

THE PARTITION ACT

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SCHEDULE

THE PARTITION ACT

[5th June, 1873.]

Cap. 279.
Acts
33 of 1965
S. 15,
6 of 1987
S. 17,
32 of 1995
S. 3.
L.N.
13K/2013.

Short title.

Interpreta-
tion.

1. This Act may be cited as the Partition Act.

2.—(1) In this Act—

“action” includes a suit;

“judgment” includes a decree or order;

“the Court” means the Supreme Court or a Resident Magistrate’s Court of a parish, within their respective jurisdictions.

(2) For the purposes of this Act, an action for partition shall include an action for sale and distribution of the proceeds; and in an action for partition it shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.

Action for
partition to
include
action for
sale.

3. In a suit of partition, where, if this Act had not been passed, a decree for partition might have been made, then if it appears to the Court that by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.

Power of
Court to
direct sale
instead of
division.

Sale on application of parties, interested to the extent of one moiety.

4. In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the property to which the suit relates, request the Court to direct a sale of the property, and a distribution of the proceeds, instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions.

As to purchase of share of party desiring sale.

5. In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if any party interested in the property to which the suit relates requests the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court may, if it thinks fit, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions, and in case of such undertaking being given the Court may order a valuation of the share of the party requesting a sale in such manner as the Court thinks fit, and may give all necessary or proper consequential directions.

As to request for sale or undertaking to purchase on behalf of persons under disability.

6. In an action for partition a request for sale may be made, or an undertaking to purchase given, on the part of an infant, person of unsound mind, or person under any other disability, by the next friend, guardian, committee in lunacy (if so authorized by order in lunacy), or other person authorized to act on behalf of the person under such disability; but the Court shall not be bound to comply with

any such request or undertaking on the part of any infant unless it appear that the sale or purchase will be for his benefit.

7. On any sale under this Act the Court may, if it thinks fit, allow any of the parties interested in the property to bid at the sale on such terms as to non-payment of deposit, or as to setting off, or accounting for the purchase money, or any part thereof, instead of paying the same, or as to any other matters, as to the Court seem reasonable.

As to terms on which parties interested may bid.

8. Any person who, if this Act had not been passed, might have maintained a suit for partition, may maintain such suit against any one or more of the parties interested, without serving the other or others (if any) of those parties; and it shall not be competent to any defendant in the suit to object for want of parties; and at the hearing of the cause the Court may direct such enquiries as to the nature of the property, and the persons interested therein, and other matters, as it thinks necessary or proper, with a view to an order for partition or sale being made on further consideration; but all persons who, if this Act had not been passed, would have been necessary parties to the suit, shall be served with notice of the decree or order on the hearing, and after such notice shall be bound by the proceedings as if they had been originally parties to the suit, and shall be deemed parties to the suit; and all such persons may have liberty to attend the proceedings; and any such person may, within a time limited by general orders, apply to the Court to add to the decree or order.

Parties to partition suits; and proceedings therein.

9. Where, in an action for partition, it appears to the Court that notice of the judgment on the hearing of the cause cannot be served on all the persons on whom that notice is by this Act required to be served, or cannot be so served without expense disproportionate to the value of the property to which the action relates, the Court may, if it

Power to Court in certain cases to dispense with service of notice of judgment.

thinks fit, on the request of any of the parties interested in the property, and notwithstanding the dissent or disability of any others of them, by order dispense with that service on any person or class of persons specified in the order, and instead thereof may direct advertisements to be published, at such times and in such manner as the Court shall think fit, calling upon all persons claiming to be interested in such property who have not been so served to come in and establish their respective claims in respect thereof, before a Judge in Chambers, within a time to be thereby limited.

After the expiration of the time so limited, all persons who shall not have so come in and established such claims, whether they are within or without the jurisdiction of the Court (including persons under any disability), shall be bound by the proceedings in the action as if, on the day of the date of the order dispensing with service, they had been served with notice of the judgment service whereof is dispensed with; and thereupon the powers of the Court under section 10 shall extend to the interests of all such persons in the property to which the action relates as if they had been parties to the action; and the Court may, if it shall think fit, direct a sale of property, and give all necessary or proper consequential directions.

Power to
declare
parties
trustees;
and to
make orders
thereon.

10. Where any decree shall be made in any partition suit for a sale or partition of any lands, it shall be lawful for the Court to declare that any party to the suit wherein such decree is made, is a trustee of such lands, or of any part thereof, and thereupon it shall be lawful for the Court to make such orders as to such trustees and lands as it might make concerning any other trustees or lands held in trust.

Provisions
as to
proceeds of
sales of
property
where
service of
notice is
dispensed
with.

11. Where an order is made under this Act dispensing with service of notice on any person or class of persons, and property is sold by order of the Court, the following provisions shall have effect—

- (a) the proceeds of sale shall be paid into Court to abide the further order of the Court.
- (b) the Court shall, by order, fix a time at the expiration of which the proceeds will be distributed, and may from time to time, by further order, extend that time.
- (c) the Court shall direct such notices to be given, by advertisements or otherwise, as it thinks best adapted for notifying to any persons on whom service is dispensed with, who may not have previously come in and established their claims, the fact of the sale, the time of the intended distribution, and the time within which a claim to participate in the proceeds must be made.
- (d) if at the expiration of the time so fixed or extended the interests of all the persons or classes of persons interested have been ascertained, the Court shall distribute the proceeds in accordance with the rights so ascertained.
- (e) if at the expiration of the time so fixed or extended the interests of all the persons interested have not been ascertained, and it appears to the Court that they cannot be ascertained, or cannot be ascertained without expense disproportionate to the value of the property or of the unascertained interests, the Court shall distribute the proceeds in such manner as appears to the Court to be most in accordance with the rights of the persons whose claims to participate in the proceeds have been established, whether all those persons are or are not before the Court, and with such reservations (if any) as to the Court may seem fit in favour of any other persons (whether ascertained or not) who may appear, from the evidence before the Court, to have any *prima facie* rights which ought to be so provided for,

although such rights may not have been fully established, but to the exclusion of all other persons; and thereupon all such other persons shall, by virtue of this Act, be excluded from participation in those proceeds on the distribution thereof; but, notwithstanding the distribution, any excluded person may recover from any participating person any portion received by him of the share of the excluded person.

How sale
moneys to
be paid.

12. Any money to be paid under any sale made under this Act, may, if the Court thinks fit so to direct, be paid to any trustees approved by the Court, or be paid into the Treasury to attend the orders of the Court under any enactment enabling the Court to invest at interest the moneys of suitors in the Workers Savings and Loan Bank, or otherwise as the Court may direct.

Provisions
in case of
two or
more
sales of
property.

13. Where in an action for partition two or more sales are made, if any person who has by virtue of this Act been excluded from participation in the proceeds of any of those sales establishes his claim to participate in the proceeds of a subsequent sale, the shares of the other persons interested in the proceeds of the subsequent sale shall abate to the extent (if any) to which they were increased by the non-participation of the excluded person in the proceeds of the previous sale, and shall to that extent be applied in or towards payment to that person of the share to which he would have been entitled in the proceeds of the previous sale if his claims thereto had been established in due time.

Jurisdiction
of Resident
Magistrates'
Courts in
partition
cases.
L.N.
13K/2013.

14.—(1) The Resident Magistrates' Courts shall have and exercise the like power and authority as the Court in suits for partition (including the power and authority conferred by this Act), in any case where the property to which the suit relates does not exceed in value the sum of two million

dollars, and the same shall be had and exercised in like manner as in other matters within their equitable jurisdiction.

(2) The Minister responsible for Justice may, by order subject to affirmative resolution, increase the monetary jurisdictional level of the Resident Magistrate's Court under subsection (1). 32/1995
S. 3.

15. Commissioners appointed by the Court in any suit for partition shall have the powers of a Judge of a Circuit Court of this Island to summon witnesses and to call for the production of books, plans, and documents, and to examine witnesses and parties concerned on oath; and no Commissioner shall be liable to any action or suit for any matter or thing done by him as such Commissioner. All summonses for the attendance of witnesses or other persons, or the production of documents, may be in the Form given in the Schedule, and shall be signed by one of the Commissioners, and oaths may be administered by any one of the Commissioners. Powers and
privileges of
Commis-
sioners in
partition.

Form of
summons.

Schedule.

16. All persons summoned to attend and give evidence, or to produce books, plans, or documents at any sitting of any Commissioners appointed by the Court in any suit for partition, shall be bound to obey the summons served upon them as fully in all respects as witnesses are bound to obey subpoenas issued from a Circuit Court. Every person refusing or omitting without sufficient cause to attend at the time and place mentioned in the summons served on him, and every person attending but leaving the commission without the permission of the Commissioners, or refusing without sufficient cause to answer, or to answer fully and satisfactorily to the best of his knowledge and belief all questions put to him by or with the concurrence of the Commissioners, or refusing or omitting without sufficient cause to produce any books, plans, or documents in his Duties of
witnesses.

possession or under his control, and mentioned or referred to in the summons served on him; and every person who shall, at any sitting of the commission, willfully insult any Commissioner, or willfully interrupt the proceedings of the Commission, shall be liable to a penalty not exceeding sixty dollars to be recovered in a summary manner, and in default of payment to imprisonment, with or without hard labour, for a period not exceeding three months.

Costs of
commissions
and
witnesses.

17. The costs of all proceedings under any Commission shall be in the discretion of the Court, and shall be taxed as other costs are taxed, and the witnesses before the Commissioners shall be entitled to the same remuneration as that to which they would be entitled for giving evidence under similar circumstances in the suit before the Court.

Power as
to costs.

18. In any suit for partition the Court may make such order respecting costs as it thinks fit.

Power to
make rules
of court,
and effect
thereof.

19. Rules of court may be made for carrying out, in proceedings in the Supreme Court, the provisions of this Act, and such orders may also prescribe the mode in which Commissions under any decree in any partition suit shall be executed, and the number of Commissioners that shall be appointed for executing such Commissions. All such orders shall take effect as general orders of the Court. Any three Resident Magistrates, to be appointed by the Minister, may from time to time make rules for the aforesaid purposes, so far as proceedings in the Resident Magistrates' Courts are concerned. Such rules for the Resident Magistrates' Courts shall not come into operation until they have been approved by the Minister who shall have power to allow, disallow, add to, or alter such rules.

SCHEDULE

Form of
summons to
witnesses.*Summons to Witnesses*

To A.B. (name of person summoned, and his calling and residence, if known). (Section 15)

You are hereby summoned to appear before (*here name the Commissioners*), appointed by the Supreme Court to enquire (*state briefly the subject of enquiry*) at (*place*) upon the day of , 19 , at o'clock, and to give evidence respecting such enquiry. (*If the person summoned is to produce any document add*). And you are required to bring with you (*specify the books, plans and documents required*). Therefore fail not at your peril.

Given under the hand of . Commissioner, this
day of . 19 .