

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
)
) CASE No. 2015-CP-15-454

JOHN MURRAY GIBBS,
Plaintiff,

vs.

HENDERSON GIBBS, JR.,
Defendant.

FINAL ORDER
(Partition)

RECEIVED

Nov 05 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
)
) CASE No. 2015-CP-18-707

JOHN MURRAY GIBBS,
Plaintiff,

vs.

HENDERSON GIBBS, JR.,
Defendant.

FINAL ORDER
(Partition)

THIS MATTER is before me for partition of real property identified as Colleton County TMS No. 154-00-00-088 as more fully described by the Complaint and Lis Pendens filed by the Plaintiff on April 6, 2015 in the Colleton County Court of Common Pleas in case number 2015-CP-15-454, and for partition of real property identified as Dorchester County TMS No. 129-16-00-012 and Dorchester County TMS No. 130-13-00-050 as more fully described by the Complaint and Lis Pendens filed by the Plaintiff on April 8, 2015 in the Dorchester County Court of Common

Pleas in case number 2015-CP-18-707. Pursuant to the Consent Order for Reference entered in this matter by the Honorable Perry M. Buckner on March 14, 2016 in the Colleton County Court of Common Pleas, and also by the separate Order for Reference to Special Referee entered in the Dorchester County Court of Common Pleas by the Honorable Diane S. Goodstein, I was appointed to serve as Special Referee to hear both matters in the interest of judicial economy, to take testimony, make findings of fact and conclusions of law, and to enter final judgment. As the matters before me concern identical issues affecting the rights of the parties' in and to their shared ownership interests in separate parcels of real properties, which issues and shared interests further necessitate balancing the equities between them, the cases were heard together and judgment is hereby entered accordingly.

THE COLLETON COUNTY PROPERTY & CAUSE OF ACTION

The Colleton County property subject to this action, and generally known as Colleton County TMS No. 154-00-00-088, is more fully described as:

ALL that certain piece, parcel or tract, together with buildings and improvements thereon, containing One and Ninety-Three Hundredths acre, more or less, situate lying and being in Bass Lake Subdivision, Colleton County, South Carolina. Property locally known as No. 4551 TMS# 154-00-00-088 located in Plat Book 30 at Page 726 in the Clerk of Court Office, County of Colleton and State of South Carolina, and more particularly described as follows: On the North by US Route 17A, on the East and Southeast by a road and lands of John & Theresa Henderson, on the Southwest by a county road, and on the Northwest and West by lands of Leroy Burgess and lands of Leroy Johnson. Route 3, Box 856, Ridgeville, South Carolina 29475.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Colleton County ROD Office in Book 846 at Page 317.

TMS No. 154-00-00-088



Plaintiff served the Defendant with the Summons, Complaint, and Lis Pendens on August 25, 2015, as reflected by the Affidavit of Service filed with the Court on September 14, 2015. The Defendant Answered on September 18, 2015, generally denying Plaintiff's prayer for relief, which Answer was filed with the Court on September 24, 2015. This matter was referred to me as Special Referee by Consent Order entered March 14, 2016. I find and conclude that this Court has jurisdiction over the subject matter and parties to this action.

THE DORCHESTER COUNTY PROPERTY & CAUSE OF ACTION

The Dorchester County Property subject to this action, and generally known as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050, is more fully described as:

ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1.

TMS No.: 129-16-00-012

-ALSO-

Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of

Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4.

TMS No.: 130-13-00-050

Plaintiff served the Defendant with the Summons, Complaint, and Lis Pendens on August 25, 2015, as reflected by the Affidavit of Service filed with the Court on September 14, 2015. The Defendant Answered on September 18, 2015, generally denying Plaintiff's prayer for relief, which Answer was filed with the Court on September 24, 2015. This matter was referred to me as Special Referee by Order entered February 18, 2016, which Order reflects that at the hearing thereon, Defendant agreed to the reference and my appointment. I find and conclude that this Court has jurisdiction over the subject matter and parties to this action.

PROCEDURAL HISTORY

Following entry of Orders of Reference and Appointment of Special Referee, Plaintiff initially scheduled and noticed a final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 21, 2018 as reflected by the Affidavit of Service filed November 30, 2018. This final hearing was initially scheduled for December 13, 2018 but was continued at the request of the parties.

Plaintiff again noticed final hearing by serving the Defendant with written Notice of Hearing together with the Notice of right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on April 8, 2019 as reflected by the Affidavit of Service filed April 8, 2019. The final hearing was scheduled for April 22, 2019. At the April 22, 2019, hearing, Plaintiff John



Murray Gibbs was present and represented by his attorney, Andrew T. Shepherd, of Summerville, South Carolina. Defendant, Henderson Gibbs, Jr., failed to appear and did not request a continuance from the Court. The Court received testimony of John Murray Gibbs as to the ownership status of the Property, together with its respective characteristics, history, condition, uses, and the conduct of the parties with regard to the same—including the uncontroverted evidence of the Defendant's longstanding attempts to unilaterally control the same and deny Plaintiff access, income, use, and enjoyment. Of note, the Plaintiff testified as to his inability to reasonably enter and access the property for purposes of obtaining appraisals necessary for completion of the proceedings before me. Upon Motion of Plaintiff's Counsel, the Court granted leave to the Plaintiff to hold the record open in order to obtain appraisals, with further leave to seek such assistance of the Court as may be necessary to command access to the property by Plaintiff's appraiser, William Ford of Appraisal Services of South Carolina, Inc. The Court further directed that upon securing appraisals, the final hearing would reconvene for purposes of receiving additional evidence and testimony, and to enter final judgment.

Plaintiff again scheduled and noticed the final hearing by serving the Defendant with written Notice of Hearing together with the Notice of the right of first refusal required by S.C. Code Ann. § 15-61-25 via U.S. Mail on November 13, 2019, as reflected by the Affidavit of Service filed November 14, 2019. The hearing was scheduled for December 4, 2019. At the hearing, Plaintiff presented evidence through his stepson, Samuel Daniel Cooper, III, and through Plaintiff's wife, Betty J. Gibbs, each of whom appeared and testified as witnesses and on behalf of Plaintiff as Plaintiff's Agents under Durable Power of Attorney, a recorded copy of which was



received into evidence. Defendant, Henderson Gibbs, Jr., did not appear or request a continuance from the Court.¹

Having observed the witnesses and exhibits presented at the hearing, and taking into consideration the law pertaining to cases of this subject matter and the credibility of the testimony and evidence before me, I make the following findings of fact and conclusions of law:

1. Plaintiff and Defendant hold title to each Property as tenants in common. All joint tenants and tenants in common who hold, jointly or in common, for a term of life or years or of whom one has an estate for a term of life or years with the other that has an estate of inheritance or freehold in any lands, tenements or hereditaments shall be compellable to make severance and partition of all such lands, tenements and hereditaments. S.C. Code Ann. § 15-61-10 (A). Although the Property at issue would constitute heir's property pursuant to the Clementa Pinckney Uniform Partition of Heir's Property Act ("Act") enacted in 2017, this matter was commenced prior to enactment of the Act and is therefore not subject to the Act's requirements. 2016 Act No. 153, Section 6, provides "[t]his act takes effect on January 1, 2017, and applies to partition actions filed on or after that date." Notwithstanding the inapplicability of the Act's partition procedures, this Court still has jurisdiction to enter judgment for partition whether in kind or by allotment under the remaining provisions of Title 15, Chapter 61, South Carolina Code of Laws. "The court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more of the parties upon their accounting to the other parties in interest for their respective shares or, in case partition in kind or

¹ The December 4, 2019, hearing was scheduled to begin at 10:00 a.m. However, the Court provided an additional fifteen minutes to allow for the Defendant to appear prior to commencing the hearing in his absence as he was not present at the scheduled time. Plaintiff's Counsel indicated on the record that Defendant had contacted Counsel's office via phone after receiving the Notice of Hearing and spoke with Counsel's receptionist. Notably, although the Defendant did not appear for the hearing, he placed a phone call to the office of the undersigned Special Referee while the hearing was then underway, leaving a voicemail referencing the case and thus indicating he was clearly aware the matter was scheduled.



by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties." S.C. Code Ann. § 15-61-50. For the reasons more fully explained below, after fully accounting for waste, betterments, and rents among cotenants, and balancing equities between them, I find and conclude under the facts and evidence presented in this case that partition by allotment can be fairly and impartially made as to each Property without injury to any of the parties in interest. Peets v. Wright, 117 S.C. 409, 109 S.E. 649, 653 (1921) ("Accounting for waste, for betterments, and for rents among co-tenants is now recognized as an incident to the right of partition, and the universal practice for the Court of equity is to adjust all these matters in the suit for partition."). I further find and conclude that the right of first refusal provided for nonpetitioning tenants in common by S.C. Code Ann. 15-61-25(A) was timely and properly noticed by the Plaintiff, and the Defendant did not exercise that right.

2. All three properties are residential in nature and are owned solely by the Plaintiff and Defendant. Appraisal reports by William Ford of Appraisal Services of South Carolina, Inc., were admitted into evidence, without objection, and are uncontroverted for purposes of establishing the fair market value of the respective properties, detailing their condition and characteristics, and supporting the Plaintiff's representations as to the non-viability for partition in-kind. The uncontroverted testimony received by the Court reflects that following the conveyance of the properties to the Plaintiff and Defendant, the Plaintiff generally provided for the upkeep, maintenance, and taxes for the time period spanning 1997 through 2006, at which time Plaintiff moved to the State of New York. Following Plaintiff's move to New York, his visits to South Carolina were severely limited, and his ability to inspect and maintain the properties on a routine basis was hampered. In the years that followed, the Defendant, on his own accord and



through the assistance of his son, began to control and generally manage the properties by renting them to third parties—all without consultation or approval of the Plaintiff.

The Colleton County property is located in the Ridgeville, South Carolina, area on Camp Buddy Road and consists of approximately 1.9 acres, with a garage reportedly damaged by fire and another shed. The property is currently unoccupied, but a manufactured home was previously on the property which the Defendant rented to tenants for a number of years. However, the manufactured home was removed from the property and Defendant alleged to the Plaintiff that the same had burned. No rents were ever shared with the Plaintiff. The appraised fair market value of the property as of November 22, 2019, immediately prior to the hearing, is \$26,650.00 or \$13,500.00 per acre.

The Dorchester County properties are located at 205 North Maple Street and 187 Pigeon Bay Road in the Town of Summerville. The property at 205 North Maple Street is approximately 0.65 acres and consists of an approximately 2,005 square foot brick home, a small detached garage, as well as a manufactured home situated behind the primary house structure. The property at 187 Pigeon Bay Road is approximately 0.25 acres and consists of an approximately 1,083 square feet wood siding house, a shed, and an approximately 1,300 square foot garage/shop-like structure. Both properties are currently occupied by tenants placed by the Defendant or present thereon through the Defendant's son.

The 205 North Maple Street property is the home where both the Plaintiff and Defendant were raised as children. It is the Plaintiff's strong desire to see the home preserved and the property maintained and protected as it has great sentimental value to both him and his family. However, the uncontroverted testimony from the Plaintiff and the witnesses reflects that almost immediately after the Plaintiff moved to New York, the Defendant unilaterally and without Plaintiff's



permission converted the interior of the North Maple Street property so as to create a boarding house for roomers. Testimony of the witnesses and notations from the appraisal reflect that the property's condition is below average and had been allowed to deteriorate in some respects. As of the date of the final hearing, the property had been continuously rented a boarding house for not less than ten years at a weekly rental rate of \$150.00 per tenant in the primary home, and \$150.00 per tenant in the manufactured home. According to the Plaintiff, at all times for a period of no less than ten years, the property has been continuously occupied by at least five tenants paying weekly rent, and sometimes as many as seven tenants or more. The Defendant and the Defendant's son place these tenants in the property and collect all of the rents. No rents have ever been shared with the Plaintiff, and Plaintiff's attempts to gain routine entry to the property or to take back control at various times over the years have been rebuked by the Defendant and by those acting through him. Even when present upon the property, the Defendant's continuing placement of roomers/tenants and modifications to the condition in the property have rendered Plaintiff unable to use the property as a home or to peaceably enjoy his family's homestead as single family home.

The Pigeon Bay Road property is also occupied by tenants placed in the home by the Defendant or the Defendant's son. It is the uncontroverted testimony that the primary home on the Pigeon Bay Road property is currently rented to a third party who pays \$800.00 per month in rent, which payments are believed to be made to the Defendant's son. Defendant has also erected a large detached garage/shop-like structure wherein third parties are known to socially congregate and loiter for what Plaintiff and Plaintiff's witnesses have come to learn is typically alcohol consumption and suspected gambling or other illicit activities in a somewhat club-like atmosphere. Of significant note within the appraisal report was the appraiser's inability to find any records regarding the large garage/shop-like structure and the appraiser's concern that the same may have



been constructed without proper permits which could expose the owners to liability. Like the other properties at issue, the Defendant has rented the Pigeon Bay Road home and engaged in other activities on the property, to include unilaterally erecting the potentially illegal and additional structure, without consulting Plaintiff or sharing in rents or revenues received. Attempts by Plaintiff and his wife to enter the property to investigate the nature of the activities of concern thereon were blocked by the Defendant and by individuals acting through him, which occurrence ultimately acted as the catalyst for initiating this action in order to protect and preserve the properties gifted to the Plaintiff and the Defendant by their father and to end the disparity of rights between the parties in and to the same. Testimony revealed that current rents for the property were being remitted to the Defendant's son, but no such rents or profits have ever been shared with the Plaintiff and suspected revenues from activities within the garage/shed-like structure have likewise never been shared or accounted for by the Defendant.

3. Plaintiff seeks both an accounting of rents and a partition of the properties by allotment. In actions for partition, allotment is statutorily preferred over judicial sale. Cox v. Frierson, 316 S.C. 469, 451 S.E.2d 392 (1994) (partition by allotment is statutorily preferred over judicial sale of the property). A partition in-kind or by allotment must be capable of being fairly and impartially made without injury to the parties in interest. S.C. Code Ann. 15-61-50.

4. None of the properties are personally occupied by the parties. The North Maple Street property is the childhood homestead of both the Plaintiff and the Defendant, but only the Plaintiff has appeared in this matter and raised (in addition to his monetary arguments) a non-monetary or sentimental attachment as an added basis for allotting full title and avoiding a forced sale. The Defendant has presented no evidence in this case aside from copies of expenditures he produced during discovery that were entered into evidence by the Plaintiff (discussed *infra*). Nor



has the Defendant presented argument outside of the general denial of his answer as to why the Plaintiff should not have the relief he seeks. In the absence of argument or the presentment of evidence from the Defendant in this matter, the Court's analysis as to matters of fairness, impartiality and manifest injury are limited to the evidence before me. Consideration of the elements of fairness, impartiality, and injury to the parties in this case therefore rests upon questions of valuation and the balancing of equities.

The appraisals of the properties reflect a fair market value of \$25,650.00 or \$13,500.00 per acre for the Colleton County property, a fair market value of \$140,000.00 for the North Maple Street Property, and a fair market value of \$140,000.00 for the Pigeon Bay Property. Based upon the uncontroverted evidence before me as to the size, shape and configuration of the North Maple Street and Pigeon Bay Road properties via testimony of the parties and the information contained within the appraisals, neither are capable of partition in-kind. While in-kind partition of the Colleton County property may be capable given its size and generally unimproved state, the Plaintiff's concession to allow allotment of the property to the Defendant without expectation of remuneration renders the necessity for partition in-kind or by sale moot as to that parcel.² Under the circumstances presented before as more fully detailed below, I find and conclude that partition by allotment can be made in a manner that is just as impartial and financially fair to the parties as would otherwise occur between them if partition by sale were directed at the fair market values for which the properties are appraised.³

² Plaintiff's concession is made in consideration of the relief granted herein of allotment of the Dorchester County properties unto the Plaintiff on such bases as more fully detailed in this Order.

³ Plaintiff's concession as to the allotment of the Colleton County parcel actually results in a greater return to the Defendant than he would otherwise realize via partition by sale of the properties due to the judgment rendered against him below. In other words, the judgment is being satisfied by way of set off credits to the Plaintiff through the allotment process in lieu of collecting the same through sales proceeds should the properties be sold.



It is uncontroverted that Defendant has received rent from at least five tenants per week at the North Maple Street property for a period, at minimum, of not less than ten years in an amount of \$150.00 per week per tenant. This rental rate amounts to \$39,000.00 per year in rental income, and \$390,000.00 over the ten year period that such rents have been collected by the Defendant.⁴ In accounting for these rents, the Plaintiff is entitled to judgment declaring that one-half of those rents are due and owing to him in the amount of \$195,000.00. Although additional rents are known to have been collected from the other properties by the Defendant, and perhaps other forms of income from the social activities thereon, Plaintiff elects solely to seek accounting of the North Maple Street rents for a period of ten years. To that end, pursuant to Plaintiff's discovery requests to the Defendant, the Defendant produced to Plaintiff's Counsel receipts and other alleged expenses that Defendant claims he incurred for property taxes, repairs, and maintenance from 1998 through 2015, all of which were admitted into evidence by the Plaintiff together with a summary of the same reflecting a total expenditure of \$107,305.26 by the Defendant. Defendant produced no other evidence of expenditures. Although Plaintiff questions the legitimacy of many of the Defendant's claimed expenditures, Plaintiff proffers that if the same were legitimate he would have been obligated to contribute half of those expenses in the amount of \$53,652.63.⁵ As such, judgment as to the share of rents due and owing to Plaintiff must be reduced by his share of expenses such that the sum due from Defendant to the Plaintiff after deduction for expenses is

⁴ Plaintiff believes rents have been collected in excess of that period but elects not to pursue additional funds.

⁵ Notably, in assessing concepts of fairness, equity, and injury to the parties in ordering partition by allotment, it is the Plaintiff who proffered this evidence and voluntarily assumed legitimacy of the Defendant's expenditures when it was not Plaintiff's duty to do so—especially in light of the Defendant's failures to appear for trial. In doing so, the Plaintiff elected to forgo the opportunity to recover additional property or sums from the Defendant when he was not obligated to do so, and he further made substantial concession to permit the Defendant's receipt of full ownership of the Colleton County property in lieu of laying further claim to Plaintiff's equitable share whether in-kind or by sale. The Plaintiff's elections in this regard are impressively fair and just, and constitute the embodiment of the equitable maxim "[h]e who seeks equity must do equity." See *Bank v. Wingard Properties Inc.*, 394 S.C. 241, 715 S.E.2d 348, 358 (S.C. App. 2011) (Discussing equitable maxims).



\$141,347.71. I find and conclude that Plaintiff is entitled to entry of judgment on his accounting claim in the amount of \$141,347.71. "Compensation to a co-tenant is allowed not as a matter of legal right but purely from the desire of a court of equity to do justice and to prevent the one tenant from becoming enriched at the expense of another." Ackerman v. Heard, 287 S.C. 626, 629, 340 S.E.2d 560, 562 (Ct. App. 1986).

5. Plaintiff seeks allotment of the North Maple Street property and the Pigeon Bay Road property unto him, and informed the Court at the hearing that if such an allotment were made, Plaintiff would, in fairness and equity, be willing to relinquish title of the Colleton County property to his brother, the Defendant. I find and conclude based upon the uncontroverted evidence presented to me that the fair market value of the North Maple Street property is \$140,000.00 and the fair market value of the Pigeon Bay Road property is \$140,000.00. An allotment of these properties to the Plaintiff would necessitate Plaintiff's remittance of \$70,000.00 to the Defendant for Defendant's interest in North Maple Street, and Plaintiff's remittance of \$70,000.00 to the Defendant for Defendant's interest in Pigeon Bay Road, for a total of \$140,000.00. However, in consideration of the judgment entered in favor of Plaintiff on his accounting claim, and adjusting such matters between the Plaintiff and Defendant as co-tenants, I find and conclude that the sum that would be due and owing from the Plaintiff to the Defendant arising from such allotment is fully negated by the sum due the Plaintiff from the judgment entered against the Defendant.

I further find and conclude that judgement should be entered in favor of John Murray Gibbs such that the properties located at 205 North Maple Street and 187 Pigeon Bay Road shall be partitioned by allotment unto John Murray Gibbs, and in making such allotment the judgment entered in his favor for \$141,347.71 shall be deemed satisfied via application of the same as a set off credit to the sums that would otherwise be due and owing to Henderson Gibbs, Jr. for his



interests being severed from the title. Peets v. Wright, 117 S.C. 409, 109 S.E. 649, 653 (1921) ("Accounting for waste, for betterments, and for rents among co-tenants is now recognized as an incident to the right of partition, and the universal practice for the Court of equity is to adjust all these matters in the suit for partition."). I further find and conclude, mindful of the stated consent of Plaintiff for the exercise of fairness and equity in rendering judgment in this action, that the Colleton County property on Camp Buddy Road shall be partitioned by allotment unto Henderson Gibbs, Jr., with Plaintiff, in consideration of his receipt of the other property interests in Dorchester County described hereinabove, waiving remuneration for the severing of his interests from the title of the Colleton County property. For the reasons set forth herein, I find and conclude that such an allotment between the parties does not work an injustice, and based upon the evidence before me and the equity both sought and volunteered by the Plaintiff, the net result to the Defendant is value in excess of what he would otherwise be entitled via partition in-kind or by sale but for Plaintiff's concessions.

6. Pursuant to Plaintiff's prayer for relief wherein Plaintiff sought such other and further relief as the Court may deem just and equitable, I find and conclude that Plaintiff is entitled to entry of judgment restraining and enjoining Defendant, Defendant's agents, and any other persons who may act on his behalf or through him, from interfering in any way with Plaintiff's possession and control of the properties at 205 Maple Street and 187 Pigeon Bay Road. I further find and conclude that Plaintiff shall be entitled to entry of judgment directing Defendant, Defendant's agents, and any other persons who may act on his behalf or through him, to remove any and all of Defendant's personal property and other personal effects which may be situated or stored on or within the properties at 205 Maple Street and 187 Pigeon Bay Road not less than fourteen (14) days following service of this Order upon the Defendant. Ex parte Dibble, 310



S.E.2d 440, 279 S.C. 592 (S.C. App. 1983) (“Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.”).

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

1. Judgment is entered against the Defendant, Henderson Gibbs, Jr., in the sum of \$141,347.71, said sum to be deemed satisfied in the form of set off credits to the Plaintiff, John Murray Gibbs, via the partition by allotment unto him of the properties in Dorchester County as set forth hereinbelow.

2. The real property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 is hereby partitioned by allotment unto John Murray Gibbs such that the interests of Henderson Gibbs, Jr., in and to the same shall terminate, and John Murray Gibbs shall, upon entry of this Order, be vested in and hold full title in and to the premises, which property is more fully described as:

ALL that piece, parcel or lot of land, situate, lying and being in Brownsville, a suburb of Summerville in Dorchester County, South Carolina: Measuring and containing One-Quarter (1/4) of an acre more or less; Butting and Bounding North by Brownsville Road, East by lands of Thomas Jenkins, South by lands of Thomas Jenkins, West by lands of Rosa Lee Jenkins, the same being more fully shown by plat thereof made by N.J. Smith, registered Surveyor, dated January, 1962.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 1. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John Murray Gibbs is the sole title holder of record.

TMS No.: 129-16-00-012

-ALSO-

Property located in Plat Book 22 at Page 11 in the Clerk of Court Office for Dorchester County, State of South Carolina, and more particularly described as follows: Towards the West on the public road which crosses the Southern Railway at the Prettyman Lumber Company, and measuring



thereon, One Hundred and Forty (140) feet; towards the North, on the lands of M.C. Gibbs, and measuring thereon, One Hundred Seventy-Five (175) feet; towards the East on lands of Vanderhorst, and measuring thereon, One Hundred Forty (140) feet; and towards the South on the lands of Janie Jenkins, and measuring thereon, One Hundred and Seventy-Five (175) feet. Including all buildings and improvements on the property and all rights of the Owner to streets, highways, alleys, driveways, easements and rights-of-way relating to the property. Lying and being in the Northern outskirts of Summerville, in the Town of Brownsville, County of Dorchester, and State of South Carolina.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Dorchester County ROD Office in Book 2092 at Page 4. The interests of Henderson Gibbs, Jr. being allotted unto John Murray Gibbs by entry this Order such that John Murray Gibbs is the sole title holder of record.

TMS No.: 130-13-00-050

3. The judgment entered hereinabove against Henderson Gibbs, Jr., in the sum of \$141,437.71 is hereby satisfied, in full, by way of set off credit to John Murray Gibbs for the full value of Henderson Gibbs, Jr.'s interests in the real property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 being allotted unto John Murray Gibbs by this Order, such that any remuneration which may otherwise have been due and owing to Henderson Gibbs, Jr. in the sum of \$140,000.00 for the value of his severed interests is thereby set off, in full, by way of said satisfaction of the judgment against him.

4. The real property identified as Colleton County TMS No. 154-00-00-088 shall be partitioned by allotment unto Henderson Gibbs, Jr., such that the interests of John Murray Gibbs, in and to the same shall terminate, and Henderson Gibbs, Jr., shall upon entry of this Order be vested in and hold full title in and to the premises, which property is more fully described as:

ALL that certain piece, parcel or tract, together with buildings and improvements thereon, containing One and Ninety-Three Hundredths acre, more or less, situate lying and being in Bass Lake Subdivision, Colleton County, South Carolina. Property locally known as No. 4551 TMS# 154-

00-00-088 located in Plat Book 30 at Page 726 in the Clerk of Court Office, County of Colleton and State of South Carolina, and more particularly described as follows: On the North by US Route 17A, on the East and Southeast by a road and lands of John & Theresa Henderson, on the Southwest by a county road, and on the Northwest and West by lands of Leroy Burgess and lands of Leroy Johnson. Route 3, Box 856, Ridgeville, South Carolina 29475.

BEING the same property conveyed to Henderson Gibbs, Jr. and John Murray Gibbs by deed of Henderson Gibbs, Sr. dated February 2, 1997 and recorded December 7, 1998 in the Colleton County ROD Office in Book 846 at Page 317. The interests of John Murray Gibbs being allotted unto Henderson Gibbs, Jr. by entry this Order such that Henderson Gibbs, Jr. is the sole title holder of record.

TMS No. 154-00-00-088

5. In consideration of the allotment unto John Murray Gibbs of Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 in the manner so directed herein, and pursuant to his consent as expressed by and through his agent at the final hearing, the allotment of Colleton County TMS No. 154-00-00-088 unto Henderson Gibbs, Jr. is made free from remuneration unto John Murray Gibbs for his severed interests.

6. The satisfaction of the judgment rendered against Henderson Gibbs, Jr. via set off credit to John Murray Gibbs for the allotment to him of Henderson Gibbs, Jr.'s interests in the Dorchester County properties, as well as John Murray Gibbs' voluntary waiver of remuneration otherwise due from Henderson Gibbs, Jr. for the allotment to him of John Murray Gibbs' interests in the Colleton County property, is and shall remain expressly conditioned upon the form and manner of partition as directed by this Order.

7. Henderson Gibbs, Jr, his agents, and any other persons acting through him or on his behalf, or claiming as such, are hereby restrained and enjoined from entering the property except for purposes permitted in Paragraph 8, below, and from harassing, or interfering in any way with John Murray Gibbs' peaceful enjoyment, possession, or control of the real properties



identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and otherwise known as 205 North Maple Street and 187 Pigeon Bay Road, Summerville, South Carolina, to include all agents, employees, tenants and any other persons present upon the property with permission of John Murray Gibbs or acting through or on behalf of him.

8. Henderson Gibbs, Jr., his agents, and any other persons acting through him or on his behalf, within fourteen (14) days from the entry and service of this Order upon Henderson Gibbs, Jr., shall remove any and all personal property and other personal effects which may be situated upon or stored on or within the properties identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and otherwise known as 205 North Maple Street and 187 Pigeon Bay Road, Summerville, South Carolina.


9. The undersigned will retain jurisdiction to do all necessary acts incident to this partition action including, but not limited to, the issuance of a Writ of Assistance.

10. This Order shall be recorded in the Dorchester County ROD Office and indexed so as to reflect the divesting of title from Henderson Gibbs, Jr. unto John Murray Gibbs in the property identified as Dorchester County TMS No. 129-16-00-012 and TMS No. 130-13-00-050 and more fully described in Paragraph 2 above.

11. This Order shall be recorded in the Colleton County ROD Office and indexed so as to reflect the divesting of title from John Murray Gibbs unto Henderson Gibbs, Jr., in the property identified as Colleton County TMS No. 154-00-00-088 and more fully described in Paragraph 4 above.

IT IS SO ORDERED!

Summerville, South Carolina
July 15, 2020



Honorable Patrick R. Watts
Special Referee