CA 490/77

Appellant: **David Natzia**

v.

Respondent: **Aliza Natzia**

In the Supreme Court sitting as Court of Civil Appeals

[June 7, 1978]

Before: Justices A. Witkon, M. Etzioni, and D. Bechor

Appeal of the judgment of the Jerusalem District Court (Acting President A. Landa) of June 1, 1977, in Application File 39/76 (Application File 434/73, PS 171/72).

Y. Ben Melech for the Appellant

Y. Hovav for the Respondent

Abstract

The appeal focused upon the dismissal of the Appellant's request to enforce a condition of a divorce agreement with the Respondent concerning the erection of a wall to divide their apartment.

The Supreme Court held:

A. (1) Section 2 of the Spouses (Property Relations) Law, 5733-1973, which requires the confirmation of a property agreement by a civil or rabbinical court, also applies to spouses married prior to the enactment of that law.

(2) The Spouses (Property Relations) Law, 5733-1973, is very strict in regard to a property agreement between spouses that establishes the relationship between them and also obligates in regard to the future.

(3) Approval of divorce agreement does not constitute confirmation of a property agreement unless it meets the requirements of sec. 2 of the Spouses (Property Relations) Law, 5733-1973.

(4) The performance of an agreement duly executed between parties who agreed to divorce does not, itself, obligate the parties to divorce.

Judgment

Justice Bechor:

This is another step in a sad dispute in ongoing civil and criminal proceedings between spouses for years. The parties are a husband and wife who married many years ago and raised children, but who have been disputing for no few years, and who are unable to live together or divorce, or at least agree to live separately under agreed conditions.

Among the children of the couple are the daughter Ronit, who is still a minor, born on Sept. 13, 1962. In 1973, the Appellant was ordered to pay maintenance for the Respondent and the daughter Ronit, who is with the mother. The Appellant has a house at 5 HaChish Street in Jerusalem that comprises a large apartment in part of which the Respondent and Ronit currently reside. This house appears to compose a not-insignificant part of the dispute between the parties. A few years ago, the Respondent lived in part of the apartment, and afterwards he rented it to tenants who have since left.

On July 1, 1975, the Respondent and Ronit filed Motion 434/75 in the District Court, in which they asked to order the Appellant to bring about the removal of the tenants he had installed in part of the apartment after an order was granted prohibiting him from entering the apartment. The court refused to grant the order ex parte, and on July 6, 1975, a hearing was held in the presence of both parties. In the course of the hearing, they agreed to a temporary arrangement according to which the hearing would be adjourned until July 18, 1974, and if no other order would be granted that day, the Appellant would be permitted to rebuild the wall that had been in the apartment on

June 25, 1975, and the wife would be prohibited from demolishing the wall. At the request of the attorneys for the parties, the court approved the said agreement "only as a temporary arrangement", and gave it the force of a court order. What is concerned is a wall that divides the apartment in two, dividing between the part in which the Respondent and Ronit reside and the other part, which was erected by the Appellant and which the Respondent demolished on June 25, 1975. On July 18, 1975, no order was granted, and the next hearing was held on July 24, 1975, at which the attorneys for the parties appeared, along with the Appellant in person, and informed the court that the parties had arrived at a compromise in accordance with a written agreement, and submitted the document, personally signed by both parties and marked "A", and requested that the court approve the compromise and issue a consent decree. The judge issued a decree in this language:

> Upon the agreement of the parties and at their request, and being satisfied that the compromise arrived at by the parties is in the interest of the minor, I approve the compromise and grant it the force of a judgment. Given July 24, 1975.

That agreement was a divorce agreement (as the parties referred to it in the heading), and its primary provisions were that the parties would divorce, Ronit would remain in the custody of the Respondent, and the Appellant would pay maintenance in the amount of IL 500 per month. The agreement also includes detailed instructions in regard to the apartment, of which the main point, in short, is that the apartment would be divided in two, the large part (Part A), the part in which the Respondent resides with Ronit, would be registered in the Respondent's name as her property and would be in her possession, and the second part (Part B) would be registered in the name of the Appellant and the couple's daughters in equal parts. It was also agreed that the Appellant would have the right to build on the roof, and that Part B would be rented as an unprotected tenancy by the Respondent, who would receive the income for 10 years from receiving the divorce, as long as she did not remarry, and that after 10 years, she would receive half the income, once again as long as she did not remarry. It was also agreed that "if the wife marries and/or allows another man to reside in the house permanently, the apartment would be divided in practice by the husband", who would rent out Part B and receive the income therefrom. It

was further stated in section 11: “The husband undertakes to demolish the walls that he built, and to restore the apartment to sound condition”.

On the day of the issuance of the said judgment, the Respondent’s attorney and the Appellant himself jointly filed a request with the Rabbinical Court asking that it arrange the granting of the divorce. Thereafter, hearings were scheduled that were adjourned from time to time due to the non-appearance of the Respondent or her attorney, or due to a request for a postponement by them. It turns out that the Respondent had changed her mind in the meantime, and did not want to accept a divorce, and the matter has not been arranged to this day. In the eleventh hearing before the Rabbinical Court, at the beginning of 1976, the Respondent and her attorney informed the court that the agreement had been coerced and that she is not willing to accept the divorce under the terms of the agreement of July 24, 1975, while the Appellant and his attorney requested that the court obligate her to accept the divorce. The court adjourned the matter for consideration and decision, and it appears that a decision has not yet been rendered. On April 8, 1976, the Respondent filed a request in the District Court, numbered 281/76, in which she asked for a declaration that the divorce agreement was void because it was obtained under pressure by the Appellant that she could not resist. That request has not yet been addressed.

On January 15, 1976, the Appellant filed a motion (No. 29/76) in which he asked “to compel the Respondent by imprisonment and/or fine and/or both together to carry out the judgment given in Motion 434/75 on July 24, 1975”. The motion was scheduled for a hearing, and in the course of the hearing it became clear that the purpose of the Appellant’s request was, primarily, to rebuild the wall between the two parts of the apartment, inasmuch as the obligations of the parties could be carried out without arranging the divorce. In the first decision of Dec. 27, 1976, the learned President rejected the preliminary arguments of the Respondent’s attorney objecting to the request. In an additional hearing held thereafter, the Respondent’s attorney raised additional legal arguments. The learned President accepted them and denied the Appellant’s request in a quasi *in limine* decision, without hearing evidence, and thus the appeal.

In his decision, the learned President stated that the agreement of July 24, 1975, as well as the temporary agreement of July 6, 1975, are property agreements in the sense of

the Spouses (Property Relations) Law, 5733-1973, and therefore require confirmation in accordance with that law. Inasmuch as they were not so confirmed, they are not binding. Section 2(a) of the above law establishes that a property relations agreement requires confirmation by the District Court or by the religious court that has jurisdiction over the marriage and divorce of the spouses. Section 2(b) of the Law establishes that the said confirmation shall not be granted unless the civil or the religious court has satisfied itself that the spouses made the agreement or the variation "by free consent and understanding of its meaning and effects".

The attorney for the Appellant argued that the said law does not apply to the agreements between the parties because they married prior to the Law's entry into force on Jan. 1, 1974. There is nothing to that argument. Section 14 of the Law establishes that sec. 3 of the Law, as well as the provisions of Chapter Two of the Law, shall not apply to spouses who married prior to the Law's entry into force. The significance of this provision is that sec. 2, which is in the first chapter of the Law, applies even to spouses who married prior to the Law's entry into force. Therefore, a property agreement between such spouses, made after the Law's entry into force, is subject to the provisions of the first chapter of the Law, including sec. 2.

As for the conditions that must be met before the court can confirm a property agreement under sec. 2 of the Law, it should be noted that subsec. (c) establishes that authentication by the marriage registrar can take the place of court confirmation in the case of a property agreement made before the marriage or at the time of its solemnization. Additionally, subsec. (d) establishes that an agreement between the parties that was confirmed by a judgment for divorce of a religious court shall be treated in accordance with the same rule as an agreement confirmed under sec. 2 of the law. Here we should note that in regard to authentication by the marriage registrar and confirmation in a divorce decree, it is not stated that the authenticator or confirmer must first be satisfied of those things upon which confirmation of a property agreement by a court is conditioned. It may be that the very occasion of the wedding or the divorce confers clear significance to the agreement, and therefore the condition to particularly ascertain whether the parties understand the meaning of the agreement and its effects was not stipulated. The situation is different in

regard to the relations between the spouses during the period of the marriage, and there is no doubt that over the course of many years of marriage, spouses make all kinds of transactions and agreements between themselves in regard to some item of their property, and it is doubtful that every such matter should be granted the status of a property agreement in the sense of this law. The law is very strict in regard to a property agreement between spouses that establishes the relationship between them and also obligates in regard to the future. It also justifies the requirement that the court ascertain not only that the spouses freely made the agreement, but that they did so understanding its meaning and effects. The regulations promulgated pursuant to the law were also made in this spirit. Regulation 1 establishes that spouses who wish to obtain the confirmation of such an agreement will submit (in the plural form) it to the court. Regulation 2 establishes that the confirmation be given by the judge in his chambers, in the presence of the spouses, after the judge explained the meaning of the agreement in simple, clear language, and ascertained whether they made it of their free will. Regulation 3 establishes that the confirmation be made on a copy of the request, and that it record that the parties were given the appropriate, proper explanations, and that in the opinion of the court, the agreement was made with free consent.

In this case, the agreement of July 24, 1975 was given the force of a judgment by a consent decree, and that force was given by the learned President himself, who, in his decision that is the subject of the appeal, established that when he did so, he did not consider the Spouses (Property Relations) Law, 5733-1973, and was not asked to do so. And who better than he can say whether or not that was given as confirmation in accordance with that law. It is also clear from the decision itself that what the learned President was asked to do, and what he did, was to consider the question whether the agreement was to the benefit of the minor who was a party thereto, and nothing more. Therefore, the learned President was correct in his decision that this was a property agreement that was not duly confirmed, and that is, therefore, not binding.

It is doubtful that such a property agreement can be executed only in part, even if duly confirmed. It is, indeed, true that the Respondent is the one who refuses to accept the divorce, but as long as the religious court has not required her to accept the divorce, and

she does not accept it, the Appellant is unwilling to convey the property that he undertook to convey to her under the agreement. As already stated above, the Appellant's purpose at this stage is to erect a wall between the two parts of the apartment so that he can rent it or use Part B of the apartment as he wishes. Clearly, the District Court cannot compel the Respondent to accept the divorce, which is a matter for the Rabbinical Court, even if there is an enforceable agreement between the parties. Moreover, the performance of an agreement duly executed between parties who agreed to divorce cannot, itself, obligate the parties to divorce (see: SCHERESCHEWSKY, FAMILY LAW, 2nd ed., p. 277). And as for performing the rest of the agreement other than granting the divorce – the Appellant is unwilling to do this. Moreover, under the agreement, the Appellant undertook to demolish the walls that he built, and the Respondent has the right to receive the rent from Part B of the apartment for ten years, as long as she has not remarried, and under sec. 6(f) of the agreement, the apartment will be divided in practice only "if the wife marries and/or allows another man to reside in the house permanently". Clearly, this section refers to marriage to another man and not, as the Appellant's attorney argues, to a situation in which the Respondent is a married woman by reason of being married to the Appellant.

The Appellant's attorney argues that the agreement of July 24, 1975 was given the force of a judgment, and therefore it is a binding judgment that should be executed. This is not so, because the transaction in its entirety cannot be executed by the District Court, and inasmuch as the very existence of the agreement does not oblige the Respondent to accept a divorce, the court lacks authority to order the divorce even if there was a binding agreement between the parties, and the divorce is the grounds and basis of the agreement that was given the force of a judgment. In addition, and as already stated above, the learned President ruled that there was no judgment that constitutes confirmation of a property agreement between spouses.

The Appellant's attorney further argued that even if the agreement of July 24, 1975 is not binding, the agreement of July 6, 1975 should be executed inasmuch as no other order was granted on July 18, 1975. The learned President also deemed the agreement of July 6, 1975 as a property agreement that had not been duly confirmed. But even were it not a property agreement that requires confirmation by law, which I am not saying, it was

only a temporary arrangement, as the attorneys of the parties declared, and as was expressly recorded in the decision. After that, the parties agreed to a different arrangement, and in any case, now – three years after that temporary agreement and that temporary decision – there is no longer reason to enforce the agreement and the decision in contempt-of-court proceedings under the circumstances and in light of the developments that have since taken place. While it is true that the Respondent refuses to divorce, it would appear that the dispute is about the conditions. As already stated, divorce proceedings remain pending in the Rabbinical Court, and the Respondent has also filed a request to rescind the agreement of July 24, 1975 on the grounds that her consent was given due to pressure that she could not resist. It should also be noted that the Respondent resides in the apartment with their minor daughter, and other daughters, including a handicapped daughter, live with her, as well.

In light of this, it is decided to deny the appeal and to charge the Appellant with the Respondent's costs of the appeal in the amount of IL 5,000.

Given this 2nd day of Sivan 5738 (June 7, 1978).