MONTSERRAT

CHAPTER 8.16

PARTITION ACT

Revised Edition
showing the law as at 1 January 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

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CHAPTER 8.16

PARTITION ACT

ARRANGEMENT OF SECTIONS

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CHAPTER 8.16

PARTITION ACT

(Acts 15 of 1895, 4 of 1945 and S.R.O. 15 of 1956)

Commencement

[14 January 1895]

Short title

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

Interpretation

2. In this Act—

"Court" means the High Court or any Judge thereof;

"disability" means infancy, coverture, idiocy or lunacy;

"lands" includes tenements and hereditaments.

Application of Act

3. This Act shall apply to all lands the subject of any co-tenancy, whether held or acquired before or after its passing.

Power to co-tenant to compel severance

4. All joint tenants and tenants in common of any estate of inheritance in their own right, or in the right of their wives of any lands in Montserrat, and all joint tenants and tenants in common for term of life or years of any lands in Montserrat, and all joint tenants and tenants in common where one or some of them has or have or shall have but a particular estate or particular estates for term of life or years, and the other or others has or have or shall have an estate or estates of inheritance or freehold in lands in Montserrat may be compelled in manner hereinafter provided to make severance and partition between them of all such lands respectively.

Power to Court to order partition on motion

5. Any person entitled to claim partition may on giving notice as hereinafter provided apply to the Court by motion for an order of partition, and the Court shall hear and dispose of such application and may make an order directing a division of the property and issue a writ of partition directed to the Provost-Marshal or other proper officer for the due carrying out of such order and also make any such order as to it seems expedient under the provisions of this Act and give and make all necessary or proper

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directions and orders consequential thereon and vary any order and make all such orders as to costs as to the Court may appear just.

Notice of motion

6. The notice required by the last preceding section shall be a notice to all parties interested to appear on such day as in such notice is mentioned, being not less than 14 days from the date thereof, and show cause why a partition of the lands described therein should not be made as to the Court may seem expedient.

Filing and service of notice of motion

7. Such notice shall be filed in Court at the Registrar's office, and a sealed copy or sealed copies thereof under the hand of the Registrar served in the manner in which writs of summons may be served under any laws or rules of Court for the time being in force relating to the practice and procedure of the High Court: Provided that the Court may dispense with service upon any party interested.

Power to Court to order sale instead of partition

8. (1) On a motion for a partition, if it appears to the Court that by reason of the nature of the property to which the motion 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 to 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 of the parties interested and notwithstanding the dissent or disability of any others of them direct a sale of the property accordingly and give all necessary or proper consequential directions.

(2) On a motion for a partition, if a party or parties interested individually or collectively to the extent of one moiety or upwards in the property to which the motion relates requests or 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 may give all necessary or proper consequential directions.

(3) On a motion for partition, if any party interested in the property to which the motion relates requests the Court to direct a sale of the property and a distribution of the proceeds as aforesaid, 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 and consequential directions, and in case of such undertaking as aforesaid 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.

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Motion for partition to include motion for sale

9. For the purposes of this Act a motion for partition shall include a motion for sale and distribution of the proceeds, and *vice versa.*

Hearing

10. At the hearing of the matter the Court may direct such inquiries 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, subject to the provisions of this Act, all parties interested shall be served with notice of the order made on the hearing and after such notice shall be bound by the proceedings, as if they had been originally parties to the matter, and shall be deemed parties to the matter; and all such persons may have liberty to attend the proceedings; and any such person may, within a time limited by rules, apply to the Court to vary the order.

Power to dispense with such service

11. Where in any proceeding under this Act it appears to the Court that notice of the order on the hearing of the motion cannot be served on all the persons interested in the property or cannot be so served without expense disproportionate to the value of the property, the Court may, if it 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 the property, who have not been so served, to come in and establish their respective claims in respect thereof before the Judge in chambers within a time to be thereby limited; and 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 matter, as if on the day of the date of the order dispensing with service they had been served with notice of the order service whereof is dispensed with; and thereupon the powers of the Court under the Trustee Act shall extend to their interests in the property, as if they had been parties to the matter, which may be deemed a suit for the purposes of the said Act; and the Court may thereupon, if it shall think fit, direct a sale of the property and give all necessary or proper consequential directions.

Procedure, where such service dispensed with

12. Where any order is made under the last preceding section of 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—

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(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 advertisement or otherwise as it thinks best adapted for notifying to any persons service on whom 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 interested have been ascertained, the Court shall distribute the proceeds in accordance with the rights of those persons;

(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 un-ascertained 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 out 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.

Compensation to co-tenant for improvements

13. On any partition or sale under this Act the Court may, in dividing the lands or distributing the proceeds of sale take into consideration, in favour of any party who has been allowed by his co-tenants to have exclusive occupation of the whole or any part of the lands, and who has expended money or labour upon cultivating or improving the property or the part of the property so occupied by him, the value of the improvements made by such party upon the property or part thereof at his expense or by his labour.

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Bidding by parties interested

14. 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 payment or 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 seems reasonable.

Persons under disability

15. (1) In any proceedings under this Act any person under any disability may be represented for all purposes by the next friend, guardian or other person lawfully authorized to act on behalf of such person under disability, but the Court shall not be bound to comply with or recognize any request for sale or undertaking to purchase made or given on behalf of any person under disability, unless the sale or purchase will be for his benefit.

(2) The Court may direct that the share or shares in the proceeds of any sale under this Act to which any person under any disability is entitled be paid to any trustees of whom it may approve or into Court and may give all directions and make all necessary orders in and about the investment of and dealing with such shares, as to the Court seems expedient.

Evidence

16. All laws and rules of Court for the time being in force for regulating the giving or receiving of evidence at the trial of an action in the High Court shall apply to any proceeding under this Act.

Finality of decrees

17. A final order made by a Judge of the High Court on the hearing of any motion made under the provisions of this Act shall be duly recorded in the decree book and shall be of the same effect as between the parties thereto as a final judgment or order in an action so recorded.

Procedure generally

18. All laws and rules of Court for the time being in force relating to practice and procedure in the High Court shall apply, so far as they are applicable, to proceedings under this Act; and rules of Court regulating the practice and procedure under this Act may be made and, when made, amended in the manner prescribed by any law for the time being in force for the making of rules of Court for the regulation of practice and procedure in the High Court.

Partitions where recourse not had to Act

19. A partition of lands, where recourse shall not be had to the provision of this Act, shall be void at law, unless made by some instrument in writing.

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