

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 20
CS 08/2017

In the matter between

DANIEL LEPERE
(rep. by John Renaud)

Petitioner

and

PATRICK LEPERE
(rep. by Guy Ferley)

Respondent

Neutral Citation: *Lepere v Lepere* (CS 08/2017 [2018] SCSC 20 January 2020).
Before: Twomey CJ
Summary: co-owned land-division in kind- Land Registration Act
Heard: 20 September -24 October 2019 Submissions 6 November 2019.
Delivered: 16 January 2020

ORDER

It is ordered that the land is subdivided as per the proposed plan of the Survey and Mapping Services (Exhibit 3) attached to this order, within six months hereof and with the parties sharing the cost of the subdivision equally. The Petitioner is to pay the Respondent the sum of SR 262,060 being his share of the house within six months of this order.

JUDGMENT

TWOMEY CJ

[1] The parties are brothers and co-owners in indivision of land comprised in Title C109 at Anse la Mouche, Mahé of the extent of 1143 square meters. The property is co-owned in the following proportions: the Petitioner two-thirds, and the Respondent one-third.

- [2] In February 2017, the Petitioner applied for a division in kind of the property averring that the property could conveniently and profitably be sub divided in kind amongst the co-owners.
- [3] In an affidavit in reply, the Respondent averred that the property could not be conveniently sub-divided as there was a development covenant attached to it preventing its sub-division. In this context, he attached a letter from the Planning Authority dated 7 July 2017 allegedly confirming the same.
- [4] The Petitioner testified that he co-owned the said property with this brother, the Respondent and that he had it valued in June 2018. The market value was considered by Gerard Renaud, quantity surveyor to be SR2, 616,180. The Petitioner also produced a letter from the Ministry of Habitat, Infrastructure and Land Transport dated 22 February 2019 which stated inter alia:
- “...we wish to inform you that your parcel falls within an area classified as ‘medium density residential and tourism’ with the maximum development density of 35% of the total size. As requested, a house on the reaming part of the parcel is feasible...”*
- [5] The Petitioner then produced a map of a proposed subdivision of Parcel C109, which had been carried out by Survey and Mapping Services subdividing the property so that the Petitioner would be allocated two thirds of it and the Respondent would have a separate parcel to build his own house. He also offered to give his brother a cash payment to compensate him for his share of the house, which would after subdivision be situated on the Petitioner’s land.
- [6] In cross-examination, the Petitioner denied that any letter from the Planning Authorities had precluded the subdivision of the land.
- [7] The Respondent testified that the house on the land at Anse La Mouche was the family home in which he had grown up. After he moved out, his brother continued to live there. Originally, the land had been co-owned by the three brothers. The Petitioner bought his

other brother's, Michel Youpa's, share and now owned two-thirds of the land and he the Respondent, one-third.

[8] He stated that the Planning Authority had told him that it would not be easy to subdivide the land. He testified that he just wanted to be paid his share of the land and house.

[9] In cross-examination, he stated that if the land could be sub-divided "that would be good".

[10] The Court in its inquiry to ascertain whether the land could be conveniently subdivided summoned the Chief Executive of the Planning Authority, Mr. Terry Biscornet, who testified that the land could indeed be sub divided among the two heirs.

[11] In closing, the Court received written submission from the Respondent who states that he is entitled to one third of the value of the house and one third of the land as proposed in the subdivision. He relies on section 107 (2) of the Immovable Property (Judicial Sales) Act. The Petitioner's submissions only repeat the evidence adduced.

[12] I therefore proceed to make a decision based on the evidence adduced and the law regarding co-owned land.

[13] Article 821 of the Civil Code substantively provides as follows:

"1. In the case of immovable property held in co ownership, if the fiduciary or a co owner decides to proceed to licitation, the court may, upon the application of any interested party, order the postponement of the sale for a fixed period, which may subsequently be renewed. In that case, the Court shall instruct the fiduciary or the executor, as the case may be, who shall be bound by such instructions.

The Court may make such order on two alternative grounds –

1st That greater hardship would be caused by refusing to grant the order staying the proceedings in licitation than by granting it;

2nd That the property may be conveniently and profitably divided in kind amongst those entitled. In that case the Court, in order to effect such

partition, shall decide the manner of partition and the allocation of the divided property amongst the persons entitled.

2. *In respect of this article, the procedure laid down in the Immovable Property (Judicial Sales) Act, Cap. 94, or any law amending or replacing it, shall be applicable.”*

[14] Applications for division in kind as indicated by the provisions above are governed procedurally by the provisions of the Immovable Property (Judicial Sales) Act (Cap 94), section 107(2) of which state in relevant part:

“2) Any co-owner of an immovable property may also by petition to a Judge ask that the property be divided in kind or, if such division is not possible, that it be sold by licitation.”

[15] On the evidence adduced, I find that the land can indeed be conveniently subdivided. I see no reason to disagree with the plan of the proposed subdivision as submitted by the Petitioner. That is as far as the land is concerned.

[16] With regard to the house, there is no way it can be conveniently subdivided and in the circumstances I order that the Petitioner be granted sole ownership thereof after payment of one third of its value to the Respondent. The parties have both agreed to the valuation of the property. I am here concerned only with the value of the house and water tank, which the quantity surveyor has set at SR786, 180. The Respondent is to be paid one third of this value, that is, SR262, 060.

[17] This sum has to be paid by the Petitioner to the Respondent within six months hereof and the subdivision completed within the same period.

[18] I therefore order that the land is subdivided as per the proposed plan of the Survey and Mapping Services (Exhibit 3) attached to this order, within six months hereof and with the parties sharing the cost of the subdivision equally. The Petitioner is to pay the Respondent the sum of SR 262,060, being his share of the house within six months of this order.

Signed, dated and delivered at Ile du Port on 16 January 2020

Twomey CJ