

Partition of Land — Unlocking a Deadlock

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A “co-proprietorship” exists where two or more persons or bodies hold alienated land in undivided shares.¹ Though some enter into such arrangements voluntarily and with eyes wide open, others can become co-proprietors due to the laws of succession. Quite often, co-proprietors may have differences in ideals and would prefer to terminate the co-proprietorship. However, as the land is held in undivided shares, a co-proprietor cannot self-declare the portion of land that is to be his unless there is mutual agreement between all co-proprietors.

Overcoming deadlocks

While a deadlock between co-proprietors is not uncommon, court assistance can be sought in such an instance. Section 145(1) of the National Land Code 1965 (**NLC**) provides that:

“Where, in the case of any land vested in co-proprietors —

- (a) any of the co-proprietors will neither join in, nor consent to the making of, an application for partition under this Chapter, or
- (b) by reason of the operation of paragraph (f) of subsection (1) of section 136 (as applied by section 141), partition of the land between all of the co-proprietors is incapable of being approved under this Chapter,

the Court, subject to and in accordance with the provisions of any law for the time being in force relating to civil procedure, may, on the application of any of the co-proprietors, make such order as it may think just for the purpose of enabling the co-proprietorship to be terminated.”

But what exactly may be considered to be a “just” order? According to the NLC,² the court may order that:

- (a) subject to the co-proprietors making such payments as the Court may consider equitable having regard to the comparative values of the individual portions thereby proposed, any application for partition made by one or more of the co-proprietors in the terms specified in the order shall be deemed for the purposes of this Chapter to have been made by them all;
- (b) the undivided share of any of the co-proprietors be transferred on the terms specified in the order to the other co-proprietors, or to any of them; or
- (c) the land be sold.

¹ National Land Code 1965, s 342 (1)

² National Land Code 1965, s 145 (2)



To quote Wong Kian Kheong J, “*the exercise of the Court’s discretion ... is necessarily dependent on the particular facts of the case in question*”.³ That said, in most instances, partitioning the land conveniently terminates the co-proprietorship while allowing each co-proprietor to get his share in the form of part of the land (as nearly as may be proportionate to his or her undivided share).

Proportionate partitioning

The Court of Appeal recently heard an appeal⁴ concerning partitioning of an agricultural estate (**Estate**). Partner SM Shanmugam (together with associate Shona Anne Thomas) acted as counsel for the respondent. The proportionate, just and best method of partitioning was among the issues in dispute.

To briefly state the facts, the Estate is held in equal shares between two parties. An application to partition the Estate pursuant to s 145 of the NLC was filed. Thereafter, both parties agreed to have the Estate partitioned as per the determination of an independent surveyor jointly appointed by both parties. The independent surveyor identified several options for partitioning the Estate. This led to an impasse with each party filing contesting applications at the High Court for the partitioning of the Estate based on the options identified.

The High Court ruled in favour of the respondent and made, among others, the following findings:

- (a) In cases such as these, justice demands that in the first instance, the Estate is to be partitioned in an area proportionate as nearly as may be to the undivided shares of the parties in the whole land.
- (b) Having considered the overall circumstances of the case,⁵ the respondent’s option would benefit both parties in the partitioning of the Estate.

On appeal, the Court of Appeal, having heard extensive submissions by counsel of both parties on the issue of partitioning, unanimously affirmed the decision of the High Court in favour of the respondent.

³ *Moo Hon Yee v Abdul Rahman Pak Shaik Abdul Kader* [2018] 1 LNS 2097
⁴ Civil Appeal Nos: A(02)(IM)(NCvC)-1510-10/2020 and A(02)(IM)(NCvC)-1511-10/2020
⁵ *Tuan Hanisah Tuan Ismail v Wan Ariffin Wan Ibrahim & Yang Lan* [2016] 1 LNS 1600



Authors' remarks

Balancing the right of each co-proprietor's entitlement in land is without a doubt an arduous task. Thus, what is considered "just" is dependent on the facts of each case. Where the land in dispute is small in size and proportionate partitioning (as nearly as may be to undivided share) renders the portion of land to be too small for utilisation, the court has the discretion to make orders such as the sale of the land. If retention of land is not a concern, an order for the land to be sold is a practical solution to a deadlock between co-proprietors as each will receive his exact share of the proceeds of sale.

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