

1980

c 369 Partition Act

Ontario

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CHAPTER 369

Partition Act

1. In this Act,

Interpretation

- (a) "court" means the Supreme Court or the county or district court of the county or district in which the land or any part thereof is situate;
- (b) "land" includes lands, tenements, and hereditaments, and all estate and interests therein. R.S.O. 1970, c. 338, s. 1.

2. All joint tenants, tenants in common, and coparceners, all doweresses, and parties entitled to dower, tenants by the curtesy, mortgagees or other creditors having liens on, and all parties interested in, to or out of, any land in Ontario, may be compelled to make or suffer partition or sale of the land, or any part thereof, whether the estate is legal and equitable or equitable only. R.S.O. 1970, c. 338, s. 2.

Who may be compelled to make partition or sale

3.—(1) Any person interested in land in Ontario, or the guardian appointed by a surrogate court of a minor entitled to the immediate possession of an estate therein, may take proceedings for the partition of such land or for the sale thereof under the directions of the court if such sale is considered by the court to be more advantageous to the parties interested.

Who may take proceedings for partition

(2) Where the land is held in joint tenancy or tenancy in common or coparcenary by reason of a devise or an intestacy, no proceedings shall be taken until one year after the decease of the testator or person dying intestate in whom the land was vested. R.S.O. 1970, c. 338, s. 3.

When proceedings may be commenced

4.—(1) Where a person interested in the land has not been heard of for three years or upwards and it is uncertain whether such person is living or dead, the court upon the application of any one interested in the land may appoint a guardian to take charge of the interest of such person and of those who, in the event of his being dead, are entitled to his share or interest in the land.

Appointment of guardian to estate of person unheard of for three years

Powers
of such
guardian

(2) The guardian shall, in the proceedings, represent the absent person and those who, if he is dead, are entitled to his share or interest in the land, and whether they or any of them are minors or otherwise under disability, and his acts in relation to such share or interest are binding on the absent person and all others claiming or entitled to claim under or through him, and are as valid as if done by him or them.

Power of
the court to
deal with
the estate

(3) The court upon proof of such absence of such person as affords reasonable ground for believing such person to be dead, upon the application of the guardian, or any one interested in the estate represented by the guardian, may deal with the estate or interest of such person, or the proceeds thereof, and may order payment of the proceeds, or the income or produce thereof, to the person who, in the event of the absent person being dead, appears to be entitled to the same. R.S.O. 1970, c. 338, s. 4.

Sales
including
estates in
dower or by
the curtesy
or for life

5.—(1) In an action or proceeding for partition or administration, or in an action or proceeding in which a sale of land in lieu of partition is ordered, and in which the estate of a tenant in dower or tenant by the curtesy or for life is established, if the person entitled to the estate is a party, the court shall determine whether the estate ought to be exempted from the sale or whether it should be sold, and in making such determination regard shall be had to the interests of all the parties.

What to pass
to purchaser

(2) If a sale is ordered including such estate, all the estate and interest of every such tenant passes thereby, and no conveyance or release to the purchaser shall be required from such tenant, and the purchaser, his heirs and assigns, hold the premises freed and discharged from all claims by virtue of the estate or interest of any such tenant, whether the same be to any undivided share or to the whole or any part of the premises sold.

Compensa-
tion to
owners of
particular
estates

(3) The court may direct the payment of such sum in gross out of the purchase money to the person entitled to dower or estate by the curtesy or for life, as is considered, upon the principles applicable to life annuities, a reasonable satisfaction for such estate, or may direct the payment to the person entitled of an annual sum or of the income or interest to be derived from the purchase money or any part thereof, as seems just, and for that purpose may make such order for the investment or other disposition of the purchase money or any part thereof as is necessary. R.S.O. 1970, c. 338, s. 5.

6. A partition or sale made by the court is as effectual for the apportioning or conveying away of the estate or interest of a minor or mentally incompetent person, party to the proceedings by which the sale or partition is made or declared, as of a person competent to act for himself. R.S.O. 1970, c. 338, s. 7, *revised*.

Effect upon persons under a disability

7.—(1) Where proceedings under this Act are brought in a county or district court, a respondent may, by notice served on the applicant and on the other respondents, if any, and filed with proof of service thereof with the clerk of the county or district court not later than two days preceding the day of return of the application, require the proceedings to be removed into the Supreme Court.

Removal of proceedings into Supreme Court

(2) Upon the filing of the notice and proof of service thereof, the clerk of the county or district court shall forthwith transmit the papers and proceedings to the proper office of the Supreme Court in the county or district in which the proceedings are brought.

Transmission of proceedings

(3) When the papers and proceedings are received at the proper office of the Supreme Court, the proceedings are *ipso facto* in the Supreme Court. R.S.O. 1970, c. 338, s. 8.

Removal of proceedings

8. An appeal lies to the Court of Appeal from any order made under this Act. R.S.O. 1970, c. 338, s. 9.

Appeal

