

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Athwal v. Athwal*,  
2025 BCSC 685

Date: 20250411  
Docket: S240576  
Registry: Vancouver

Between:

**Pardeep Singh Athwal and Kesar Singh Athwal**

Petitioners

And

**Taranjeet Singh Athwal**

Respondent

Before: The Honourable Justice Tucker

## Reasons for Judgment

Counsel for the Petitioners:

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Counsel for the Respondent:

R.A. Wollenberg

Place and Date of Hearing:

Vancouver, B.C.  
March 31, 2025

Place and Date of Judgment:

Vancouver, B.C.  
April 11, 2025

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**I. Introduction**

[1] The petitioners, Pardeep and Kesar Athwal, seek an order for sale of a property located at 13300 Blundell Road, Richmond, BC (the “Property”) pursuant to the *Partition of Property Act*, R.S.B.C. 1996, c. 347 (the “Act”).

[2] The respondent to the petition is Taranjeet Athwal.

[3] As the parties all share the same surname, I will refer to them by their first names. I do so solely for clarity.

[4] The petition (“Petition”) was filed in January 2024. A response to the Petition (“Response”) was filed in March 2024. The parties attended a mediation in December 2024. The mediation was unsuccessful.

[5] Following the mediation, however, the parties reached an agreement that the Property would be sold. They also reached an agreement that the issues requiring determination prior to any final distribution of sale proceeds, including contributions and alleged agreements, would be determined by trial. Accordingly, the hearing before me was limited to the following issues relating to the sale:

- a) who should receive conduct of sale;
- b) whether the parties should be entitled to bid on the Property; and
- c) what terms should be in place to protect the party without conduct of sale.

[6] The parties have agreed that certain terms governing the interim period should be included in the order, and that the remaining issues under the Petition should be converted into an action and referred to the trial list.

**II. Background**

[7] The petitioners, Kesar and Pardeep, are father and son. Pardeep is Kesar’s younger son, and Taranjeet (the Respondent) is his elder son. Kesar is in his late 70s and the brothers are in their 50s, each with their own families.

[8] In May 1997, Kesar and his wife, Parminder, bought the Property. The Property is five acres in size and presently includes a small operational blueberry farm and several structures. The structures include several residential tenancy units. Historically, there have been between four and five tenanted units on the Property.

[9] Kesar and Parminder provided the down payment for the Property. The balance of the purchase price was funded through mortgages. Pardeep and Taranjeet, both in their late 20s at the time of acquisition, were guarantors for the mortgages. Pardeep and Taranjeet were both added to the Property title as registered owners in joint tenancy along with Kesar and Parminder. Pardeep and Taranjeet both contributed to the mortgage payments for the Property, but the amounts of their respective contributions is disputed.

[10] In 2007, the construction (“Construction”) of a 10,000 square foot house (“House”) and a sizeable guesthouse (collectively, the “Improvements”) on the Property began. After the Construction was completed in 2010, Kesar and Parminder began living in the House. Taranjeet and his family moved into the House shortly thereafter. Pardeep says he and his family moved into the House in 2017, and made their residence there permanent as of 2020.

[11] In June 2023, Parminder passed away. Her interest in the Property advanced to the surviving joint tenants: Pardeep, Kesar and Taranjeet.

[12] The parties agree that the former joint tenancy between them has now converted into a tenants in common relationship. Counsel advised that they are taking steps to update the title to reflect that the parties now hold their interests as tenants in common.

[13] The parties’ ability and willingness to live together on the Property deteriorated over time. In July 2023, Pardeep wrote Taranjeet saying that he was interested in purchasing Taranjeet’s interest in the Property. Nothing productive came of this. In January 2024, Kesar and Pardeep filed the Petition seeking a sale of the Property.

[14] In March 2024, Taranjeet filed the Response opposing the sale. He asserted that there was good reason not to order a sale, as his school-age children resided there and the youngest of them had health issues.

[15] In the Response, Taranjeet also alleges it was agreed that he would receive a 50% interest in the value of the Improvements to reflect his efforts in the Construction (“Improvements Agreement”). Under the alleged Improvements Agreement, Taranjeet says the other 50% interest in the value of the Improvements is held by Kesar (and that Pardeep has no ownership interest in the Improvements).

[16] In August 2024, Pardeep and Kesar moved off the Property. Taranjeet and his family continued to reside in the House and do so at present.

[17] The subsequently reached an agreement that the Property would be sold, but on terms that addressed Taranjeet’s assertions of hardship: i.e., the closing date would not be earlier than August 2025 and Taranjeet’s family could continue to reside in the House until possession was given to the buyer.

[18] At the hearing, both sides agreed that joint conduct of sale by both sides of the dispute would be inappropriate due to animosity and an inability to work together.

**III. Legal Framework**

[19] Section 2 of the *Act* provides that a tenant in common may be compelled to partition or sell land:

**Parties may be compelled to partition or sell land**

2 (1) All joint tenants, tenants in common, coparceners, mortgagees or other creditors who have liens on, and all parties interested in any land may be compelled to partition or sell the land, or a part of it as provided in this Act.

(2) Subsection (1) applies whether the estate is legal or equitable or equitable only.

[...]

[20] Section 6 sets out the requirements for obtaining an order for sale:

**Sale of property where majority requests it**

6 In a proceeding for partition where, if this Act had not been passed, an order for partition might have been made, and if the party or parties interested, individually or collectively, to the extent of 1/2 or upwards in the property involved request the court to direct a sale of the property and a distribution of the proceeds instead of a division of the property, the court must, unless it sees good reason to the contrary, order a sale of the property and may give directions.

[21] Section 10 provides that the Court may allow any of the parties to bid on the resulting sale:

**Court may allow interested parties to bid**

10 On a sale under this Act the court may allow any of the interested parties to bid at the sale on the terms as to nonpayment of deposit, or setting off or accounting for the purchase money instead of paying it, or as to any other matter that seems reasonable to the court.

[22] Neither side disputes the Court's jurisdiction to award sole conduct of sale to one party and to determine the terms of the sale. That jurisdiction is found in both Rule 13-5(4)(a) of the *Supreme Court Civil Rules* and in the power to give directions under s. 6 of the *Act*. *Kainth v. Brar*, 2022 BCSC 1552 at paras. 22–25.

**IV. Issues**

[23] The Petitioners assert that they hold a 67% interest in the Property (including a 67 % interest in the Improvements). They point to the statutory presumption in s. 23(2) of the *Land Title Act*, R.S.B.C. 1996, c. 250, which assumes that interests are held as set out in the certificate of title (which is, by agreement, is to be taken as stating that the parties are now tenants in common).

[24] The Petitioners deny the Improvements Agreement, but say that even if the Improvements Agreement was established and found to displace the statutory presumption (see *Ryser v. Rawlings*, 2008 BCSC 1050 at paras. 21–22), the Petitioners *still* hold a majority interest. That is, under the terms of the Improvements Agreement alleged, Kesar would have a 50% interest in the value of the Improvements, and Kesar and Pardeep would have a 67% interest in the value of the land.

[25] I am satisfied that the Petitioners are majority owners and otherwise meet the statutory preconditions for a sale order under s. 6 of the *Act*.

[26] As noted, in the Response Taranjeet asserted there was good reason for the Court to exercise its discretion against ordering a sale at this time. However, he altered his position and agreed to a sale of the Property once the parties agreed that certain terms regarding the interim period and closing date should be included in any sale order made.

[27] The Petitioners seek orders that:

- a) The Petitioners be given conduct of sale;
- b) All parties be permitted to bid on the Property;
- c) The Petitioners be required to keep the Respondent informed about the sale process; and
- d) Any sale require the consent of all parties or court approval.

[28] Taranjeet does not oppose an order permitting the Petitioners to bid on the Property, but contends that he should then have conduct of sale, as he disavows any intention to bid himself. Taranjeet also says that he is more appropriate as he would be best-place to respond to inquiries from realtors and potential buyers about the Improvements and, as the resident, to deal with showings and inspections.

[29] In the alternative, if the Petitioners are granted conduct of sale, Taranjeet asks the Court to impose a number of additional terms regarding the sale and the Petitioners' ability to bid.

## **V. Analysis**

[30] The parties have provided me with a number of cases in which the primary issue before the Court was whether to grant exclusive conduct of sale to one party or side in a dispute (see e.g. the cases reviewed in *Kainth* at paras. 26–28), as opposed to ordering joint conduct. Here, however, the parties have agreed up front

that joint conduct between all three is not feasible. There is no dispute over whether one side should have sole conduct of sale, only over which side should get it.

[31] The starting point here is not an examination of past conduct for grounds for disqualification. Rather, the question is which side has the better claim and/or is better situated to conduct the sale in all the circumstances.

[32] The parties raised in argument a number of considerations that I find to be of no real assistance here. I am satisfied that both sides have motivation to push the sale process forward. The Petitioners have moved off the Property and are currently having to pay rent. While the Respondent initially opposed a sale, he resiled once there were terms addressing his family stability concerns. I agree with the Respondent that his actions in this respect do not suggest that he is resistant to sale in a way that render it inappropriate for him to have conduct of sale. The Respondent accepts that there will be a sale and seeks to relocate his family prior to the next school year. The reality is that the Property is of very significant value, and neither side appears able to purchase a new residence off the Property without access to some sale proceeds.

[33] The Petitioners argue that the interim arrangements are so favourable to the Respondent as to give him a financial disincentive to conclude a sale. However, as already noted, the Respondent acknowledges that he cannot afford to bid on the Property and seeks to relocate his family prior to the Fall. He also risks deeper out of pocket Property expenses should the Property income drop. The fact that the Respondent will be able to reside in the Property pending transfer to the seller is not a significant factor here.

[34] With respect to the Property and the Improvements, all of the parties have sufficient knowledge to field marketing and inspection questions. While there is a dispute regarding relative involvement in the Construction process, it is undisputed that all were involved to some degree in the Construction and all three recently resided on the Property.

[35] There are two primary considerations here. First, the Petitioners hold a significantly greater ownership interest than the Respondent does. Second, the Petitioners hope to bid on the Property, while the Respondent disavows any such intent.

[36] In my view, a party (or, in his case, a side of the dispute) that holds a significantly greater interest in a property generally has a better claim to conduct of sale (relative to a minority owner), on the basis that the majority ownership has more at stake in the sale. In *Etemadi v. Maali*, 2021 BCCA 298, the Court of Appeal noted that both owners of a property had “a profound interest” in the terms of any sale of the property (para. 104). While the context there was joint ownership as between spouses, the informing principle is that personal interest in the sale arises from an ownership interest. Generally speaking, the greater the proportion of a ownership interest held, the weightier the corresponding personal interest at stake.

[37] This principle is implicit in the outcome of *Zimmerman v. Vega*, 2011 BCSC 757. The petitioners there collectively held a 75% ownership interest (para. 23). In assigning conduct of sale, Justice Shabbits stated:

[40] The plaintiffs are entitled to an order directing a sale of the property and a distribution of its proceeds.

[41] The parties themselves are entitled to purchase the property. Any one or more of them can submit an offer to purchase for consideration.

[42] I am of the opinion that it is the plaintiffs that should have conduct of sale. They own a majority interest in the property.

[38] The Respondent does not dispute that the Petitioners’ claim that they have a majority ownership interest. His argument is simply this: the Petitioners would be in a conflict of interest if they have conduct of sale (because they wish to bid), whereas he will not (because he will not bid). He notes the following comments by Madam Justice Fitzpatrick in *Durrani v. Lehal*, 2018 BCSC 2489:

[53] Mr. Durrani argues that he is an investor and that he is highly motivated to obtain the best sale price in the circumstances. He also argues, with some merit, that since Mr. Lehal is residing in the Property and has indicated an interest in purchasing the Property, his incentives towards a sale of the Property or the sale of the Property at the best price may not be as high as that of Mr. Durrani.

[Emphasis added.]

[39] The Respondent contends that a conflict of interest necessarily arises where the seller wishes to buy at the sale. I agree that a conflict of interest does arise. I find, however, that that conflict is redressed by imposing terms of sale akin to those proposed by the Petitioners, as is demonstrated in many past court orders (e.g., *Zimmerman*).

[40] Here, there is no evidence before me to suggest that the Petitioners will act in bad faith in conducting the sale. Given that absence of suggestion, I am satisfied that the conflict is sufficiently guarded against by requiring a transparent sale process and either court approval or consent of all to any final sale.

[41] I note that a professional real estate agent or firm is to be engaged. The Petitioners consented to the Respondent's request for an additional term requiring them to obtain and disclose an appraisal report prior to listing the Property. The terms of the order require the Petitioners to keep the Respondent up-to-date on matters relating to the sale process. Further, as the Respondent resides on the Property, he can obtain his own appraisal of the Property at any time.

[42] If the Respondent views the marketing, negotiation, price or any other aspect of the sale process deficient, he will have an opportunity to place his concerns before the Court. As they proceed in the sale, the Petitioners will need to keep in mind the fact that the Respondent has that right.

[43] Finally, the Respondent sought to have me impose additional terms akin to those imposed in *Reale v. Tooby*, 2024 BCSC 170 (see para. 101). I do not consider any of the additional terms imposed in that case to be warranted at present.

## VI. Order

[44] The form of the order set out below reflects both my findings above and the proposed terms that were confirmed as accepted during the course of the hearing. Where my order as given varies a term proposed in the draft order, I have underlined those changes to draw attention to them. The underlining set out below is included in these reasons for judgment solely to ensure the changes are not overlooked by the parties.

[45] The Petition is allowed and an order is made by the Court as follows:

1. The property located at 13300 Blundell Road, Richmond, British Columbia, and legally described as:

Parcel Identifier: 011-314-427

Lot B Section 20 Block 4 North Range 5 West

New Westminster District Plan 8304

(the "Property"), shall be offered for sale, by private sale, free and clear of all encumbrances of the parties, save and except for the reservation, provisos, exceptions and conditions expressed in the original grant thereof from the Crown;

2. The Property will be sold in accordance with the *Partition of Property Act*, RSBC 1996, c. 347, the closing date will be no earlier than August 1, 2025, and the possession date will be at least three weeks from the closing date (the "Possession Date") unless otherwise agreed to in writing by all parties;

### **Process of Sale**

3. The petitioners shall be granted exclusive conduct of sale and be at liberty to list the Property for sale with a real estate agent or firm, for a period commencing forthwith, and shall be at liberty to pay any such real estate agent or firm who may arrange a sale of the Property a commission of not more than 7% of the gross selling price on the first \$100,000 and 2.50% on the balance to be paid from the proceeds of the gross selling price;

4. The respondent, or any person or persons on behalf of the said respondents including any person or persons in possession of the Property shall forthwith and until further order of the Court, permit any duly authorized agent on behalf of the petitioners to inspect, appraise, or show to any prospective purchaser the Property including the interior of the premises between 4:00pm and 7:00pm on Wednesdays and 1:00pm to 5:00pm on Saturdays or at other times between the hours of 9:00am and 7:00pm provided a minimum of 48 hours advance

notice is provided to the respondent, and to post signs on the Property and premises stating that the Property is offered for sale;

5. Any party of record may provide an offer to purchase the Property;

6. The petitioners will obtain a professional appraisal report valuing the Property prior to listing the Property for sale;

7. The petitioners must keep the respondent informed of matters relating to the sale of the Property in a timely manner, including by providing the following information:

- a. name of listing agent;
- b. sale price for the Property;
- c. offers received;
- d. counter-offers provided; and
- e. any appraisal or other valuation reports obtained in respect of the Property.

The requirement to inform the respondent of the sale of the Property will not deprive the petitioners of exclusive conduct of the sale of the Property and decision-making power affecting the sale of the Property;

8. The sale of the Property and distribution of the sale proceeds shall be subject to the approval of the Court unless otherwise agreed to in writing by all parties;

9. The parties may apply for further directions with respect to carrying out any of the terms of this order;

#### **Tenancies**

10. The respondent is responsible for payment of all maintenance expenses related to the Property, including utilities and mortgage payments, on an interim basis between the date of this order and the Possession Date (the "Interim Period"). Any extraordinary expenses not covered by insurance (e.g. significant repairs, septic failure, electrical failure) will be shared equally between the parties;

11. The respondent is responsible for maintenance of the Property, including its electrical systems, until the Possession Date;

12. The petitioners will direct all residential tenants at the Property to make rent payments directly to the respondent. The respondent will be responsible for ensuring all residential tenancies at the Property comply with the *Residential Tenancy Act*, SBC 2002 c.78;

13. Payments made by the respondent during the Interim Period is without prejudice to:

- a. the respondent's right to seek contribution and/or recovery of expenses paid during the Interim Period from the petitioners; and
- b. the petitioners' right to claim occupational rent against the respondent.

**Conversion of the Proceedings**

- 14. This proceeding is converted to an action for all other purposes;
- 15. The petitioners will file a Notice of Civil Claim within 60 days, or such longer period agreed to by counsel. The usual Supreme Court Civil Rules will apply thereafter; and
- 16. Costs in this matter to be reserved to the hearing of the final disposition in this matter.

[46] During the course of the hearing, the parties indicated that the proposed agreed upon terms with respect to interim to Property income and expenses, and the Respondent's obligations to maintain same, included operation of the blueberry farm. Counsel advised that they would consider whether the blueberry farm should be directly addressed in the order. If the parties wish to expand the order made above by adding consent terms with respect to the blueberry farm, they are at liberty to do so.

"Tucker J."