



**BERMUDA
1855 : 11**

PARTITION ACT 1855

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[29 September 1855]

[preamble and words of enactment omitted]

Interpretation

1 In this Act, unless the context otherwise requires—

"land" includes messuages, lands, tenements, and hereditaments, and any undivided share thereof, and any estate or interest therein;

"co-tenancy" means an estate in land held in coparcenary, in joint-tenancy or in tenancy in common, either in fee simple or for any less estate;

"infant" means any person under the age of eighteen years.

[Section 1 "infant" amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001]

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Co-tenant may petition Supreme Court for partition

2 Where any co-tenant prefers a petition to the Supreme Court verified upon the oath or affirmation of the petitioner, praying for the partition of any land in Bermuda held by him in co-tenancy, specifying in such petition the particular land sought to be divided, and the share claimed by the petitioner, and also setting forth in such petition to the best of the knowledge, information, and belief of the petitioner, the names and places of residence of the other cotenants, and whether any and which of them are under the age of eighteen years, the Supreme Court, if it sees fit to do so, may proceed upon such petition in a summary manner under this Act for the partition of such land:

Provided that if from any circumstance whatsoever at any time in the course of the proceedings it appears to the Supreme Court that the ends of justice are not likely to be so fully attained by a summary proceeding under this Act as they might be under some other mode of proceeding, or that there is any serious and well grounded reason against proceeding in a summary way under this Act, it shall be competent to the Court, if it thinks fit to dismiss such petition and all further proceedings thereon.

[Section 2 amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001]

Procedure

3 (1) Upon any such petition being presented to the Supreme Court, the Court, if it thinks fit, may make an order appointing a day or time for all the co-tenants named in the petition to show cause (if any they have) why partition should not be made as prayed by such petition.

(2) At the time so appointed, or at any subsequent time to which the Supreme Court may postpone the consideration thereof, if it is made to appear to the satisfaction of the Court, that a copy of such petition and order has been served upon each of the co-tenants named in the petition (except the petitioner) either personally or by leaving the same at his usual place of abode, whether in Bermuda or elsewhere; and in case of an infant co-tenant, in addition to such service as aforesaid, by serving a copy of such petition and order in like manner upon the father or mother, guardian, or other next friend of the infant with whom the infant is residing, the Court, upon motion, if it thinks fit, may make an order referring such petition to the Registrar to inquire and report to the Court the names and places of residence of all the co-tenants interested in such land, and their respective proportions, estates, and interests therein.

(3) Upon such report being confirmed by the Supreme Court, either wholly or in part, either on the first reference or on any subsequent reference to the Registrar, the Court, if it thinks fit, may issue a

commission to any three persons to be appointed by the Court to inspect such land, and to inquire and report to the Court how and in what manner the land may be divided among the several co-tenants thereof in the most equitable and advantageous manner.

(4) Upon such last mentioned report being made to and considered by the Supreme Court, the Court, if it thinks fit, may confirm the report either wholly or in part, and to order partition of such land to be made accordingly.

Supreme Court may order execution of deeds by parties

4 (1) The Supreme Court may order all necessary parties to execute any deeds which may be requisite and proper for perfecting such partition, and where any such person to whom any such deed is tendered for execution, refuses or neglects to execute the deed, within a reasonable time after the deed being so tendered, the Court may order such deed to be executed by the Registrar as the attorney for such party appointed for that purpose by the Court.

(2) Any such deed so executed shall be as effectual to all intents and purposes as if the deed had been executed personally by the party so refusing or neglecting to execute the deed.

(3) Every such deed executed by the Registrar shall be recorded in the Registry within twelve months after his execution thereof.

(4) Any deed so executed by the Registrar as the attorney of any married woman shall have the same validity and effect as if the voluntary execution of the deed had been acknowledged by her before any commissioner appointed in the usual manner to take such acknowledgement.

Infants

5 (1) Where it appears to the Supreme Court that the interests of any infant would be affected by any partition under this Act, the Court shall direct the Registrar to inquire and report thereupon; and if it is satisfactorily made to appear to the Court that the interests of the infant will not be unjustly or injuriously affected by the proposed partition, the Court, if it thinks fit, may order the Registrar to execute any deed for perfecting such partition as attorney for the infant for that purpose appointed by the Court:

Provided that in every such case it shall be competent to the infant at any time within twelve months after attaining his full age and not afterwards, or in the event of the death of the infant before attaining such age, for the heirs, executors, administrators or assigns of the infant at any time within twelve months after the death of the infant and not afterwards, to apply to the Supreme Court in a summary way to set aside such deed, so far as relates to the infant, his heirs, executors, adminis-

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trators and assigns, for any legal or equitable cause whatsoever; and it shall be competent to the Court to set the deed aside, if it is made to appear to the Court that there is any legal or equitable cause whatsoever for setting the deed aside.

(2) Unless and until any such deed is set aside as aforesaid it shall be as effectual to all intents and purposes whatsoever as if the infant had executed the deed personally, and at the time of the execution thereof had been of full age.

Dower

6 Whenever any partition is made and completed under this Act, any inchoate right of dower of the wife of any co-tenant to whom any portion of the land is allotted in severalty, by such partition, shall attach upon such portion instead of, and as an equivalent for, any inchoate right of dower to which she might have been entitled at the time of such partition in her husband's undivided share of the land.

Partition binding and conclusive

7 When any partition is made and completed under this Act, the partition shall be binding and conclusive upon the co-tenants parties thereto, and their respective heirs, executors, administrators and assigns.

Money ordered to be paid for equality of partition

8 The Supreme Court, if it thinks fit, may order any sum of money to be paid for equality of partition by any co-tenant, not being an infant, to any other co-tenant, not being an infant.

Costs

9 (1) The costs and expenses of any partition made under this Act, and of the proceedings for obtaining the partition, and deeds for perfecting the petition, may be apportioned by the Supreme Court rateably among the several co-tenants according to their respective interests in the land, and may be ordered by the Court to be paid accordingly.

(2) The payment of all monies ordered by the Supreme Court to be paid under this Act may be enforced, and such monies may be levied in like manner and by the like process, as may be done in any other case:

Provided that no process shall issue for enforcing payment of any money ordered to be paid by an infant until the expiration of twelve months after such infant has attained his full age.

Saving for other process of partition

10 Nothing in the foregoing provisions of this Act shall be construed so as to prevent any person from prosecuting any action at law or suit in equity for partition in like manner as if this present Act had not been passed.

[Amended by:

1952 : 11

2001 : 20]