Contentious issues with French properties

Dawn Alderson looks at the different claims able to be made by the children in England against the estate of a deceased parent under the French rules of succession

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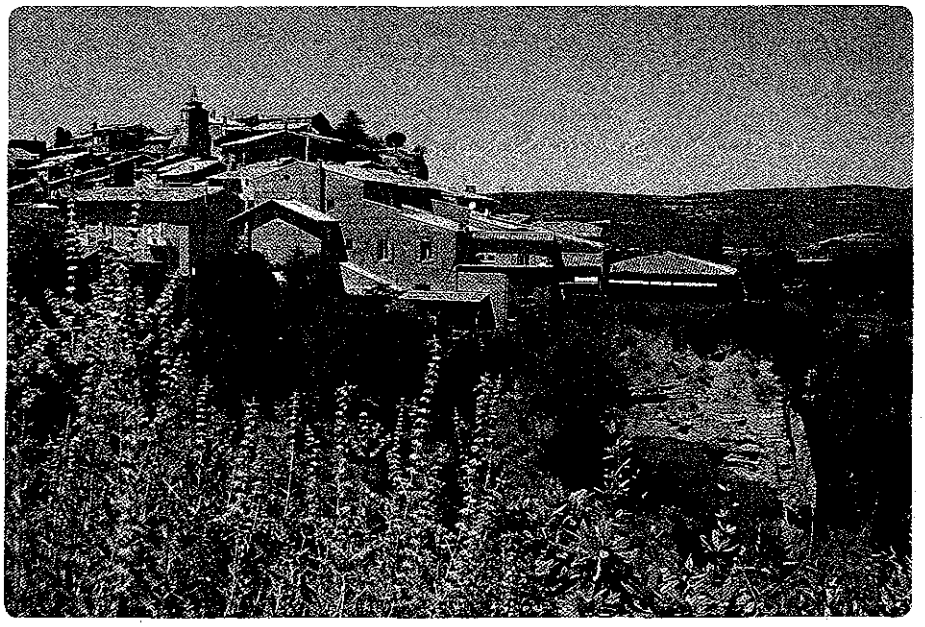

There is nothing new about English married couples retiring to live in France permanently in recent years, but when this involves a second marriage for one or both of the couple, and there are children from the first marriage, particular difficulties and problems can arise. This is because under French law, children have entrenched rights to inherit a part of their parent's estate, which cannot be overridden by a will or other testamentary disposition (la réserve légale)[1]. The purpose of this article is not to provide a summary of the private international laws applicable nor an analysis of the questions of domicile and the law applicable to the devolution of the deceased's assets in a particular case (all of which would merit a detailed analysis prior to advice being given) but rather to provide an illustration using three contrasting scenarios of the diverse nature of possible claims.

From our experience, the number of estates being disputed has increased dramatically in recent years. Unfortunately, even when the parties are motivated to settle amicably, the tax consequences resulting from any proposed compromise agreement may mean actual settlement is elusive.

Scenario one

Mr Y had gone to live in France some years previously with his new wife Amanda. He had a daughter from a preceding marriage whom he saw rarely. He died while still living in France. It was unclear if he was still domiciled in England and Wales, but on the facts he was domiciled in France under French rules at the date of his death. His last will, drawn up by his solicitor in England before he went to live in France, stipulated that the whole of his estate would be left to Amanda if she survived him. His assets comprised a bank account in Jersey, a half-share of the matrimonial home in France owned as tenants in common with Amanda, and several joint bank accounts.

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Under French law, his daughter was entitled as a matter of law to a share in her father's estate, notwithstanding the terms of his will, due to the reserved rights in favour of children enshrined in the French civil code. If Mr Y had acquired a French domicile at the date of his death, Mr Y's daughter was essentially entitled to one-half of all her father's worldwide assets, the other half being able to be left to Amanda by virtue of Mr Y's will. Other variations were also permitted (at Amanda's choice) whereby her interest would instead be limited to a 'usufruit' (life interest) or a combination of an absolute interest in one-quarter and a life interest in the balance (Mr Y's daughter owning the bare interest in this case)[2].

Amanda wanted to remain at the property following her husband's death and to be able to

maintain her previous standard of living enjoyed with her husband. The position was further complicated under French law by her right as 'the surviving spouse to the droit viager' over the property (right of occupation and use)[3].

She and her advisors argued that the deceased had not lost his English domicile of origin and as a result, while the daughter's rights were not contested, these were limited to an interest in the French immovable property.

A dispute arose between the parties as to their respective rights over the different assets and in particular the bank account in Jersey. The succession in France and elsewhere was paralysed for a number of years and despite incurring significant costs neither party felt able to make concessions.

Scenario two

Mr D, an English national, had been married for the second time to Susan. They did not have any children between them, but Mr D had three children from his first marriage. The couple owned a French house purchased while they were living in England in joint names in equal shares. Mr D lost his job unexpectedly and the couple retired to France to live there permanently.

Unfortunately, Mr D subsequently died after only a year. He had no significant assets except for his share in the property in France. Following his death, the notaire dealing with the succession in France contacted the three children in England to inform them that under French law they were entitled to a share in the French property equal to one-quarter of their father's share each, or a one-eighth share in the whole property (the reserved heirship rules).

They were understandably pleased as they had not had any contact with Susan since their father's death. Unfortunately, their hopes were soon to be dashed as Susan also contacted them to explain that although they were ostensibly entitled to a share in the property, any rights they had would be more than 'cancelled' out as Susan had in fact loaned her husband the amount of the purchase price to enable him to purchase his share in the property. In addition, she had also paid for all of the extensive renovation works carried out at the property.

Legally speaking, the children did, of course, have the option to contest Susan's claim as the position had not been documented. However, Susan did, in fact, want to sell the property and a buyer had been found. After some negotiation, it was agreed by the children to accept a reduced lump sum payment on the sale of the property in full and final settlement of their rights over their father's estate.

Scenario three

Mr J, an English national who had always lived in England, had purchased a property in France in his sole name 2004. He and his second wife Kirsty, whom he had married some years previously, moved to France in 2005 to live permanently there. Once established in France, they decided to change their matrimonial property regime to adopt the regime of universal community property in French law as permitted by the Hague Convention XXV of 14 March 1978. This was stated to cover all their immovable property in France including the property purchased by Mr J. They signed the deed to this effect with their local notaire, who inserted the usual provision whereby in the event of the death of either of them, all of the property within the community would pass to the survivor absolutely.

Mr J had two adult children living in England from his first marriage, a fact that was not discussed with the notaire at the time of signing the marriage contract. If the notaire had been aware of this, it is likely that the parties would have been strongly advised against adopting this approach because of the risk of the children making a claim against Kirsty in the event of her husband preceding her.

Following her husband's death, Kirsty appointed the same notaire to deal with her husband's succession but was not particularly concerned about the financial arrangements following Mr J's death, given the change of matrimonial property regime that she and Mr J had entered into prior to their marriage just to protect her in this event. At this time, the children's existence was belatedly brought to the attention of the notaire. He then had the unenviable task of informing Kirsty that in this situation under French law, notwithstanding the change of matrimonial property regime, the children had a right to require that they each receive an amount equal to the share that they would otherwise have been entitled to receive in their father's estate, if the change of matrimonial property regime had not been entered into.

In effect, the children were entitled to make a claim under article 1527 of the Civil Code[4] so that the assets passing to the surviving spouse under the 'regime matrimonial' were limited to the maximum amount able to be left to the spouse in the presence of children ('la quotité disponible').[5]

Negotiations for a settlement were protracted, as Kirsty did not want to have to share ownership of her home with her husband's children. However, she subsequently decided that in the changed circumstances she could no longer afford to maintain such a large property and the property would be sold. Following on from this it was relatively easy to reach an agreement between the parties, whereby the children agreed to give up all their rights in connection with the estate in consideration of a lump sum payable on the forthcoming sale of the property.

Conclusion

Questions of law apart, it is becoming obvious that there is an increased level of general awareness of the existence of French rules giving rights for children in the event of a parent's death and this can easily be confirmed from a cursory search of the web. As a result, particularly in the case where the deceased had children from a preceding marriage, it is now highly likely that following the death of a parent in France, the children will, at the very least, be asking questions. With the spectre of a potential claim always able to be made against the surviving spouse by the children, it remains essential for all English nationals owning French property or taking up permanent residence in France, to be fully advised as to the rights for children and how these may affect their succession planning and the ability to protect the surviving spouse in the event of their death. Failure to do so may result in much grief and worry both for the surviving spouse and the children, and ultimately a complete breakdown in the family relationships. ■

1. *C.civ. art. 912*
2. *C.civ. art. 913*
3. *C.civ. art. 764*
4. *C.civ. art. 1527*
5. *C.civ. art 913*