

O'BRIEN v O'B

THE HIGH COURT

1983 No. 2882P

✓ 96

BETWEEN:

VERA MAUD O'BRIEN

Plaintiff

and

CONOR MYLES JOHN O'BRIEN

Defendant



Judgement of Mr. Justice Costello.

Delivered the ¹⁹ ~~14~~th May, 1983.

*Mary P. O'Connell
Scrip.*

The 17th Lord Baron Inchiquin died on the 20th May, 1982 leaving a widow who is the Plaintiff in these proceedings. He was life tenant of extensive lands and premises at Dromoland and on his death his nephew, the Defendant herein, became the 18th Baron and succeeded, again as life tenant, to the Dromoland lands and premises. The present dispute concerns the ownership of (a) a valuable herd of cattle and sheep (b) a considerable quantity of valuable farm implements and equipment which were on the lands when the 17th Baron died. The Plaintiff says that they are hers by virtue of a Partnership Agreement of the 4th April, 1978, under which she and her husband had carried on a farming business on the Dromoland lands, an agreement which provided that on the death of either partner the assets of the partnership would accrue to the surviving partner. The Plaintiff says that as the stock and chattels now in dispute were all partnership assets she is now entitled to them. The Defendant claims they are his by virtue of the deceased's will under which he bequeathed to his successor as tenant for life under the Dromoland Settlement "any stock farm implement or equipment that I may die possessed of at Dromoland" or alternatively by virtue of an informal family settlement made "during the 1940's". He says that the 16th Lord Baron Inchiquin has been in possession of all the farm stock and machinery by virtue of an agreement made between

himself and his brothers and sisters (including the deceased, the 17th Baron) to the effect that the tenant for life for the time being of the family estates at Dromoland was entitled to the farm stock and machinery on the lands but only as tenant for life so as to ensure that the farm could be effectively run by the life tenant at any particular time.

I cannot now on this interlocutory application finally determine this dispute. What I have now to decide is whether pending the hearing of this action an order should be made which would stop the Defendant selling the stock and equipment and permit the Plaintiff to do so. My discretion is exercised in accordance with well established principles. Firstly, I must decide whether the Plaintiff has made out a fair question to be decided at the trial and that her claim is not a frivolous or vexatious one (see American Cyanamid Case 1975 A.C. 396 and Educational Co. of Ireland Case 1961 I.R. 329). She has certainly done that. She has sworn that the stock and equipment were part of the partnership assets and she can claim therefore that they did not pass under the deceased's will and that the alleged family agreement of the 1940's is ineffectual to deprive her of her contractual rights. Having so concluded, I must then decide whether damages would be an adequate remedy in this case. In the light of the evidence before me I think she has shown that if

she wins the Court will grant her an injunction, as she will have established that the stock and chattels are hers and the Court is not likely to deprive her of her property. That leaves for consideration the question of the balance of convenience. The Plaintiff has incurred very heavy debts arising from the partnership business and it seems to me to be reasonable that she should want to reduce them. Her ability to do so would obviously be seriously impaired if an injunction is refused. Whilst appreciating on the other hand that the Defendant will be adversely affected if an injunction is now granted I think the balance lies in the Plaintiff's favour. I have been assured by counsel that the undertaking as damages which the Plaintiff is prepared to give can be honoured, and this will mean that if the Defendant succeeds at the trial his financial loss can be made good.

I will therefore make an order in the terms of the notice of motion of the 25th April. In doing so I have not overlooked the argument advanced by Mr. Finlay on the Defendant's behalf to the effect that the Plaintiff's delay has disentitled her to relief. The evidence shows that whilst the Plaintiff was aware that her right to the stock and equipment was challenged by the Defendant since the latter half of 1982, the parties were obviously trying to settle their differences with the help of their

legal advisers. When the Defendant actually sold some of the stock
 the Plaintiff moved immediately, and I do not think that her forbearance
 in instituting these proceedings before the end of April should be held
 against her.

Approved
JL
 20.5.03