

**SUPREM COURT OF SEYCHELLES**

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**Reportable**  
[2020] SCSC 687  
MC 114/2016

In the matter between

**MAGGIE AH WENG**  
*(rep. by Nichol Gabriel)*

**Petitioner**

and

**CYRIL HITIE**  
*(rep. by Karen Domingue)*

**Respondent**

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**Neutral Citation:** Ah Weng v Hitie (MC 114/16) [2020] SCSC 687 (18 September 2020)

**Before:** Dodin J.

**Summary:** Co-ownership – Partition – Whether land can be conveniently subdivided – allotment to the co-owners.

**Heard:** 14 June, 26 July 2019, 19 February 2020

**Delivered:** 18 September 2020

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**ORDER**

The land H11684 can be conveniently subdivided to allocate to the Petitioner and the Respondent a plot each. I order that the land is subdivided as per the proposal of the land surveyor Ah Kong and I allot the proposed plot number 1 to the Petitioner and proposed plot number 2 to the Respondent. The Petitioner shall meet the cost of land surveyor Ah Kong. Each party shall bear the remaining costs.

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**JUDGMENT**

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**DODIN J.**

[1] The Petitioner and the Respondent are brother and sister. They are co-owners of a plot of land Title H11684 situated at Ma Constance, Mahe, with an area of 836 square meters. The Petitioner is also the owner Title H5284 and the Respondent is the owner of Title H8160 both of which adjoined H11684.

[2] The Petitioner claims that she no longer wishes the land to remain in a state of indivision and wishes to extract her half share in H11684. The Respondent objects to the Petition but prayed the Court to make the following orders:

A. An order that an appraiser be appointed at the costs of the Petitioner to submit a report on the proposed partition;

B. An order that should the property be able to be conveniently subdivided the demolition order be made against the Petitioner for the development that she has made on Title H11684 or in the alternative an order of compensation to be paid to the Respondent for the prejudice caused after the prejudice has been assessed by an appraiser;

C. Any other orders that this Court deems just in the circumstances of the case; and

D. An order that all the costs of the Appraiser and the costs of this case be awarded against the Petitioner.

[3] The Respondent seem to take issue with the developments made by the Petitioner on her land H5284 which has spilled over on a portion of the co-owned land. The Court appointed Antoine Ah-Kong, land surveyor to appraise the property and to make a proposal for the subdivision. Mr Ah-Kong submitted a report recommending that the land can be subdivided into two plots. Plot 1 nearer to the road with an area of 400 square meters is proposed to be allocated to the Petitioner and plot 2 extending to the hill with an area of 436 square meters is proposed to be allocated to the Respondent. The Respondent again objected to the proposal.

[4] Mr Joelan Sinon also a land surveyor testified that he did the original survey of the plots before the Petitioner and the Respondent were allotted their current plots. The Petitioner was allocated the plot near the road and the Respondent the plot at the rear of it up the hill.

[5] Both Mr Ah-Kong and Mr Sinon are in agreement that the plot next to the main road has higher value than the rear plot despite the latter having a bigger area. However they are

also of the view that unless the proposed plots can be amalgamated with the parcel already owned by the parties, the area cannot be lower than 400 square meters for development to be permitted.

[6] The Court conducted a *locus in quo* observing that the only encroachment on H11684 was a soak-away pit and a corner of a septic tank. The land at the rear is hilly but buildable. It must be noted that the Court is not concerned with parcel H5284 owned by the Petitioner on which she has made some major developments. The issue is simply whether the demand made by the Petitioner for subdivision of H11684 to extract her share is reasonable, fair and just. If so, how should the land be subdivided and who should be allocated which plot.

[7] On the first issue of ending the co-ownership, I find that the land parcel H11684 is co-owned by the Petitioner and the Respondent who each have one half share. The Respondent lives in Australia whilst the Petitioner lives in Seychelles where the land is situated. The Petitioner has engaged in the development of her land and wishes to extract her share in the adjoining H11684 with a view for further development. I find that there is good cause to grant her prayer to end the co-ownership and to subdivide and allocate to the Petitioner and Respondent their respective plots.

[8] As regards the prayer of the Respondent the Court finds that the land H11684 can be conveniently subdivided to allocate the Petitioner and the Respondent a plot each. However, as this is co-owned property, the demand that the Petitioner meets all the costs is not founded on any ground and no evidence was adduced by the Respondent in support of his prayers other than his dissatisfaction with the encroachment on the co-owned property.

[9] Having heard the evidence and viewed the land and the proposed subdivision and allocation submitted by land surveyor Ah-Kong I find that if the Respondent is allocated the land adjoining the main road (plot 1) and the Petitioner the rear plot (plot 2) amalgamation will not be possible. Secondly, since there is already the Petitioner's soak away pit and a minimal part of the septic tank on plot 1 no prejudice would be caused to

either party if plot number 1 is allocated to the Petitioner as per the proposal of the land surveyor Ah-Kong.

[10] I therefore grant the prayer of the Petitioner and order that the land is subdivided as per the proposal of the land surveyor Ah Kong and I allot the proposed plot number 1 to the Petitioner and plot number 2 to the Respondent.

[11] The cost of the land surveyor Ah Kong shall be borne by the Petitioner. The remaining costs shall be borne by each party.

[12] A copy of this judgment shall be served on:

- i. Land surveyor Ah Kong;
- ii. CEO Lands Department in the Ministry of Land Use and Habitat;
- iii. The Land Registrar.

Signed, dated and delivered at Ile du Port on 18 September 2020.

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Dodin J

Judge of the Supreme Court