

GOOD

THE HIGH COURT

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PROBATE

IN THE MATTER OF THE SUCCESSION ACT, 1965
AND IN THE MATTER OF AN APPLICATION PURSUANT TO
SECTION 27 (4) OF THE SUCCESSION ACT, 1965

AND IN THE GOODS OF LESLIE GOOD, DECEASED

AND IN THE MATTER OF AN APPLICATION BY ROSALENE JONES

Applicant

Judgment of the President of the High Court delivered on the 14th
day of June 1986
July

This is an application brought by one Rosalene Jones, a daughter
of the deceased in the title hereof for:-

an order giving liberty to the Applicant to apply for and
obtain a Grant of Letters of Administration and Testate over
the estate of Leslie Good, deceased, late of 24 Rosmeen Park,
Dun Laoghaire, in the County of Dublin who died on the
9th day of December 1985, for the limited purpose of taking
an action against Mrs. Doris Good, the lawful widow of the
said deceased, to enforce a contract alleged to have been
made between deceased and said Doris Good relating to the
distribution of the deceased's estate on his death.

The application is grounded on the affidavit of the said Rosalene Jones
from which it appears that:-

- (1) Leslie Good died on the 9th day of December 1985, intestate,
leaving him surviving as his next of kin his lawful widow,
Doris Good, and three lawful and only children, the Applicant
herein, Yvonne Good and Aideen Good.

- (2) The said children were children of the deceased by a previous marriage to Ida Jane Good, who died on the 4th day of August 1982.
- (3) The last Will and Testament of the said deceased, which was made on the 29th day of March 1982, was revoked by virtue of the provisions of Section 85(i) of the Succession Act, 1965, it not having been made by the deceased in contemplation of his subsequent marriage.

Section 67(ii) of the Succession Act, 1965 provides that:-

If an intestate dies leaving a spouse and issue

- (a) the spouse shall take two-thirds of the estate, and
- (b) the remainder shall be distributed among the issue in accordance with sub-Section 4.

In her affidavit, however, the Applicant alleges that the deceased and the said Doris Good, who both had property of their own and children by previous marriages had agreed between themselves that the property, which each had, would, on their respective deaths, "pass back to his or her children, as the case may be and would not fall to be distributed to the other spouse or the other spouse's family".

She alleges that:-

"a clear admission of the existence of this agreement was made by Doris Good to Yvonne Good on Saturday, the 18th day of January 1986 and Doris Good agreed with Yvonne Good that it had been agreed between Doris Good and the deceased, that on the death of either, everything which had come into the marriage from the person who had died, was to go back to that person's children".

In her affidavit Doris Good denies the making of the said alleged agreement and denies that she made the admission depose to by the applicant.

The Applicant is desirous of instituting proceedings to enforce the agreement alleged to have been made by the deceased and Doris Good and has been advised that:-

"any proceedings to enforce an agreement made between the deceased and Doris Good would require to be taken by the estate of the said deceased and consequently applies for a grant pursuant to the provisions of Section 27 sub-Section 4 of the Succession Act, 1965".

The said Section provides that:-

"Whereby reason of any special circumstances it appears to the High Court (or, in a case within the jurisdiction of the Circuit Court, that Court) it would be necessary or expedient to do so, and the Court may order that administration be granted to such person as it thinks fit."

It is clear from the affidavit of the Plaintiff that the agreement upon which she relies and which she seeks to enforce was, if it was in fact made, a verbal agreement made between the deceased and Doris Good upon consideration of marriage and that it was an agreement that was not to be performed within the space of one year from the making thereof.

She does not suggest nor claim in her affidavit that it was an agreement in writing or that any note or memorandum thereof signed by the deceased was made or is in existence.

Section 4 of the Statute of Frauds provide that:-

"No action shall be brought whereby to charge any Executor

or Administrator upon any special promise to answer any damages or to his own estate; or whereby to charge the Defendant upon any special promise to answer for the death, default or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith or some other person lawfully there unto by him lawfully authorised".

It seems to me that the agreement alleged to have been made between the deceased and Doris Good and sought to be enforced by the Applicant herein was an agreement, if it was in fact made, made "upon consideration of marriage" and an agreement "that is not to be performed within the space of one year from the making thereof".

Consequently, it is an agreement in respect of which, by virtue of the provisions of Section 4 of the Statute of Frauds, no action can be brought unless the agreement or some memorandum or note thereof is in writing and signed by the party to be charged therewith, namely, Doris Good, or some other person there unto by her lawfully authorised.

That being so I am not satisfied that there are any special circumstances in this case which render it either necessary or expedient to issue the Grant sought by the Applicant herein and will refuse the application.

J. O. Paul