

41 Nfld. & P.E.I.R. 320

Morris, Re

Newfoundland Supreme Court, Trial Division

Lang

Judgment: April 23, 1982

Morris, Re

In the Matter of the Last Will and Testament of Louis R. Morris, late of Lower Island Cove, Conception Bay, Province of Newfoundland, Retired Mechanic, deceased.

In the Matter of an application to one of the Honourable the Judges of the Supreme Court of Newfoundland, Trial Division, for directions with respect to determining the Inventory of the estate of Louis R. Morris, deceased.

Doris I. Morris, as Executrix of the Last Will and Testament of Louis R. Morris, Plaintiff v. Joann Morris McElroy, representing the children of Louis R. Morris, deceased, Defendant

Newfoundland Supreme Court, Trial Division

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Judgment: April 23, 1982

Docket: Doc. 1017

Counsel: **David C. Day**, Esq., Q.C., for the plaintiff.

Ian F. Kelly, Esq., for the defendant.

Lang, J.:

1 This is an application of Doris I. Morris as Executrix of the Last Will and Testament of Louis R. Morris, late of Lower Island Cove, Conception Bay, Province of Newfoundland, the plaintiff herein, by way of originating summons for directions with respect to the following three issues or questions:

1. Is the real property and dwelling at Lower Island Cove, Conception Bay in the Province of Newfoundland, acquired by Louis R. Morris on the 3rd day of July, A.D. 1978, and subsequently occupied by Louis R. Morris and Doris I. Morris as their family residence, an asset of the estate of Louis R. Morris, deceased, liable to be included in the inventory of his estate and liable to distribution pursuant to the deceased's Last Will and Testament?

2. Is the interest of the widow, Doris I. Morris, in the matrimonial home capable of being a matrimonial asset within the meaning of Section 16(1)(b) of The Matrimonial Property Act of Newfoundland (being Chapter 32 of the 1979 Statutes of Newfoundland)?

3. Can the estate of Louis R. Morris sue under Section 19(1)(d) of The Matrimonial Property Act for division of matrimonial assets of the estate and of his widow?

The hearing of this application consisted of argument only as there is no dispute between counsel for the plaintiff and counsel for the defendant as to the facts.

2 Approximately 30 years ago the plaintiff and Louis R. Morris were married and after the marriage moved to the United States of America. There were two children of the marriage, namely; John Louis Morris and Joann Morris McElroy who both reside in the United States of America.

3 On the 3rd day of July, 1978 Louis R. Morris bought a parcel of land with a dwelling situate thereon in Lower Island Cove, Conception Bay, Newfoundland. The deed of conveyance respecting this purchase is registered in the Registry of Deeds for Newfoundland in Volume 2537 at Folios 194-196. Both Louis R. Morris and his wife Doris I. Morris, the plaintiff herein, occupied this property in Lower Island Cove, Newfoundland as their principal place of residence from shortly after purchase on July 3, 1978 up to or about March 25, 1981 on which latter date Louis R. Morris died in hospital in St. John's, Newfoundland.

4 It should be noted here that The Matrimonial Property Act of Newfoundland (the Act) pursuant to Section 45 thereof came into force on the 1st day of July, 1980. Sections 4(1), 10 and 15 of the Act were amended by Section 11 of Chapter 24 of the 1980 Statutes of Newfoundland.

5 I have considered the facts and the arguments of counsel for the plaintiff and of counsel for the defendant and the following are my answers to the three issues or questions on which directions are sought:

*First Question* - Is the real property and dwelling at Lower Island Cove, Conception Bay, Newfoundland, acquired by Louis R. Morris on the 3rd day of July, A.D. 1978, and subsequently occupied by Louis R. Morris and Doris I. Morris as their family residence, an asset of the estate of Louis R. Morris, deceased, liable to be included in the inventory of his estate and liable to distribution pursuant to the deceased's Last Will and Testament?

Answer - No.

6 In order for an asset or property to be an asset of an estate it must be property owned by or which the deceased has an interest at the time of death. In the matter herein Louis R. Morris did not at the time of his death own or have an interest in the said real property and dwelling (the property) situate at Lower Island Cove, Conception Bay, Newfoundland and therefore the

property is not an asset of the estate of Louis R. Morris and should not be included in the inventory of his estate.

7 The property was acquired by Louis R. Morris on July 3, 1978 almost two years before the Act came into force on July 1, 1980. Louis R. Morris and his wife Doris I. Morris, the plaintiff herein occupied the property shortly after its purchase in 1978 as their family residence and was so occupied from or about the 3rd day of July 1978 to or about the 25th day of March, 1981 on which latter date Louis R. Morris died in hospital in St. John's, Newfoundland.

8 Section 4(1) of the Act defines a 'matrimonial home' as follows:

4(1) In this Act the term "matrimonial home" means the dwelling and real property occupied by a person and his or her spouse as their family residence and owned by either or both of them whether that occupation occurred before, on or after the commencement of this Act.

I therefore find that the property is a matrimonial home under Section 4(1) of the Act.

9 Section 6 of the Act declares that each spouse has a one-half interest in the matrimonial home owned by either or both spouses and creates a joint tenancy with respect to it. Therefore as stated previously the property is not an asset of the estate of Louis R. Morris and shall not be included in the inventory of his estate.

*Second Question* - Is the interest of the widow, Doris I. Morris, in the matrimonial home capable of being a matrimonial asset within the meaning of Section 16(1)(b) of The Matrimonial Property Act?

Answer - Yes.

10 The interest of the widow, Doris I. Morris in the property, which is a matrimonial home, is not only capable of being a matrimonial asset within the meaning of Section 16(1)(b) but I find that the property is a matrimonial asset by virtue of paragraph (b) of subsection (1) of Section 16 of the Act.

11 16(1)(b) of the Act is as follows:

(b) "matrimonial assets" includes all real and personal property acquired by either or both spouse during the marriage, with the exception of,

(i) gifts, inheritance, trusts or settlements received by one spouse from a person other than the other spouse and any appreciation in value of them during the marriage,

(ii) personal injury awards, except the portion of the award, if any, that represents compensation for economic loss,

- (iii) personal effects,
- (iv) business assets,
- (v) property exempted under a marriage contract,
- (vi) family heirlooms, and
- (vii) real and personal property acquired after separation.

12 I find that the property does not come within any of the exceptions to matrimonial assets set forth in subparagraphs (i) to (vii) inclusive of paragraph (b) of subsection (1) of Section 16 of the Act. In this matter the property was purchased on July 3, 1978 by Louis R. Morris who was at this time married to the plaintiff, Doris I. Morris, for almost 30 years. The plaintiff and her husband, Louis R. Morris, occupied the property shortly after July 3, 1978 as their family residence to or about March 25, 1981 on which latter date Louis R. Morris died in hospital at St. John's, Newfoundland. Therefore the property constitutes real property acquired by the husband during his marriage to Doris I. Morris and is a matrimonial asset within the meaning of Section 16(1)(b) of the Act.

13 Mr. Day, Q.C. counsel for the plaintiff submitted that although the property is a matrimonial home within the meaning of Section 4(1) of the Act, it is not a matrimonial asset under Section 16(1)(b) of the Act because the plaintiff only became the sole and outright owner of the property when her husband Louis R. Morris died on March 25, 1981 by virtue of the joint tenancy created with respect to the matrimonial home under Section 6(2) of the Act on July 1, 1980 when the Act came into force. In other words, Day, Q.C. submits that the plaintiff only acquired the sole legal and beneficial title to the property on the death of her husband and therefore it was not acquired 'during the marriage' as required under Section 16(1) (b) in order to be a matrimonial asset.

14 I cannot agree with this submission of the plaintiff. First of all Section 16(1)(b) of the Act defines matrimonial assets as including all that real and personal property acquired by either or both spouses during the marriage. In this matter Louis R. Morris acquired the property during his marriage to the plaintiff. In addition, Section 16(2) states that in the case of a matrimonial home matrimonial assets include a matrimonial home acquired before the marriage, and notwithstanding subparagraph (e) of paragraph (b) of subsection (1) of Section 16 of the Act, includes a matrimonial home acquired by gift, settlement or inheritance. Therefore, a matrimonial home, for example, could be acquired by inheritance before a person marries and possibly before one of the spouse was ever born.

15 In interpreting an Act we must look at the whole Act and also determine the object or purpose of the Act. Noel, J. in *Murrin vs. Murrin* (1981) made the following statement:

Section 3 provides that the purpose of the act is to reform the law with respect to

matrimonial property in order, amongst other purposes, to give a one-half interest in the matrimonial home to each spouse. Section 6 declares that each spouse has a one-half interest in the matrimonial home owned by either or both spouses, and creates a joint tenancy with respect to it. Because of these express provisions, it was argued that the act should not be interpreted to derogate from the property interests so clearly created. Section 2(2) provides that the act shall be deemed to be remedial and shall receive such fair, large, and liberal construction and interpretation as best ensures the objects of the act and its purposes as set out in Section 3.

The act expresses the clear intention that each spouse shall hold an equal interest (sic) in the matrimonial home as joint tenants but the joint tenancy is not the same as a joint tenancy in common law. It is a joint tenancy created by the act and is subject to provisions of the act which distinguish (sic) it from a joint tenancy in common law, for example, the act imposes restrictions on the right of a spouse to alienate his or her interest. *Section 8.*

In addition to the purpose of creating the property interests referred to in Sections 3 and 6, the act, Section 17, expresses that the purpose of Part II is to recognize that child care, household management and financial support are the joint responsibilities of the spouses and that there is a joint contribution by each of the spouses, financial and otherwise, that entitles each spouse to an equal division of the matrimonial assets acquired during the course of the marriage. In the circumstances stated in Section 19, including the circumstances that the spouses have been separated and there is no reasonable prospect of the resumption of cohabitation, either spouse is entitled to apply to a court to have the matrimonial assets divided in equal shares, notwithstanding the ownership of the assets. The right of a spouse to have the matrimonial assets divided in equal shares is, however, not absolute for Section 20 provides that the court may make a division that is not equal where such a division would be grossly unjust or unconscionable taking into account any of the factors stated in that section.

Section 16(1) defines matrimonial assets as including all real and personal property acquired by either spouse or both spouses, with certain exceptions, during the marriage. A matrimonial home acquired during marriage is a matrimonial asset as defined by that section. The case of matrimonial home acquired before marriage is dealt with, specifically, by Section 16(2) which declares that such a home is a matrimonial asset.

Since a matrimonial home is a matrimonial asset, it follows that, upon an application to divide matrimonial assets in equal shares, its division is subject to the provisions of Section 20 under which the court has jurisdiction to make a division which is not equal in the circumstances mentioned in that section.

16 Halsbury's Laws of England, Third Edition, Volume 32, Section 517 contains the following statement respecting the nature of joint tenants' interests:

Each joint tenant has an identical interest in the whole land and every part of it. The title

of each arises by the same act. The interest of each is the same in extent, nature and duration. In the case of freeholds, the seisin, and, in the case of leaseholds, the possession, is vested in all; none holds any part to the exclusion of the others. At common law the interest of each must vest at the same time. These are the four unities of title, interest, possession, and time;

17 Again at page 333 of Volume 32 of Halsbury's Laws of England, Third Edition, Section 518 the following statement is found:

From the fact that each joint tenant is seised of the whole it follows that the appropriate mode of conveyance when one joint tenant wishes to vest the entire interest in the other tenant or tenants is by release.

18 The Act, however, as stated by Noel, J. in *Murrin vs. Murrin* expresses the clear intention that each spouse shall hold an equal interest in the matrimonial home as joint tenants but the joint tenancy is not the same as a joint tenancy in common law. It is a joint tenancy created by the Act and is subject to the provisions of the Act which distinguishes it from a joint tenancy in common law, for example Section 8 of the Act imposes restrictions on the right of a spouse to alienate his or her interest.

19 Section 16(1)(b) defines matrimonial assets as including all real property acquired by either or both spouses during the marriage, with the exception of those items contained in subparagraphs (i) to (vii) inclusive of section 16(1)(b). Section 16(1)(b) is quite clear as it refers to real property acquired by one spouse or both spouses during the marriage and if so it is a matrimonial asset. In the matter herein the husband acquired real property during the marriage of himself and the plaintiff.

20 A statute must be interpreted to achieve a logical and equitable result. Under Section 2(2) of the Act it is stated that the Act shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as best insures the objects of the Act and its purposes as set out in Section 3 of the Act.

21 As stated previously in referring to the nature of joint tenants' interests in Halsbury's Laws of England, Volume 32, Third Edition, at page 332 wherein it is stated each joint tenant has an identical interest in the whole land and until severance each has the whole, Section 8 of the Act imposes restrictions on severance.

22 Property acquired by either or both spouses before or during the marriage does not cease to fall within the definition of a matrimonial asset within the meaning of Section 16(1)(b) of the Act because a one-half interest in that property may pass at death. The property was still acquired by either or both spouses before or during the marriage. The Act makes it quite clear that the matrimonial home is to be considered as a whole in determining whether it is a matrimonial asset and the fact that a half-interest exists or may exist is irrelevant. There is a clear distinction in the Act between a piece of real property and half interests, for example Section 4(1) and Section 6(1).

23 As stated previously Section 4(1) refers to a dwelling and real property occupied . . . , Section 6(1) refers to each spouse having a one-half interest . . . , Section 16(1) refers to real and personal property and Section 16(2) states that matrimonial assets include a matrimonial home acquired before the marriage. The half interest of the spouse only arises on marriage and, therefore, the fact that an interest passes on death is irrelevant.

24 Section 19 of the Act provides that either spouse is entitled to apply to court to have the matrimonial assets divided in equal shares, notwithstanding the ownership of these assets and the court may order such a division. If the interest passing on death were excluded from the definition of matrimonial assets, then the survivor's original half interest would be subject to division but the half interest acquired on the death of the other spouse would not be subject to division. Section 20 of the Act permits the Court to make a division of matrimonial assets that is not equal where the Court is satisfied that a division of these assets as equal shares would be grossly unjust or unconscionable taking into account the factors listed in paragraphs (a) to (b) inclusive of Section 20 of the Act.

*Third Question* - Can the estate of Louis R. Morris sue under Section 19(1)(d) of The Matrimonial Property Act for division of matrimonial assets of the estate and of his widow?

Answer - Yes.

25 Section 19 of the Act is as follows:

19(1) Where

- (a) a petition for divorce is filed,
- (b) a marriage is declared a nullity,
- (c) the spouses have been separated and there is no reasonable prospect of the resumption of cohabitation, or
- (d) one of the spouses has died,

*either* spouse is entitled to apply to the court to have the matrimonial assets divided in equal shares, notwithstanding the ownership of these assets, and the court may order such a division.

26 Section 19(1)(d) of the Act states that where one of the spouses has died, either spouse is entitled to apply to a court to have the matrimonial assets divided in equal shares, notwithstanding the ownership of these assets, and the court may order such a division. If one spouse has died there is only one spouse left to take action but the subsection states either spouse may sue if one has died, therefore, the estate of a deceased spouse can sue under Section 19(1)(d)

of the Act for a division of the matrimonial assets.

27 Section 24(e) of the Act states that in an application made under Section 19 the court may order that either or both spouses give such security . . . and Section 19(1)(d) deals with the situation where one of the spouses has died.

28 Section 40(1) of the Act states that an executor or administrator of a deceased spouse may enter into an agreement with the *surviving spouse* (emphasis added) as to the ownership or division of property under the Act. This provides an alternative to possible court action.

29 In Section 19 of the Act there are only four situations giving the Court jurisdiction to divide matrimonial assets. Three of these relate to marriage breakup and the fourth to the death of one of the spouses. If the executor of a deceased spouse has no right to apply under Section 19 of the Act or if Section 19(1)(d) was not contained in the Act, then Section 19 would only be applicable in the case of a marriage breakup and as such might promote marriage breakup. So logically, Section 19(1)(d) is part of Section 19 of the Act in order for either spouse where one of the spouses has died to apply to a court to have the matrimonial assets divided in equal shares.

30 Therefore, as stated previously the estate of Louis R. Morris can sue under Section 19(1)(d) of the Act for a division of the matrimonial assets of the estate and of his widow.

31 Each party shall have costs, solicitor and client, party and party, from the estate.

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