

## Cooper v Kaur (2000)

**LTL 10/10/2000 EXTEMPORE : Independent, October 18, 2000**

10/10/2000

### **Barristers**

Private: Amanda Barrington-Smyth

### **Court**

Civil Division

### **Summary**

Where there were unresolved factual issues concerning the conduct of spouses leading up to the purchase of a matrimonial home, the court needed to investigate each party's conduct to aid it in the resolution of disputes about the property's disposal.

### **Facts**

Appeal by the defendant in this action ('K') with leave of the single judge against an order that property purchased by her during her marriage to the claimant ('C') was purchased as a joint venture and was accordingly divided equally. In 1992, C and his former wife ('L') purchased property known as Park Farm, which had been in C's family for many years. In 1994, C and L's marriage was dissolved and proceedings were commenced for the disposal of the farm. During those proceedings, C met K and a relationship commenced. Soon after, C was charged with a number of criminal offences of handling stolen goods. There remained in these proceedings, an issue as to whether K was aware of the charges against C. Further, in August 1996, a bankruptcy petition was issued against C which brought about a bankruptcy order in October 1996. Again, an issue remained in these proceedings as to the extent of K's knowledge of the bankruptcy proceedings. In his divorce proceedings with L, C entered into a consent order whereby he would pay L for her share in Park Farm. The consent order was not performed and L issued an application for enforcement. That action by L brought in the trustee in bankruptcy who, it became apparent, did not have notice of the consent order. Accordingly, the trustee brought about an agreement whereby Park Farm was to be sold to satisfy the consent order made with L and enable C's creditors to be paid. That agreement was however suspended on the basis, it appeared, that K who was at that stage married to C, had an option to buy Park Farm. K exercised her option to purchase the farm whilst C was in prison in relation to the criminal charges proved against him. K purchased the farm with the benefit of loans from friends and relatives and a substantial mortgage. When C was released from prison, he returned to Park Farm. The following day, K left the farm. An issue remained as to the reason why K left the farm. However, she requested possession of Park Farm and served a notice terminating C's occupancy. In response, C issued these proceedings seeking a lump sum order and property adjustment order from the sale of the farm. At the hearing of that application, C's argument that K had purchased the farm at an undervalue for the benefit of herself and C was accepted. K was held to have purchased the property as a joint venture and accordingly an order was made that proceeds from the sale of the

farm be divided equally after the repayment of borrowings not directly charged to the property. This was K's appeal from that decision.

### **Held**

HELD: (1) The findings which gave rise to the order were unusual given the fact that this was the briefest of marriages. (2) It was necessary for the judge, as he did, to decide whether K's ownership of the property was impressed by any trust in favour of her husband. However, what then had to be considered, but was not, was what order should have been made in favour of the husband on the criteria set out in s.25 of the Matrimonial Causes Act 1973. (3) The judge concentrated upon the respective contributions made by the parties. That was an important factor. However, he failed to carry out the essential task of proceeding through the statutory checklist. Had that task been done, regard would have been had to the conduct of the parties. In a case such as the instant, it was inequitable not to do so whatever the attractions of avoiding such an investigation. In the instant case, the conduct of the parties was a prime issue in which there were factual issues which were unresolved. (4) The real area that needed crucial judicial investigation and finding, was the intention and motives of the parties. If K's intention was originally that there was an implied trust for C, it needed to be considered whether that implied trust survived taking into account findings of fact as to conduct. (5) Accordingly, the order could not stand and the appeal was allowed.

**Appeal allowed.**

**Permission**

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