

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

B

Plaintiff;

-v-

B

Defendants.

DEENY J

[1] This is an appeal brought by Mr B. from an order of the acting Registrar of Titles made on 28 June 2011. The appellant, formerly objector before the Registrar, is entitled to bring such an appeal to the High Court. What he complains of is an inhibition being registered by the Order of the acting Registrar of Titles on Folio 1086L County Armagh which is or contains his dwelling house and of which he is otherwise the absolute owner as I understand it, subject to a mortgage. The Registrar's order in so far as relevant reads:

"It is hereby ordered that an inhibition be registered in the above-mentioned Folio in the following term -

"All dealings with the land herein (save and except dealings overriding the registered ownership) are inhibited until notice has been given to W. B. whose address in the UK for service of notice is c/o Flynn and McGettrick, solicitor, 9 Clarence Street, Belfast.""

[2] The acting Registrar of Titles was persuaded to make that Order because of both the judgment and the Order of Master Evan Bell sitting as a Master in what he describes in the judgment of 2 March 2009 as the Probate and Matrimonial division of the High Court. I do not think I need labour the point here that that nomenclature was already out of date. Mr B. did not appear at that hearing but nor did he appeal it when he learnt of the outcome even out of time. Mr Henry Toner QC did appear on behalf of the wife. The parties were separated and now divorced. They have three children. One of those children is under a disability. Mrs B. sought to protect the long term interests of the disabled daughter of the marriage, C who at this time was 23 years old and described as severely learned disabled, by acquiring some rights to the former matrimonial home which had been transferred into the sole name of the husband, B.

[3] The Master was obviously struck by her moderation in not seeking a more draconian order but it seems to me to be to her credit that she adopted the approach which she did take. The Master then gave a judgment which appears to be a reserved judgment in the matter. He concluded at paragraph 27 -

“I therefore order that 33.3% of the net proceeds of any future sale of the property be awarded to the wife.”

[4] I think that having gone to the trouble of giving a reserving judgment and, indeed, even if he had not reserved judgment, it would have been preferable for him to expand on exactly what that meant for the parties. Now this may have occurred to the Master because the Order on foot of that judgment although bearing the same date - I do not know obviously whether it was the same date as the judgment was delivered though it would appear that that was the case - elaborates; in fact the Master it seems to me clarified what he did mean in his Order and I do not see anything improper in that. There are unfortunately one or two typographical errors in the Order but suffice it to say that having repeated that the petitioner should receive one third of the net proceeds of sale of the dwelling in question - he went on to order at paragraph 2 -

“From the date hereof until such sale the respondent or his executors or administrators or assigns shall have all duties as equitable mortgagor to the petitioner as equitable mortgagee in respect of the said premises at (address) for the purposes only of seeking and enforcing the rights created by the terms of paragraph 1 above.”

[5] Again perhaps that is not ideally worded and I have some sympathy with Mr Bs' point that he has been made an equitable mortgagor without being told what his duties are but he very properly, as I would expect from an officer of the court,

acknowledges that certainly he must, at least, be under a duty of good faith i.e. not to deliberately embarrass the property with unnecessary debts so as to try and disadvantage his child in the event of him selling the property at some date in the future. I accept Mr B's point that the wording of para. 2 is not in the judgment but it is in the Order of the court and I think it is the Master mending his hand so to speak and I think he is entitled to do that and I think it is reasonably clear. Mr B as a conveyancer objects to an equitable mortgage being created in this way and I accept his submission that it would not be a customary way to do so. However Mr Toner QC who is, of course, a leading figure in the Family Division draws to the court's attention Article 26(1) of the Matrimonial Causes (Northern Ireland) Order 1978 and the relevant parts read as follows:

- "1. On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute) the court may make one or more of the following orders that is to say -
 - (a) an order that a party to the marriage shall transfer it to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such a property as may be so specified, being property to which the first mentioned party is entitled, either in possession or in reversion;
 - (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;..."

[6] Clearly in this case the former wife has not sought the transfer back to her of the matrimonial home registered in the name of Mr B but I accept the submission of Mr Toner that he was entitled to ask for and the Master was entitled to grant a settlement of the property to the satisfaction of the court to the benefit of one of the children of the family pursuant to Art.26 (1) (b) and that is in effect what has been done here. I think that being the case the Master was entitled to put in paragraph 2 in his Order of 5 March 2009 and he was also entitled to put in something to the effect of paragraph 4 of that order -

"The petitioner shall be at liberty to register this Order as appropriate on the title to the said premises."

[7] Now Mr B as conveyancer again is critical of that but the intention I think is a legitimate intention on the part of Master Bell even if it is right for Mr B to say that an

Order of the court is not a registrable matter in terms of registered land but it seems to me that the acting Registrar of Titles (Mr AH Moir) was probably as conscious of that as Mr B and that he found a proper form of words, which I have already read out, to protect the interests of Mrs B and her daughter, which is simply an admonition that notice be given to her before there is a dealing with the land. If and when Mr B comes to sell this property, or his executors or administrators or assigns, she will be put on notice and will be able to draw to the parties attention the Order of the court and secure [if necessary by Order of this Court] a third of the net proceeds for her disabled daughter C. B.

[8] For those reasons therefore I consider that the Order of the acting Registrar was correctly made and I refuse the appeal.