

In the House of Lords

Re: Leonard Brown

Mrs Sally Smith was the registered proprietor of “High House Farm”, which she farmed in partnership with her husband. In the early 1990s, the partnership broke up and Mr Leonard Brown was asked by Mrs Smith to manage the farm on her behalf in return for a monthly salary.

In 1995, Mrs Smith informed Mr Brown that she intended to leave him the farm in her will. She subsequently executed a will (“**the 1995 will**”) in which she left the farm to Mr Brown. In early 1997, however, she made another will (“**the 1997 will**”), appointing her solicitor, Mr John Doe, executor and leaving all her property (including the farm) to two close friends, Mr and Mrs Edwards, in equal shares. She did not tell Mr Brown of her change of mind but, on the contrary, continued to reassure him that the farm would be his when she died. On the faith of these assurances, Mr Brown, in addition to running the farm full-time and paying all the outgoings, provided care for Mrs Smith (who was now in her seventies) by doing the shopping, providing cups of tea and meals and keeping her company, for which he received no remuneration.

In 1998, Mrs Smith died. Following probate of the 1997 will, Mr John Doe, in his capacity as executor, vested the freehold estate in the farm into the name of Mr and Mrs Edwards as joint beneficiaries. The farm was then sold by Mr and Mrs Edwards to a Mr Evans (a local farmer).

Mr Evans has now brought an action claiming possession of the farm against Mr Brown. Mr Brown has counterclaimed for a declaration that (1) he was entitled to the freehold of the farm by virtue of Mrs Smith’s assurances that she would leave him the farm in her will and (2) such assurances created an estoppel equity which bound Mr Evans by virtue of s.70(1)(g) of the Land Registration Act 1925.

In the High Court, Wisdom J. held that Mr Evans was entitled to possession for two reasons:

- (1) the doctrine of proprietary estoppel could not be raised in relation to a promise of a gift under a will;
- (2) proprietary estoppel was a mere right of action which could not give rise to a right of persons in actual occupation under s.70(1)(g) of the 1925 Act.

The Court of Appeal, following *Taylor v. Dickens* [1998] 1 FLR 806 and *Gillett v. Holt* [1998] 2 All E.R. 917, dismissed Mr Brown’s appeal affirming the first ground given by Wisdom J. However, Wise L.J., with whom Basil and Brush L.JJ. concurred, disagreed with the second ground, holding that the estoppel equity was a right which gave the right to claim a property interest which, if granted by the court, related back and hence capable of constituting an overriding interest under s.70(1)(g).

Mr Brown now appeals to the House of Lords and Mr Evans cross appeals against the second part of the Court of Appeal decision.

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