

IN THE CENTRAL FAMILY COURT

First Avenue House
42-49 High Holborn | London
WC1V 6NP

Date: 7th February 2024

Before :

DISTRICT JUDGE ASHWORTH

Between :

SV

Applicant

- and -

AV

Respondent

-and-

UV

Intervenor

Harpreet Giani for the Applicant instructed on a direct access basis
Nick Davies for the Respondent instructed by KT Family Solicitors
Oliver Foy for the Intervenor instructed by Pine Legal Solicitors

Hearing dates: - 8th -10th January 2024

JUDGMENT

District Judge Ashworth:

1. This is my judgment in respect of SV's application for a financial remedies order arising from her marriage to AV. For the purpose of this judgment and the sake of expedience I intend to refer to them as the Wife and the Husband and hope they will not be offended by this.
2. In dealing with the matter I had access to a Court bundle. I heard oral evidence from the parties and the Intervenor, UV, and received submissions from their Counsel Mr Giani for the Wife, Mr Davies for the Husband and Mr Foy for the Intervenor. The Wife and Intervenor were assisted by Interpreters. The Husband had the assistance of an Intermediary. I thank them all for their assistance in dealing with the matter.

HISTORY

3. The parties were married in 2007. There is a dispute as to the date they separated, the Husband saying that the Wife moved into a separate bedroom in 2013 and the parties finally separating in March 2016 when the Wife left the family home. The Wife says the date of separation was April 2018. A divorce petition was issued in 2021 and decree nisi pronounced the same year. Whether the marriage was 11 or 13 years, it is one of a medium length. There are no children of the marriage although the Wife has three children from another relationship with RK, twins aged 5 and another child aged 23 months.
4. The Wife issued her Form A in February 2022 and the First Appointment took place on 12th August 2022 with directions being given listing the matter through to FDR on 11th November 2022. On 24th October 2022, the Husband made an application to rely on a document which he says is a pre-nuptial agreement and for the Wife's application for

financial remedies to be dismissed. The parties agreed this should be dealt with on the 11th November 2022 and that the FDR be re-listed. At the hearing the Court gave further directions in respect of the substantive application and the Husband's application and re-listed the FDR on 21st April 2023. The hearing was not effective and the court gave further case-management directions re-listing the FDR on 22nd May 2023. The case did not settle and the Court gave directions through to final hearing.

5. On 22nd June 2023 the Wife made an application under section 37 of the Matrimonial Causes Act 1973 in respect of various properties which are the subject matter of these proceedings seeking a freezing injunction for the avoidance of any disposition of the properties. At this time the Wife was acting as a litigant in person.
6. On 10th August 2023 the Husband made an application to adjourn the final hearing listed on 16th and 17th August 2023 and for the hearing to be used as a directions hearing.
7. On 14th August 2023, the Intervenor applied to intervene in the proceedings.
8. On 16th August 2023, DDJ Shaw granted the request for an adjournment and dealt with the hearing as a directions hearing. She granted the Husband's application for an intermediary and the Wife's application for an interpreter to be funded by HMCTS. Her order records that the Wife was unable to confirm at that stage whether she sought to set aside property transfers so that the properties are transferred back to the Husband or whether she seeks only for any beneficial interest in the properties to be recognised. The order records that the Judge was unable to deal with the section 37 application in the absence of an interpreter and that it would be decided at the end of the final hearing.
9. Permission was given to the Intervenor to intervene but no directions made, as might have been expected, for her to file particulars of claim, for the Husband and Wife to file a

defence or for there to be standard disclosure although the Intervenor was given permission to file a further statement in respect of her claim and directions made for her to be served with all relevant documents and pleadings. The Husband and Wife were both given permission to file statements in reply.

10. The order records that both parties accept this is a clean break case.

PARTIES

11. The Wife is aged 42 and currently unemployed. Her income is made up of benefits totalling £12,322 pa. She currently resides at NC, a property owned by RK. The Husband says she is cohabiting with him but this is disputed by the Wife.

12. The Husband is aged 52 and also unemployed and in receipt of benefits totalling £2,956 pa. He is diagnosed with paranoid schizophrenia and suffers from depression and anxiety. He resides with the Intervenor at BR, where the parties also resided during the marriage.

13. The Husband and Wife have filed an agreed ES2. The former family home at BR is in the joint names of the Husband, the Intervenor and his sister NS. There is a dispute as to the value of the Husband's interest, the Wife putting it at £208,550 and the Husband £103,587.

14. There are seven other properties. One, HR, was never in the Husband's name. The remaining six were in the Husband's sole name or the joint names of himself and third parties at some stage but with the exception of AR, are now in the names of third parties. The Wife says that the Husband's interests in these properties totals £1,972,132. The Husband's case is that he has no beneficial interest in these properties.

15. The ES2 also refers to land in the Punjab India, but this has no ascribed value. The Husband has some minimal savings but otherwise there are no other assets.
16. The Wife has incurred legal costs of £28,000, the Husband £30,548 and the Intervenor £15,300 all of which have been discharged in full.

PARTIES' POSITIONS

17. The Wife's position is that the Husband has interests in property totalling £2,075,719. She seeks the transfer of one of the following properties into her sole name –

BR

AR

XR

SR

HR

18. She also seeks lump sums of £28,000 to cover her costs and £800 in respect of the divorce proceedings.

19. The Husband disputes he has an interest in the properties as alleged by the Wife or at all. He accepts that he has an interest in the property at BR but says that this is 16.6%. Whilst accepting that this was the family home he asserts that it was never a matrimonial asset as the interest was transferred to him post separation. His case is that his late father had a property portfolio which was inherited by his mother on his father's death. Whilst he accepts that he was a sole or joint legal owner of the other properties, with the exception of HR, he disputes that he has ever had any beneficial interest in the properties as alleged

by the Wife or at all. He also says the Wife has undisclosed assets and land in India although this is disputed by her. He proposes that there is an immediate clean break between the parties with each retaining their own assets and liabilities.

LAW

20. In dealing with the matter, I have considered the matters set out at section 25 of the Matrimonial Causes Act 1973. My first consideration is the welfare of any child of the family under the age of 18 but this does not apply here as the Wife's children are not children of the family. I must then consider all the circumstances of the case having regard to the matters set out at section 25(2). When carrying out the section 25 analysis I must determine the weight to be attached to any pre-nuptial agreement.

21. In *Radmacher v Granatino* [2010] UKSC 427 the Supreme Court held that when considering the weight to be attached to an ante or post-nuptial agreement the issues the Court should consider are:

a. *Were there circumstances attending the making of the agreement that detract from the weight that should be accorded to it?*

b. *Were there circumstances attending the making of the agreement that enhance the weight that should be accorded to it; the foreign element?*

c. *Did the circumstances prevailing when the court's order was made make it fair or just to depart from the agreement?*

At Paragraph 68 it considered that *“If an ante-nuptial agreement, or indeed a post-nuptial agreement, is to carry full weight, both the husband and wife must enter into it of their own free will, without undue influence or pressure, and informed of its*

implications” and at Paragraph 69 it was said that “Sound legal advice is obviously desirable, for this will ensure that a party understands the implications of the agreement, and full disclosure of any assets owned by the other party may be necessary to ensure this. But if it is clear that a party is fully aware of the implications of an ante-nuptial agreement and indifferent to detailed particulars of the other party's assets, there is no need to accord the agreement reduced weight because he or she is unaware of those particulars. What is important is that each party should have all the information that is material to his or her decision, and that each party should intend that the agreement should govern the financial consequences of the marriage coming to an end.”

At Paragraph 75 it advanced the proposition that ***“The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement.”*** and at Paragraph 78 explained that *“The reason why the court should give weight to a nuptial agreement is that there should be respect for individual autonomy. The court should accord respect to the decision of a married couple as to the manner in which their financial affairs should be regulated. It would be paternalistic and patronising to override their agreement simply on the basis that the court knows best. This is particularly true where the parties' agreement addresses existing circumstances and not merely the contingencies of an uncertain future.”*

22. In *Versteegh v Versteegh* [2018] EWCA Civ 1050 at Paragraph 65 Lady Justice King said that *“in my judgment, when an English court is presented with a PMA such as the present one; signed in a country where they are commonplace, simply drafted and generally signed without legal advice or indeed disclosure, it cannot be right to add a*

gloss to Radmacher to the effect that such a spouse will be regarded as having laced the necessary appreciation of the consequence absent legal advice to the effect that some of the countries, in which they may choose to live during their married life, may operate a discretionary system”.

23. In respect of the properties, the presumption of advancement applies where there is a transfer by a parent to their child. However, this is capable of rebuttal.
24. The burden of proof lies with the party making the assertion. It is for them to satisfy me on a balance of probabilities that it is more likely than not their version of events is correct.

EVIDENCE

25. I did not find the Wife to be a reliable witness. Despite saying she required the assistance of an interpreter because of her limited understanding of English, all her statements are in English. None contained the required confirmation that they had been translated for her or that she understood them and the accepted practice of preparing the statement in her own language and then having it translated into English had not been complied with, even in respect of statements prepared and filed by Solicitors representing her at the start of these proceedings. In fact the Wife’s evidence was that her Solicitors had all their communications and correspondence with her brother which might reasonably have been expected to put them on notice as to the formal requirements necessary in respect of her written evidence, if necessary. Whilst the Wife said that the statements had been prepared with the assistance of her brother and sister and had been read back to her there was no evidence to confirm this and nothing to suggest the statements had not been prepared by her or that she could not understand them other than her own assertion this was the case.

Both the Husband and his brother RV say she was able to speak and understand English without difficulty.

26. On more than one occasion she was evasive when answering questions put to her in cross-examination and gave oral evidence about important matters, such as her assertion that the Husband's father told her that the properties in question belonged to the Husband, not mentioned anywhere in her written evidence. When asked why, her response was that she did not find it necessary to have done so. On another occasion when asked why she had not stated in her written evidence her allegation that the Husband had told her she was free to go anywhere and have sex with anyone and that she could have a baby with anyone, she said she didn't think it relevant to financial issues, and subsequently when asked whether she was pregnant in 2016 did not answer with a straightforward "yes" or "no" but that she did not admit to it. On other occasions, her evidence was not plausible such as when she said she could not recall having a practicing certificate or being on the role of the Bar Council in Uttar Pradesh.
27. In respect of the Wife's evidence I give myself a Lucas warning and remind myself that just because a party is not telling the truth about part of their evidence it does not mean they are not telling the truth about all of their evidence and there may be reasons why they have chosen not to be truthful about one part of their evidence.
28. Neither the Husband nor the Intervenor were reliable witnesses. Both were frequently confused as to the questions being put to them. The Husband's difficulties are largely explained by the medical evidence and Communicourt report which were not challenged by the Wife. On more than one occasion the Husband actually told me he was confused and that the questions were hard although he did his best to answer them. It was not put to him in cross-examination that his evidence was rehearsed and he did not present as a

witness who had been coached as to what to say. On the contrary I found him to be spontaneous on occasion.

29. The Intervenor also struggled at times to fully understand what was being asked of her. However, whilst both she and the Husband were uncertain about the details of many specific aspects of the case, both were consistent about certain matters, such as the fact there was a pre-nuptial agreement. I am satisfied that both the Husband and the Intervenor gave evidence to the best of their ability with a view to assisting the Court.

30. Both the Intervenor's witnesses are related to her and the Husband being her adult children and his siblings. However, I found that each gave impartial evidence and I found their evidence to be plausible.

31. Whilst the Husband relied on a statement from his brother SV, he was not called to give oral evidence to the Court. In these circumstances where the Wife has not had the opportunity to challenge the evidence the weight to be attached to it is minimal.

FINDINGS

32. There are numerous allegations emanating from both parties. Whilst I have considered all the evidence in this case I have only made such findings as I consider necessary and proportionate to determine the outcome.

PRE-NUPTIAL AGREEMENT

33. I am satisfied that at some stage either before, or immediately after the marriage, the Wife signed a document which purported to be a pre-nuptial agreement but whether it was the affidavit disclosed by the Husband or another document is unclear. Both the Husband and the Intervenor were clear and consistent in their evidence that a pre-nuptial agreement had

been entered into but their evidence as to the chain of events was muddled. At one stage in his statement dated 8th February 2022 the Husband refers to the parties signing the agreement in October 2006 before he returned to the UK but in oral evidence said it was signed after the parties married.

34. His statement makes no reference to either party obtaining legal advice prior to signing the agreement but says that on 13th January 2007 he and the Wife went to meet a lawyer to get advice and get her notarized affidavit which is said to mirror the terms of the pre-nuptial agreement. However, later in the same statement he says the parties signed the agreement after they obtained legal advice and that the affidavit was signed in front of a notary public at the same law firm they received legal advice from. This was his position in oral evidence when he said he and the Wife went to court and signed a pre-nuptial agreement together. He said it was typed out and was explained to the Wife. He accepted this was the first time she had seen it. However, he then became confused and said he didn't know anything about the pre-nuptial agreement and then that they went to another lawyer in India to get advice.

35. The Husband was unable to provide a copy of the agreement setting out its terms and is inconsistent as to what they were. In the same statement he says that the pre-nuptial agreement provided that the parties would go for a clean break order in the event of separation unless there are children of the family. However, the affidavit which is said to mirror the terms of the agreement makes no reference to children or departure from a clean break in such circumstances.

36. The Wife's statement in response to that of the Husband dealing with the pre-nuptial agreement is a bare denial that it existed at all or that she signed either it or the affidavit. However, in her oral evidence she admitted signing the affidavit, but said it was without

being told anything about it and that it was given to her by her father-in-law with other papers to sign and was told it was to do with the visa for immigration and marriage. She confirmed she did not read the document before signing it. It is implausible that the Wife would not have mentioned this, either in her statement dated 14th April 2023 or in her statement filed in respect of the divorce petition in which she provides a third version of events, namely that her father-in-law took her signature on the affidavit stating that if she left the Husband who is very well off then she would not be entitled to any financial claim or compensation. I am satisfied that the Wife did attend before the notary on 13th January 2007 when she signed the affidavit, the contents of which were explained to her.

37. As was made clear in the case of *Radmacher v Granatino* obtaining legal advice about an agreement is desirable but not essential. However, the fact that the Wife had a practicing certificate in law, as I am satisfied she had based on the information given to the Immigration Tribunal, does not mean that she has or had any detailed knowledge of matrimonial law. Neither does the fact the Notary explained the legal terms and conditions of the affidavit, which may in any event have differed from any other document said to constitute the pre-nuptial agreement, mean the Wife was given any legal advice as to the consequences and implications of signing the agreement and whether it would be in her best interests to do so. The Husband's own case appears to be that the parties went to see a lawyer, whether it was the notary or some other lawyer, together, although again at one stage in evidence he said that the Wife went by herself to see the notary, and then that she went with her mother. However, there is no clear evidence that she obtained or was advised to obtain independent legal advice as to the proposed pre-nuptial settlement and its effect.

38. It also appears there was no financial disclosure by either party although given the Husband's case that he had no assets at the time of the marriage his case must be that his intention was to prevent the Wife from making a claim in respect of any assets acquired post-marriage.
39. The Court was provided with no evidence as to the law and practice regarding pre-nuptial agreements in India and whether an agreement entered into in the manner in which it is alleged would be upheld there.
40. In considering the weight to be attached to any pre-nuptial agreement the Court must have regard to the value of matrimonial assets now and the impact of implementation of the terms of the agreement as against fairness. Under the terms of the affidavit, if it is in fact the pre-nuptial agreement, the Wife would receive nothing in the event of separation or divorce, regardless of how long the marriage lasted or whether there were any children, whether or not the Husband had any assets at the time of the marriage or subsequently. In *SC v TC (ZZ21D12436) HHJ Hess*, in summarising the principles relating to "Agreements" said that *"parties are unlikely to have intended that their ante-nuptial agreement should result, in the event of the marriage breaking up, in one partner being left in a predicament of real need, while the other enjoys a sufficiency or more, and such a result is likely to render it unfair to hold the parties to their agreement. Equally, if the devotion of one partner to looking after the family and the home has left the other free to accumulate wealth, it is likely to be unfair to hold the parties to an agreement that entitles the latter to retain all that he or she has earned"*.
41. In conclusion whilst I am satisfied that a document was signed with a view to it being a pre-nuptial agreement I cannot be satisfied on a balance of probabilities as to what it was, whether the affidavit or some other document, the circumstances in which it was signed

or its terms. To the extent the terms prevented the Wife from making any financial claim against the Husband whether in respect of matrimonial property or to meet needs regardless of the length of the marriage or the Husband's assets was unfair to the Wife at the time the agreement was entered into and is unfair now. I attach no weight to any agreement in determining computation and division of assets in this case.

DATE OF SEPARATION

42. In replies to questionnaire, the Wife says that she left the family home on 19th February 2017 due to domestic abuse and stayed overnight with RK but returned home the next day and remained there until April 2018. The Husband says the marriage broke down in 2013 when the Wife moved into a separate bedroom and she left the home in 2016 and did not return. The photographs relied on by the Wife to support her case are not evidence that the parties continued to live together between 2016 and 2018. None show the parties together. It is accepted that post- separation she has maintained a relationship with the Husband's brother SV and his wife and so it would not be unusual for there to be photographs of them in social settings at which the Husband might also have been present, such as the temple. In his divorce petition the Husband says they stopped living together as a couple in August 2018 but also says she left in March 2018. However, this is contradicted by the previous sentence which states that the Wife left the marriage in 2013 and continued to visit the family for another 3 – 4 years. RV also says that the date of separation was 2015/16 although he also says that she left home later in 2016 for 6 months or so. It is accepted by RV and was also accepted in evidence by the Husband that after she left the Wife returned to cook for their father whom RV said did not judge the Wife.

43. There is no evidence to support the Husband's case that the Wife was pregnant when she left in 2016. However, on the Wife's own case she became pregnant in the last quarter of 2017 with her twins being born in June 2018. The Wife had not suggested anywhere before the hearing that she had in effect been given permission by the Husband to have a child with someone else and I am satisfied that if correct it would have been included in the Wife's Form E or section 25 statement. Whilst Mr Giani says in his submission document that the evidence shows that the Wife's relationship with RK and her pregnancy was condoned by the Husband's father and, as a result had to be accepted by the rest of the family, and that in those circumstances it is implausible that she would have been thrown out of the house and only allowed to return to cook, I do not agree. If that were the case there would have been no necessity for the Wife to leave at all, if the intention was that she could have her children and continue living at the property. The Wife says the Husband and his mother threw her out, but if, as suggested by Mr Giani, the Husband's father condoned the relationship and was the absolute patriarch of the family whom "everyone obeyed without demur" they would not have dared to take such action. I consider it implausible that the family would have allowed the Wife to continue living with them whilst pregnant with another man's child.

44. Whilst I accept the Wife did provide a NHS letter addressed to her at BR dated 2nd February 2018 attaching a maternity exemption certificate this was one document when it might have been expected that other documents would have been produced. It was provided during the hearing and so there was no opportunity to make enquiry as to the basis on which it was sent to the address. There may have been an explanation such as the Wife not having changed her address or records not being updated and if it was the only letter sent it does not undermine the Husband's case because he clearly says in his statement that not much post came after separation. On the Wife's case that she did not

fall pregnant until late 2017 it is possible that between 2016 and 2017 the Wife did return to the property having left to see and cook for the Husband's father.

45. The dates in the Husband's divorce petition are inconsistent but he was clear in his evidence that separation was March 2016. On balance I accept his explanation as the date in the petition is a mistake because it does not make sense when read with the previous paragraph. Given my findings as to the Wife's reliability as a witness together with the implausibility of her case that she continued living at BR whilst pregnant with RK's twins, a man who was a friend of the family and in business with the Husband's father, I find that the date of separation was March 2016.

WORKING IN THE BUSINESS

46. The Wife's position is based on the assets firstly belonging to the Husband and secondly being matrimonial property. Given that all the properties with the exception of HR were purchased prior to the marriage, even if the Husband has a beneficial interest the Wife would have to demonstrate that they had mingled to become matrimonial in nature in order to advance a case for sharing. Otherwise, if the court is satisfied as to ownership they will be non-matrimonial and the Wife will only be entitled to have recourse to them to meet needs.
47. The Wife's case as to the matrimonial nature of the properties other than BR is on the basis that these properties formed part of a buy to let property portfolio operated as a business by the Husband and his father. In her section 25 statement (p247) she refers to the Husband's conviction and fine as a property owner in 2007, that he was on the father's pay roll and did all the banking, rent collection and fighting with the local council and suchlike. This is in direct contradiction to the statement she filed with her acknowledgement of service in which she said that the Husband had never worked his

entire life and she was always dependent on his father for handouts. In oral evidence the Wife said that the Husband used to collect rent from the various properties but then said that sometimes his father asked him to do this but most of the time tenants came to BR to pay their rent which would sometimes be collected by the father, sometimes by the Husband and sometimes by other family members, including her. She accepted that other people sometimes did the banking and said that funds were deposited into various accounts in the joint names of the Husband and others of which she had no knowledge or details.

48. The Wife's description of this being in effect a family business in which the Husband made a full and active contribution and he and his siblings shared the rental income from the properties with the father and Intervenor is simply not borne out by the evidence. I am sure the Husband will not be offended when I say that he is not a sophisticated man and I find it unlikely he fully and effectively co-managed a business with his father in the manner in which the Wife would have me believe or at all. I have no doubt that he did odd jobs for his father including collecting rent and depositing it at the bank but this doesn't mean he was a partner in or co-owner of the business and there is no evidence of any other bank accounts in his sole name or in joint names with third parties.

49. The Husband's evidence was that his father was in charge of the business and received all the rent. He used to help his Father part-time and received a salary of £200pw. This is supported by his tax returns which show that the Husband was receiving a monthly income of £833 which was paid by way of PAYE and not on a self-employed basis. There was no evidence that the Husband did any substantive work in the business and RV gave evidence that his brother was not involved in managing the properties and his

involvement did not extend beyond being on the title deeds and doing some administrative work for his father.

50. Whilst I have no doubt that the Husband's Father gave him additional monies on occasion as and when asked this does not mean that he had an ability to draw down on collective income. Even if he did, I agree with Mr Davies that Mrs Justice Roberts made clear in *MCJ v MAJ* [2016] EWHC 1672 that rental income from non-matrimonial property used to fund the parties living expenses does not change the fundamental nature of the capital asset. I am satisfied that the Husband was not a partner or co-owner of the business and as such to the extent he has any interest in the properties they cannot be said to have mingled so as to become matrimonial in nature. Any claim the Wife has in relation to those properties, if they are owned beneficially by the Husband, must be predicated on need.

BENEFICIAL OWNERSHIP OF PROPERTIES

51. BR was purchased in the Husband's father's sole name in 1977. It was the home of the Husband's parents and the Intervenor still lives there. The Husband lives there as he has done his whole life and it was the matrimonial home. On 30th August 2016 it was transferred to the Husband, his parents, and his sister. On the death of his father, the Intervenor inherited his share under his estate. The property has an agreed equity of £625,650 but there is a dispute as to the Husband's interest. He says it is 16.6% and the Wife says it is 33.3%. The Husband and the Intervenor says this is because the father's intention on transfer was that his 50% beneficial ownership should be divided between himself and his children. There is no documentary evidence to support this but I am satisfied that at the date of transfer the Intervenor would have acquired a beneficial interest in the property by virtue of it being her matrimonial home and so the explanation is a reasonable one. On the father's death the Husband's interest would not have altered

as his father's share passed to his mother. I am satisfied the Husband's interest in the property is £103,857. I am satisfied that this interest was acquired post-separation of the parties and so is not matrimonial property. However, even if I am wrong as to that, on the Wife's own case it was acquired within a period two years prior to separation and so whilst matrimonial the Husband's significant contribution in this respect would have to be considered and in my view means that any award based on sharing would not be appropriate.

52. HR was never legally in the Husband's name. The Wife was directed to file a statement in respect of her case that he has a beneficial interest in the property which is at page 481 of the bundle. I am not satisfied that this establishes that the Husband has ever had an interest in the property. Whilst he may have failed to include any of the properties in his Form E and breached court orders this does not mean the Court can or should infer that he has a beneficial interest in this property. There is no evidence the Husband received rental income from this specific property and nothing which would lead the Court to conclude that the Husband has or had an interest in it.

53. AR was purchased in June 1994 in the joint names of the Husband, his father and his paternal aunt and uncle who are not a party to these proceedings. SR was purchased in the joint names of the Husband and his father in 2002. HHR was purchased in the joint names of the Husband and his father in 2000. SR was purchased by the Husband's father in his sole name in 1984 and transferred to the Husband and his brothers in 2012. XR was purchased in the joint names of the Husband, his parents and his sister in 1989. IR was purchased in the joint names of the Husband, his parents and his brother in 1993. In 2014, the Intervenor transferred her interest in the property to the Husband and in 2018 he transferred his interest back to her.

54. There was no evidence the Husband paid or contributed towards the purchase price of any of the properties. In 1989 he would have been seventeen and in 1994 twenty-three so it would appear unlikely he had the funds to do so in respect of XR and AR. The Wife's evidence for this and all the properties was that they were purchased before she knew the Husband and she did not know if he would have enough funds to purchase the property and that she did not know whether the Husband had bought the properties or had been given them. Her evidence that if the Husband had bought the properties he must have paid for them is no more than an assumption not supported by any evidence.
55. The Husband, Intervenor and her witnesses all gave evidence that the father was in control of his property portfolio and that they did as he directed including signing transfers and documents. They all said the father was superstitious and that this may explain why various properties were put into different names in different combinations of ownership.
56. The Intervenor gave evidence she had transferred her interest in IR to the Husband to bolster his sponsorship of the Wife's visa application and subsequently the property was transferred back to her. There was no evidence the transfer was for consideration or that the Intervenor had gifted it to the Husband. Post-transfer the Husband did not deal with the property as if it was his own.
57. As I have already found, I am not satisfied that the Husband was in receipt of any of the rental income from the properties or in any way treated them as being his own.
58. I directed that the Inheritance Tax forms be disclosed and I considered it might assist in determining the beneficial interest of the properties. The Intervenor was questioned by Mr Giani on behalf of the Wife at some length on the fact that the contents of the various forms appeared misleading and incorrect. In particular, the IHT404 which is a schedule of

jointly owned assets only refers to the Husband's father having an interest in property at STR and ABR. The Wife says this is clear evidence that the Husband, and not his father, has an interest in the properties in his name. The Intervenor said that no-one else in the family had assisted with the completion of the forms which had been prepared by the accountants and signed by her with a declaration that their contents were true to the best of her knowledge and belief. Initially I was concerned that the forms did not accurately reflect the Husband's and Intervenor's positions of the parties in relation to the properties but on consideration I am satisfied they do and Mr Foy's submission that the fact the properties which are the subject matter of these proceedings did not need to be included in the Form as they were solely owned by him but not in his sole name, correct. The form makes it clear that in cases where assets are in joint names but one person provided all the money then their share of the asset will be the whole and so in effect not jointly owned. In addition, given that the Intervenor was the sole beneficiary of the father's estate no inheritance tax would have been payable on his death in relation to the properties and so there appears to be no motive for not declaring the correct position as to ownership to HMRC.

59. I am satisfied that the presumption of advancement is rebutted and the Husband does not have a beneficial ownership in any of the properties other than BR. All the evidence supports his case that his father treated the properties and the income from them as his own, regardless of whose name they were actually in.

SECTION 37 INJUNCTION APPLICATION

60. On 22nd June 2023 the Wife made an application under section 37 of the Matrimonial Causes Act 1973. The terms of the order sought in the application are unclear. In the statement in support, the Wife refers to various properties in which she says the Husband

has a legal interest not disclosed in his Form E and at Paragraph 6 of the statement she seeks an order restraining the Husband from disposing or refinancing the properties connected to the Husband. At paragraph 7, she sets out the properties she says that the Husband holds or has held a legal and beneficial interest, namely all those which are the subject matter of these proceedings save BR and says that the Husband has transferred these properties to family members or others without any monetary exchange during proceedings. In fact, the Husband has never been on the title deeds of HR which was purchased in the names of the Husband's father and sister and never transferred to him and I have already made a finding that he has never had a beneficial interest in this property.

61. It appears the Wife actually seeks orders pursuant to section 37(2)(b) setting aside the dispositions although the position is not entirely clear. The directions order of District Judge Shaw dated 16th August 2023 records that the Wife was unable to confirm at that stage whether she seeks to set aside property transfers so that they are transferred back to the Husband or whether she sought only for any beneficial interests held by the Husband to be recognised. The difficulty is no directions were made for the transferees to either be joined to the proceedings as parties or to file statements in respect of the application and in these circumstances it is difficult to see how the Court could set aside the dispositions if it determined that one or more was made with the intention of defeating the Wife's claims.

62. Given my finding that the Husband does not and never did have an interest in any of the properties it cannot be said that any of the dispositions were made with a view to defeating the Wife's claims and in these circumstances I need go no further in consideration of the application.

COMPUTATION OF ASSETS

63. I am satisfied that there is no matrimonial property and so the sharing principle does not apply. The Husband has non-matrimonial property in the form of his interest in BR which is available to satisfy the Wife's needs provided it is reasonable to both parties. Those needs must be generated by the marriage and not subsequent events. There can be no suggestion that the Husband is required to make provision for the needs of the Wife's children from another relationship. Their needs should be addressed by an application against RK under the provisions of Schedule 1 of the Children Act 1989. This court is concerned with addressing the needs of the Wife arising from the breakdown of the marriage. This is a marriage in which neither party owned property or lived in their own rented accommodation but were at all times housed in the property which had been, and still is, the Intervenor's matrimonial home. The Wife's case was she did not work and I am satisfied the Husband earned a minimal income from working in his father's business. Her needs on separation would have been limited to putting her in a similar position and would not in my view have extended beyond the provision of a small lump sum to provide the deposit for rented accommodation. They would not have extended, either then or now, to the purchase of alternative accommodation to house her or the children. The only issue for the Court to determine is whether the Wife's needs are currently being met and to the extent they are not whether the Husband has the ability to raise a payment to meet needs.

COHABITATION

64. There is no strict legal definition of "cohabitation". No formula to apply where the number of nights a week a couple spend together defines whether or not there is cohabitation. The Court will look at all the circumstances of the relationship including but

not limited to intermingling of finances and financial dependency as well as the amount of time spent together.

65. I am satisfied that the Wife is cohabiting with RK at his property at NC. This is a property owned by RK and in respect of which he discharges the mortgage and all outgoings. In her Form E she refers to it being “temporary accommodation” and this is confirmed in her Replies to the Husband’s Schedule of Deficiencies dated 23rd January 2023 at Page 186 where she refers to RK providing it on a temporary basis. She provides no explanation as to what is meant by temporary, and whether it is pending the outcome of this case or some other event as she has been living there now for some four years.

66. Between April 2018 and March 2019, she lived at CR, although during this time she spent 2 – 3 months in India. During this period, she was living with RK. From March to September 2019, she lived separately at FS but after being evicted by her landlord she moved to NC where she has remained since. In replies to questionnaire she says this was from September 2019 but in oral evidence she said she had lived at the property since 2020. She did not provide any explanation as to why she had moved into a property owned by RK if she was not in a relationship with him, as she says, or why he would fund the mortgage or utilities in full on her property for a period in excess of four years without seeking some form of contribution from her if they were not in fact living together.

67. In her replies to questionnaire dated 28th November 2022 the Wife stated that RK has asked her to leave. In her oral evidence she said that he and his girlfriend have asked her to leave many times and that he has put the property on the market. None of this evidence is in her section 25 statement although when asked why she had not mentioned the sale, the Wife said she had only recently found out. There is no evidence to support the Wife’s

case. No statement or evidence from RK confirming he has asked her to leave, no copies of any estate agents particulars or other evidence the property is being marketed. Given the Wife has been aware throughout of the Husband's allegations it is implausible that she would not have thought it relevant to produce any evidence available to her to support her case.

68. In her replies she accepted that she has been to the gym with RK and the children a few times. She also said she cannot explain why he does not support her or his children but of course he is paying for the mortgage and utilities. However, when asked in evidence why she had not applied for child maintenance through the CMS her response wasn't that he was providing funding already by alternate means, but that she didn't have sufficient information about him. She said that she knew his name and address but when she put it in, by which I presume she meant the online application form, nothing came up. However, the form she relies on at Page 575 is an online maintenance calculator not an application form and there is no evidence the Wife has made any attempt to apply for child maintenance from RK or why his address would be required as it is my understanding CMS would be able to obtain this from another government department such as HMRC or DWP.

69. In an email dated 14th November 2022, her Solicitors referred to RK as the Wife's partner and whilst they confirmed it was an error it is perhaps difficult to understand how in the circumstances such an error could have been made if the Wife had confirmed to them that he was not her partner and she was not cohabiting.

70. However, the most compelling evidence in support of the Husband's case is the surveillance evidence annexed to his section 25 statement which shows that between the dates of 19th and 22nd July 2022 RK was present at the property every night leaving early

in the morning. The photos for Wednesday 20th July 2022 at Pages 392 and 393 show that he has a key to the premises as he lets himself back in. Almost a year later between 18th and 22nd May 2023 the evidence again clearly shows RK present at the property every night and on one occasion he remains at the property for almost an hour after the Wife and the children have left.

71. The Wife's case, that RK looks after the children when she goes out does not in any way explain why he was present at the property for four and three consecutive nights or, if it was the case that she went out on each of these evenings, why he stayed overnight and did not return to his own home after she returned. Her suggestion that the Investigators and/or the Husband only picked photos from when RK was visiting is not plausible. I am satisfied they are evidence that RK lives at the property and that the only conclusion I can reasonably draw taking into account the Wife's financial dependence on him is that they are cohabiting and will continue to do so for the foreseeable future.

OUTCOME

72. In conclusion, I am satisfied that there are no matrimonial assets available for division and the only non-matrimonial property available to the Husband is his interest in BR which is the home of himself and the Intervenor. The Wife currently has no needs as she is cohabiting with RK and will continue to do so for the foreseeable future. If in fact this is not the case and her relationship with him has ended as she says, she has the option of seeking financial provision from him for the children to include the settlement of property.

73. The Wife's claims against the Husband are dismissed and there should be a clean break order reflecting this.

74. The matter is listed for the handing down of judgment on 12th March 2024. If the parties are able to agree the wording of an order which the court approves, their attendance at the hearing can be dispensed with.

District Judge Ashworth

7th February 2024