

SUPREME COURT OF SEYCHELLES

Not Reportable

[2022] SCSC ...

MC 23/2021

In the matter between:

LISE ROSEMARY ESPOSITO
represented by Marina Delbecq-Costa
(rep. by Rene Durup)

Petitioner

and

JESSIA MARIE-ANGE AH-TIME
(rep. by Bryan Julie)

Respondent

Neutral Citation: *Esposito v Ah-Time* (MC23/2021 [2022] SCSC (08 April 2022).

Before: Carolus J

Summary: Division in kind – Appointment of Appraiser – section 112 Immovable Property (Judicial Sales) Act (Cap 94)

Heard: 16 February 2022

Delivered: 08 April 2022

ORDER

Mr. Antoine Ah-Kong of Ah-Kong Land Surveys, Providence Industrial Estate, Mahe, is appointed to carry out an appraisal of the land comprised in Title V21081 and to submit a report proposing partition of the property, for the share of the property to which the petitioner is entitled as per agreement dated 16th June 1986 to be distracted therefrom. Costs of the appraisal shall be borne by the petitioner.

ORDER

Carolus J

- [1] This Order is made in respect of a petition for division in kind of title V21081. The petition is supported by an affidavit sworn by the petitioner to which are exhibited relevant documents.
- [2] Title V21081 which is a subdivision of title V1112 is registered in the names of the parties as per Certificate of Official Search dated 10th December 2020. Title V1112 is itself a subdivision of title V772. The petitioner's mother Mrs. Mary Morel purchased from Sylvia Ah-Time and Nicole Ah-Time by way of an agreement dated 16th June 1986 *“a portion of land situated at Beau-Vallon, Mahe, more fully described in the schedule hereto of the extent of 400 square metres ...”* The aforementioned schedule containing the description of the property reads as follows: *“a portion of land and house situated at Beau-Vallon, Mahe, Seychelles, of an extent of 400 square metres and bounded as follows: On the North along an existing surveyed boundary on a length of 25 metres On the South by the Vendor's property on a length of 20 metres. On the East by the Vendor's property on a length of 10 metres. On the West along a stream on a length of 25 metres.”.*
- [3] Sylvia Ah-Time and Nicole Ah-Time had acquired the land which had been distracted from parcel V772, from Marie-Ange Gregoretti born Ah-Time on 19th August 1985. Parcel V772 was subsequently subdivided in other parcels including V1112. As stated Title V21081 the land subject matter of this petition is a subdivision of title V1112. The root of title V1112 is explained in detail in *Delpeche v Gregoretti* CS 04/2004 [2017] SCSC 1007 (27 October 2017).
- [4] By Will dated 23rd October 1990, Mrs. Mary Morel bequeathed the portion of land she had purchased by the agreement dated 16th June 1986 to her daughter the petitioner. That portion of land is what the petitioner wants extracted from Title V21081, of which she and Jessie Marie-Ange Ah-Time the respondent are now co-owners. Title V21081 is of an area of 1,075 sq. metres. The share of Title V21081 to which the petitioner is entitled is 400 square metres and its location is as described at paragraph 2 above.
- [5] The respondent has not objected to the division in kind or the appointment of an appraiser to carry out an appraisal and submit a proposal for subdivision of the property.

Counsel for the petitioner has informed the Court that the petitioner is prepared to bear the costs for the appraisal.

[6] Applications for division in kind are governed by the provisions of the Immovable Property (Judicial Sales) Act (Cap 94). The present Petition is made pursuant to section 107(2) of that Act.

[7] Section 112 of the same Act provides as follows:

The Judge may also, before deciding upon the demand, order an appraisalment (expertise) by an appraiser to be named by him.

In such case the appraiser shall, within a delay to be fixed by the Judge, make and file in the registry his report which shall in a summary manner give a description of the property, the estimated value thereof, and the basis upon which such valuation is made. The report shall further state whether or not the property can conveniently be divided in kind, and if so divisible shall set forth the proposed lots in conformity with this Act and the provisions of the Civil Code of Seychelles.

In no case of appraisalment under the provisions of this Chapter shall it be necessary to administer an oath to the appraiser.

The parties to the division in kind shall be summoned, by a notice served upon them in person or at the domicile elected by them in accordance with section 110, four days at least before the day fixed for the appraisalment, to attend at the time and place where the said appraisalment is to be made.” Emphasis is mine.

[8] In the circumstances, in terms of section 12 of the Immovable Property (Judicial Sales) Act (Cap 94), I hereby appoint Mr. Antoine Ah-Kong of Ah-Kong Land Surveys, Providence Industrial Estate, Mahe, to carry out an appraisalment of the land comprised in Title V21081 situated at Beau Vallon, Mahe, Seychelles. Mr. Ah-Kong shall submit a report to this Court complying with the above-mentioned provision, proposing partition of the property for the share to which the petitioner is entitled of an extent of 400 square metres and at the location described in the agreement dated 16th June 1986, the relevant part of which is reproduced at paragraph 2 hereof, to be distracted therefrom. The plan must be submitted on or before 27th May at 9:30 a.m. Costs of the appraisalment shall be borne by the petitioner.

[9] A copy of this Order is to be served on Mr. Ah-Kong forthwith.

Signed, dated and delivered at Ile du Port on 8th April 2022.

Carolus J