



ANALYSIS

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1983, No. 145

An Act to amend the Matrimonial Property Act 1976

[16 December 1983]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Matrimonial Property Amendment Act (No. 2) 1983, and shall be read together with and deemed part of the Matrimonial Property Act 1976 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of January 1984.

2. Interpretation—Section 2 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) For the purposes of this Act the value of any property to which an application under this Act relates shall, subject to

sections 12 and 21 of this Act, be its value as at the date of the hearing of that application by the Court of first instance unless that Court or, on an appeal under section 39 of this Act, the High Court or the Court of Appeal or Her Majesty in Council in its or her discretion otherwise decides.”

3. Separate property defined—Section 9 (5) of the principal Act is hereby amended by inserting, after the words “order of the Court”, the words “(not being an order made under section 25 (3) of this Act)”.

4. Property acquired by succession or by survivorship or as a beneficiary under a trust or by gift—Section 10 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Property, being—

“(a) Property acquired by succession or by survivorship or as a beneficiary under a trust or by gift from a third person; or

“(b) The proceeds of any disposition of property to which paragraph (a) of this subsection applies; or

“(c) Property acquired out of property to which paragraph (a) of this subsection applies,—

shall not be matrimonial property unless, with the express or implied consent of the spouse who received it, the property or the proceeds of any disposition of it have been so intermingled with other matrimonial property that it is unreasonable or impracticable to regard that property or those proceeds as being separate property.”

5. Division of balance of matrimonial property—Section 15 (1) of the principal Act is hereby amended by omitting the words “clearly been”, and substituting the words “been clearly”.

6. Matrimonial property and creditors—(1) Section 20 (2) of the principal Act is hereby amended by omitting the expression “\$10,000”, and substituting the expression “\$21,500”.

(2) Section 20 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Where, on the bankruptcy of a spouse, the matrimonial home (including a homestead) or, where section 11 (2) of this Act applies, the proceeds of the sale of the matrimonial home, pass to the Official Assignee, he shall, after paying—

“(a) Any debts secured on the home or, as the case may be, those proceeds; and

“(b) Any unsecured debts (other than personal debts) of that spouse,—

pay to the other spouse the amount of his or her protected interest or so much of it as remains after paying those debts.”

(3) Section 20 (7) (c) of the principal Act is hereby amended by omitting the word “improving” in the first place where it appears, and substituting the words “acquiring or improving or repairing”.

7. Power to make agreements—Section 21 of the principal Act is hereby amended by inserting, after subsection (12), the following subsections:

“(12A) Subject to subsection (12B) of this section, every agreement under this section shall be deemed to have been made for valuable consideration.

“(12B) Nothing in subsection (12A) of this section shall limit or affect the manner of determining,—

“(a) For the purposes of the Estate and Gift Duties Act 1968, whether a disposition of property is a gift; or

“(b) For the purposes of section 23 (3) (b) of the Land Settlement Promotion and Land Acquisition Act 1952, whether an agreement under this section is an agreement for the transfer of any estate or interest without any valuable consideration in money or money’s worth.

“(12C) Subject to the provisions of this section, remedies that, under any enactment or rule of law or of equity, are available for the enforcement of contracts may be used for the enforcement of agreements under this section.”

8. New sections inserted—The principal Act is hereby amended by inserting, after section 28, the following sections:

“28A. Factors affecting occupation orders and orders with respect to tenancy—(1) The Court—

“(a) In determining whether to make an order under section 27 (1) or section 28 (1) of this Act; and

“(b) In determining, in relation to an order made under section 27 (1) of this Act, the period or periods, the terms (if any), and the conditions (if any) of the order,—

shall have particular regard to the need to provide a home for any minor dependent child of the marriage and may also have regard to all other relevant circumstances.

“(2) Nothing in this section shall limit the generality of section 26 (1) of this Act.

“28B. **Power to make ancillary order in respect of furniture**—On or after making an order under section 27 (1) or section 28 (1) of this Act, the Court may make an order granting to the person in whose favour the order is or has been made the use, for such period and on such terms and subject to such conditions as the Court thinks fit, of all or any of the household furniture or household appliances, effects, or equipment in the matrimonial home or other premises to which the order made under section 27 (1) of this Act relates or in the dwellinghouse to which the order made under section 28 (1) of this Act relates.”

9. Ancillary powers of Court—(1) Section 33 (3) (l) of the principal Act is hereby amended by omitting the words “transfer or”, and substituting the words “transfer of”.

(2) Section 33 of the principal Act is hereby amended by adding the following subsection:

“(7) Where the Court, by any order under this Act, appoints a person (including a Registrar or other officer of the Court) to sell any property and to divide, apply, and settle the proceeds, the Court may make provision in that order for the payment of remuneration to that person and for the reimbursement of his expenses.”

10. Appeals—(1) Section 39 of the principal Act is hereby amended by repealing subsection (1) (as substituted by section 17 of the Family Courts Act 1980), and substituting the following subsections:

“(1) Where a Family Court or District Court has made or has refused to make an order in any proceedings under this Act, or has otherwise finally determined or has dismissed any proceedings under this Act, a party to the proceedings or any other person prejudicially affected may, within 28 days after the making of the order or decision or within such further time as the Court may allow in accordance with section 73 (1)

of the District Courts Act 1947, appeal to the High Court in accordance with the provisions of Part V of that Act (except section 71) and those provisions shall apply accordingly with any necessary modifications.

“(1A) The Court appealed from may, on the *ex parte* application of the appellant, order that security under section 73 (2) of the District Courts Act 1947 shall not be required to be given under that section.”

(2) The Family Courts Act 1980 is hereby consequentially amended by repealing so much of the Schedule as relates to section 39 (1) of the Matrimonial Property Act 1976.

11. New First Schedule substituted—The principal Act is hereby amended by repealing the First Schedule, and substituting the First Schedule set out in the Schedule to this Act.

12. Amendment to Joint Family Homes Act 1964—Section 10 of the Joint Family Homes Act 1964 is hereby amended by inserting in subsection (2A) (as inserted by section 2 (1) of the Joint Family Homes Amendment Act 1972), after the words “Matrimonial Property Act 1963”, the words “or the Matrimonial Property Act 1976”.

13. Amendment to Administration Act 1969—Section 47 of the Administration Act 1969 is hereby amended by inserting in subsection (1) (as substituted by section 189 (1) of the Family Proceedings Act 1980), after paragraph (d), the following paragraph:

“(da) Under section 5 (3) of the Matrimonial Property Act 1976:”.

14. Transitional provisions—(1) In the case of proceedings filed under the principal Act before the commencement of this Act, the amendments made to the principal Act by this Act shall apply to those proceedings where the hearing of those proceedings has not been commenced before the commencement of this Act.

(2) Notwithstanding anything in subsection (1) of this section, in the case of a bankruptcy that has occurred before the commencement of this Act, the amendments made to section 20 of the principal Act by subsections (1) and (3) of section 6 of this Act shall not apply in respect of that bankruptcy.

SCHEDULE

Section 11

NEW FIRST SCHEDULE TO PRINCIPAL ACT

“FIRST SCHEDULE

Section 42 (2)

NOTICE OF CLAIM OF INTEREST UNDER MATRIMONIAL PROPERTY ACT

To the District Land Registrar of the District of

TAKE NOTICE

(1) That I [*Name of claimant*] of [*Address and occupation*] am the wife (or husband) of [*Name of spouse*] of [*Address and occupation*] who is registered as a proprietor of [*Here state the nature of the estate or interest*] in the land described in the Schedule hereto (or who is entitled to or is beneficially interested [*Here state the nature of the estate or interest under the Land Transfer Act 1952*] in the land described in the Schedule hereto by virtue of any unregistered agreement or other instrument or transmission or of any trust expressed or implied, or otherwise howsoever).

(2) That my marriage to the said [*Name of spouse*] took place on [*Date*] at [*Place*].

(3) That, pursuant to the Matrimonial Property Act 1976, I claim an interest in the said estate or interest by virtue of my marriage to the said [*Name of spouse*].

And I appoint [*Here state an address within the registration district*] as the place at which notices relating hereto may be served.

Dated this day of 19

Signed by the above-named, A.B., as claimant, in the presence of—C.D., [*Occupation and address*]

SCHEDULE

[*Here describe land*]”.

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This Act is administered in the Department of Justice.

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