

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Singh v. Virk*,
2023 BCSC 917

Date: 20230601
Docket: S248368
Registry: New Westminster

Between:

Ajit Singh

Petitioner

And

Avtar Kaur Virk

Respondent

Before: The Honourable Justice Lamb

Reasons for Judgment

Counsel for Petitioner:

R. Davidson

Counsel for Respondent:

J.R. Scouten

Place and Date of Hearing:

New Westminster, B.C.
May 16, 2023

Place and Date of Judgment:

New Westminster, B.C.
June 1, 2023

Introduction

[1] By filing this petition, Ajit Singh seeks to force the final step in protracted litigation between him and the respondent, Avtar Kaur Virk, over ownership of a residential property in Surrey BC.

[2] Mr. Singh is the registered owner of the property located at 9117 149 Street, Surrey, British Columbia (the “Property”). Ms. Virk has resided at the Property since 2007. A number of years ago, Ms. Virk filed an action against Mr. Singh claiming he held the Property for her pursuant to an express or constructive trust. Mr. Singh counterclaimed for money he said was owing and for alleged misuse of a power of attorney he granted to Ms. Virk. After an 11-day trial, Justice E. McDonald decided Mr. Singh held a fractional beneficial interest pursuant to a remedial constructive trust in favour of Ms. Virk: *Virk v. Singh*, 2020 BCSC 225. Based on the formula prescribed by Justice McDonald, Ms. Virk holds a 60.31% beneficial interest in the Property, and Mr. Singh holds a 39.69% beneficial interest in the Property. The appeal and cross-appeal from Justice McDonald’s order were dismissed on April 28, 2022: *Virk v. Singh*, 2022 BCCA 153.

[3] Mr. Singh now applies for an order to sell the Property pursuant to the *Partition of Property Act*, R.S.B.C. 1996, c. 347. Ms. Virk opposes the sale. She provided an undertaking to the court to purchase Mr. Singh’s fractional interest in the Property “for such price as the Court may fix and on such terms as the Court may direct”. Ms. Virk says that s. 8(2) of the *Partition of Property Act* removes my discretion to order a sale as a result of her unconditional undertaking to purchase Mr. Singh’s interest in the Property.

[4] The issue to be decided is whether Mr. Singh is entitled to an order for sale of the Property or whether Ms. Virk is entitled to an order that she may buy Mr. Singh’s interest in the Property without exposing the Property for sale on the open market.

Analysis

[5] As a beneficial owner, Ms. Virk may be compelled to sell her interest in the Property if such a sale is authorized by the *Partition of Property Act*, s. 2. Ms. Virk does not dispute Mr. Singh's standing to bring this petition.

[6] Section 6 of the *Partition of Property Act* provides that the court must direct the sale of a property instead of division where the majority owner requests a sale, unless the court "sees good reason to the contrary".

[7] In a proceeding for partition, section 7 of the *Partition of Property Act* gives the court discretion to order a sale of the property where it appears that a sale would be more beneficial than a division of the property based on the nature of the property involved and for any other reason.

[8] Section 8(1) of the *Partition of Property Act* provides that a court may order a sale of property when a party with less than a one-half interest requests a sale: *Lashman v. Spencer*, 2022 BCSC 96 at para. 22. However, s. 8(2) provides that a court may not order a sale if another party with interest in the property undertakes to purchase the share of the party requesting the sale: *Lashman* at para. 22; *Haigh v. Kent*, 2016 BCSC 333 at paras. 39 and 55.

[9] Section 8(2) allows the majority owner to avoid a public sale by undertaking to buy the minority owner's interest where the minority interest holder applies for an order for sale: *Olson v. Miller*, 2019 BCCA 274 at para.65. Justice Skolrood described s. 8(2) as providing a "limited right of first refusal mechanism", limited in that it does not prevent a majority owner from forcing a sale pursuant to s. 6: *Deines v. Chappell*, 2014 BCSC 846 at para. 20-21.

[10] In this case, Mr. Singh (the beneficial owner of a minority interest in the Property) applies for an order that the Property be sold and the proceeds distributed; s. 8(2) allows Ms. Virk (the beneficial owner of a majority interest in the Property) to avoid a public sale by undertaking to buy Mr. Singh's interest.

[11] I am satisfied that Ms. Virk’s undertaking to purchase Mr. Singh’s interest is unconditional, as required by s. 8(2) of the *Partition of Property Act*. *Rendle v. Stanhope Dairy Farm Ltd.*, 2003 BCSC 1894 at para. 22. Ms. Virk undertakes to purchase Mr. Singh’s fractional interest in the Property “for such price as the Court may fix and on such terms as the Court may direct”, which amounts to an unconditional offer. I have no evidence that Ms. Virk will be able to fulfill her undertaking and some reason for concern based on the findings of Justice McDonald; however, counsel was not able to provide any authority to suggest that the court should look behind an unqualified undertaking to purchase with a determination of value to follow.

[12] Mr. Singh argues that Ms. Virk’s undertaking to purchase the Property is “too little too late” given the passage of time since the Court of Appeal dismissed the appeal and cross-appeal in this matter. Mr. Singh says the Property should be offered for sale on the open market in order to determine its true value. However, s. 8(2) requires only an unconditional undertaking by Ms. Virk to justify a directed sale to her. There is no requirement for a timely initiative by the majority owner. Ms. Virk says that she cannot be faulted for delay, as she could not have initiated the forced sale of Mr. Singh’s interest to her under the *Partition of Property Act*. While that may be true, Ms. Virk may have been able to initiate a sale of the Property to her pursuant to Rule 13-5(1): *Olson* at para. 72, 75 and 77.

[13] Mr. Singh argues that I should exercise my discretion to order a sale of the Property because Ms. Virk has not complied with Justice McDonald’s order to return a Nissan vehicle to him and to pay him \$2300 for wrongfully taking title to the Nissan. I have no evidence that Mr. Singh took steps to have the Nissan transferred back to him. The damage award plus post-judgment interest may be included in the purchase price of the Property.

[14] In any event, I accept that Ms. Virk has met the requirements of s. 8(2) of the *Partition of Property Act*. As a result, pursuant to s. 8(3) of the *Partition of Property*

Act, I order Mr. Singh to sell his 39.69% fractional interest in the Property to Ms. Virk as follows:

- a) if the parties are unable to agree by June 9, 2023 on the price to be paid by Ms. Virk to Mr. Singh for his 39.69% fractional interest in the Property, then each party may obtain and serve on the other party an appraisal of the fair market value of the property by no later than June 30, 2023;
- b) either party has leave to bring an application after June 30, 2023 on eight business days notice for an order
 - i. fixing the price to be paid by Ms. Virk to Mr. Singh and
 - ii. prescribing the form and terms of the purchase and sale agreement for the purchase by Ms. Virk of Mr. Singh's 39.69% fractional interest in the Property;
- c) the court, in fixing the price to be paid by Ms. Virk to Mr. Singh for his 39.69% fractional interest in the Property, may adjust the price to reflect Property-related expenditures made subsequent to February 20, 2020 and any other relevant matters (including any adjustment required to enforce the order of Justice McDonald); and
- d) the parties are at liberty to apply for further directions regarding the manner in which the purchase of Mr. Singh's 39.69% fractional interest in the Property shall be completed.

[15] The parties may request to appear before me on any application to fix the terms of the purchase of Mr. Singh's 39.69% fractional interest in the Property or for directions, but I am not seized of such further applications.

[16] The parties shall bear their own costs of the petition. Although Ms. Virk generally succeeded in obtaining the orders she sought, her response to the petition and affidavit were only filed on the morning of the hearing. In these circumstances,

in my view, it is appropriate that she be deprived of costs to which she might otherwise be entitled.

“Lamb J.”