cost and all the technical and practical applications could be effected quite easily.

But that really was not the point; what we had to ask ourselves was, having seen the premises, would the husband's presence there as close as it would be under the circumstances, affect the two persons, that is to say the wife and daughter in the way which they quite clearly were affected (and we found they were so affected when we heard the case on the 15th June). We have come to the conclusion that we would have to answer that question in the affirmative. It seems to us that this is a temporary measure, or would be a temporary measure until the divorce petition is heard, and we are informed that this has now been filed. Everything we have said in the judgment as regards the husband being able to find somewhere to live for the time being still applies today. We do not think that it is in the interests of the wife and the daughter to alter the injunctions which we originally imposed, (and refused to alter again on the 15th June) or amend them in any way. We do not think that the property lends itself to such a division, as we feel that there would be an intolerable presence of the husband leaning heavily on the wife and stepdaughter. Therefore, the summons is dismissed and costs will follow the event.

Authorities cited:-

N -v- P 1985/86 J.L.R. 144.
Bassett -v- Bassett (1975) 1 All E.R. 513.

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