

CITATION: Senthilvadivel v. Ranjithan, 2025 ONSC 4442
COURT FILE NO.: FS-24-46026-00
DATE: 20250730

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Prathesh Senthilvadivel, Applicant

AND:

Rajivi Ranjithan, Respondent

BEFORE: M. Kraft, J.

COUNSEL: *Joe Nzemeke*, for the Applicant

Jane Cvijan, for the Respondent

HEARD: July 29, 2025

ENDORSEMENT

- [1] This is a motion brought by the respondent, Rajivi Ranjjithan (“the wife”), for the partition and sale of an investment property located at 302 Demaine Crescent, Richmond Hill, ON L4C 2W5 (“Demaine property”), title to which is held by the parties as tenants in common, with the wife holding a 90% interest and the applicant, Prathesh Senthilvadivel (“the husband”) holding a 10% interest.¹
- [2] The husband seeks an order dismissing the wife’s motion for partition and sale of the Demaine property until after the ownership interest of this property is determined. He has pleaded a resulting trust interest and made an unjust enrichment claim in the Demaine property.

Issue to be Determined

- [3] The only issue to be determined on this motion is whether the Demaine property should be partitioned and sold under s.2(1) of the *Partition Act*, R.S.O. 1990, c.P.4 prior to the ownership issue of this property being determined?

¹ Initially, the wife’s Notice of Motion, dated June 17, 2025, sought partition and sale of the Demaine property and another property jointly owned by the parties located at 125 Redpath Avenue, Toronto ON M4S 0H5, unit 2311. She also sought a declaration that Demaine is owned by the parties as tenants in common with her owning 90% and the husband owning 10%, along with an order for a declaration that both parties are 50% owners of the Demaine property and the Redpath property. Prior to the motion being argued, the parties agreed to list the Redpath property for sale, leaving only the Demaine property to be an issue for determination.

Background

- [4] On January 20, 2020, the Demaine property was purchased for \$778,000, with title being registered 90% to the wife and 10% to the husband. The agreement of purchase and sale is dated December 19, 2019.
- [5] The husband takes the position that legal title does not reflect the beneficial ownership of this property. According to the husband, title to the property was structured on a 90/10 basis to allow the wife to qualify for the First-Time Home Buyer's Credits. He submits that he never intended to gift the wife a beneficial interest in the property.
- [6] The written record is conflicted as to each party's monetary contribution to the purchase of the Demaine property, such that,
- (a) The husband claims that he contributed the full down payment of \$218,000 and the closing costs of the Demaine property from his own savings and from funds he received from his father. He argues that the wife did not contribute any funds toward the purchase.
 - (b) The wife claims that she contributed \$74,700 toward the purchase of the Demaine property. She submits that her bank records demonstrate her making e-transfers to the husband in early 2019 to save money to purchase the Demaine property. This is disputed by the husband who claims that these e-transfers predated the agreement of purchase and sale of the Demaine property and were for the parties' joint wedding expenses. The wife also claims that in 2020 and 2021, she contributed a further \$54,000 toward the mortgage. Again, this is disputed by the husband who maintains that all mortgage, taxes, utilities, and insurance associated with the Demaine property was paid from a bank account has managed exclusively but was in the parties' joint names.
- [7] After the Demaine property transaction closed on January 20, 2020, the husband occupied the property on his own. The wife moved into the property at the outset of Covid-19 in March 2020. The wife's brother also temporarily resided in the basement unit of the Demaine property. The parties lived at the Demaine property until October 2022.
- [8] It is agreed that by November 2022, the parties moved out of the Demaine property and resided with the paternal grandparents in Scarborough. The Demaine property has been tenanted to two separate tenants since November 2022.
- [9] The parties were married on November 21, 2020, 11 months after the Demaine property was purchased. They have one child of the marriage, M., age 2.5.
- [10] The parties separated on January 14, 2024.
- [11] Since the separation, the husband has managed the tenants, repairs and all expenses associated with the Demaine property. The wife argues that the rental income yields a profit

to the husband which he does not share with her. The husband argues that there is a net loss on the Demaine property.

- [12] As of April 2025, the mortgage registered on the Demaine property was \$433,657.25. Starting January 2025, the monthly mortgage payments were \$2,998.65.

The Parties' Respective Positions

- [13] The husband's position is that partition and sale of the Demaine property would be prejudicial to his ownership and trust claims because:

- (a) The beneficial ownership of the Demaine property is in dispute, which must be resolved prior to the property being sold;
- (b) There is no urgency or hardship;
- (a) The husband's equitable claims will be prejudiced if the property is sold;
- (b) The husband's financial contributions to the Demaine property supports his resulting trust argument; and
- (c) The wife's pleadings and claims are inconsistent, as she asserts both a 90% interest in the Demaine property and argues that she is entitled to a 50% sharing of the net proceeds of sale.

- [14] The wife's position is that the husband convinced her to transfer her savings into his account, so he could be approved for a mortgage. As a result, she claims that between March 22, 2019 and May 17, 2019, she transferred a total of \$62,739.73 from her personal savings account to the husband. She also claims to have sent the husband \$3,000 in January 2020 and \$9,000 prior to the purchase of the Demaine property. The wife argues that the parties agreed to take title of the Demaine property with her having a 90% interest and the husband having a 10% interest to reflect her contribution (and her family's contribution) to the property. She argues that she is struggling financially having to pay rent, with no child or spousal support being paid by the husband and she requires her share of the equity from the Demaine property. She acknowledges that the husband's equitable claims can be protected if some of the net proceeds of sale from the Demaine property remain held in trust. Although she does not suggest an amount to be held in trust.

Should the Demaine property be sold prior to the ownership of this property and the husband's equitable claims are determined?

- [15] It is clear that the Demaine property will be included in the calculation of one or both party's respective net family property, as defined in s.4(1) of the *Family Law Act*, R.S.O. 1990, c.F.3.
- [16] Since the Demaine property was owned on the date of marriage and was not a matrimonial home on the date of separation, there will be a date of marriage deduction for the Demaine

property in an amount equal to its fair market value on the date of marriage on one or both parties' side of the net family property ledger. In other words, only the increase in the fair market value of the Demaine property between the date of marriage and date of separation will be equalized.

- [17] In *Dhaliwal v. Dhaliwal*, 2020, ONSC 3971 (CanLII), Pazaratz, J. outlined the applicable legal principles involved when one spouse is seeking partition and sale of a jointly owned property in paragraph 16, in which he states as follows:
- a. Section 2 of the *Partition Act*, R.S.O. 1990, c.P.4, empowers the court to order the sale of a jointly owned property, whether ownership is by joint tenants or tenants in common; *McNeil v. McNeil* 2020, ONSC 1225.
 - b. A joint tenant has a *prima facie* right to an order for the partition or sale of property held with another joint tenant. *Kaphalakos v. Dayal* 2016 ONSC 3559 (SCJ); *Marchese v. Marchese* 2017 ONSC 6815 (SCJ); *Jama v. Basdeo* 2020 ONSC 2922 (SCJ); *Davis v. Davis* 1953 CanLII 148 (ON CA); *Brienza v. Brienza* 2014 ONSC 6942 (SCJ). as well as all parties interest in, to or out of, any land in Ontario to suffer partition and sale of land, whether the estate is legal and equitable or equitable only.
 - c. A court is required to compel partition and sale unless the opposing party has demonstrated that such an order should not be made. *Jama v. Basdeo*; *Steele v Doucett* 2020 ONSC 3386 (SCJ).
 - d. The other joint tenant has a corresponding obligation to permit the sale. These are fundamental rights flowing from joint tenancy. *Steele v Doucett*.
 - e. The onus is on the party who opposes a sale to establish that there is a sufficient reason, recognized in law, why the court should exercise its discretion to refuse a sale. *Afolabi v. Fala*, 2014 ONSC 1713 (SCJ).
 - f. Generally, the party opposing the sale must show malicious, vexatious or oppressive conduct *relating to the partition and sale issue* in order to avoid the sale. *Silva v. Silva* (1990) 1990 CanLII 6718 (ON CA), 1 O.R. (3D) 436 (ON CA); *Jama v. Basdeo*; *Steele v Doucett*.
 - g. Each case must be considered on its own facts. The court must consider all relevant factors in exercising its discretion. *Davis v. Davis* 1953 CanLII 148 (ON CA), [1954] O.R. 23 (C.A.); *Steele v Doucett*.
 - h. In family law cases, an order under the *Partition Act* should generally not be made until any dispute related to the property has first been determined. *Maskewycz v. Maskewycz* (1973) 1973 CanLII 603 (ON CA), 2 O.R. (2d) 713 (ON CA).
 - i. The *Family Law Act* does not displace the *Partition Act*. But in family cases a partition application should generally not be granted where it can be shown that a

legitimate family law claim would be unfairly prejudiced. *Silva v. Silva*; *Parent v. Laroche* 2020 ONSC 703 (SCJ); *Latcham v. Latcham* (2002) 2002 CanLII 44960 (ON CA), 27 R.F.L. (5th) 358 (ON CA); *Dulku v. Dulku* 2016 CarswellOnt 16066 (SCJ).

- j. In assessing and guarding against potential prejudice, the court must take a realistic view of the potential impacts of a sale – both positive and negative – in relation to the interests of both joint tenants, and the family as a whole. Where the financial or other circumstances of the parties are such that a sale would be the inevitable result at trial, there is little justification for delaying the sale. *Zargar v Zarrabian* 2016 ONSC 2900 (SCJ); *Giglio v Giglio* 2015 ONSC 8039 (SCJ); *Keyes v. Keyes* 2015 ONSC 1660 (SCJ).
- k. More to the point, where it is evident at the temporary motion stage that monthly carrying costs are *currently* unsustainable, it is inappropriate to indefinitely perpetuate financial hardship for the entire family. Quite commonly, house expenses which were barely affordable when the family unit was intact immediately become unaffordable once the same income has to fund two separate households. Sometimes harsh new realities need to be faced sooner as opposed to later – in order to avoid even more painful consequences such as power of sale proceedings or even bankruptcy.
- l. The court must consider the impact of a proposed sale on children or a vulnerable spouse -- including the emotional impact, and the fundamental need to ensure that they have appropriate housing. *Delongte v. Delongte* 2019 ONSC 6954 (SCJ); *Kaing v. Shaw* 2017 ONSC 3050 (SCJ). The availability and affordability of alternate housing must be considered. As part of the analysis, support obligations may need to be co-ordinated – even on a temporary basis – to ensure that any party displaced by a sale will have the resources to arrange reasonable replacement accommodation.
- m. Orders for sale of a matrimonial home at the interim stage should not be made as a matter of course. *Fernandes v Darrigo* 2018 ONSC 1039 (SCJ). The court must be mindful of the whole of the proceeding, and the need to achieve a final resolution for the family as fairly and expeditiously as possible. *Kereluk v. Kereluk*, 2004 CanLII 34595 (SCJ).
- n. Timing can be a relevant consideration in dealing with a motion for sale at a temporary stage. The availability of a trial within a short period might reduce the pressure for an immediate sale. *Goldman v. Kudeyla*, 2011 ONSC 2718 (SCJ).
- o. On the other hand, a request for sale during summer months may entail some timeliness if seasonal market opportunities are favourable; or to reduce the likelihood of a child having to change residence (and possibly catchment area) while a school year is in session.

- p. The stage of a child's academic progress might also be relevant. Sale might be delayed if it would allow a child to complete a certain grade level before an inevitable switch to another school. On the other hand, immediate sale might be more appropriate if the child happens to be transitioning to a new school in any event.
- q. But the mere existence of children in a household is not in itself a sufficient basis to oppose a sale. A generic statement that children enjoy living in their current house or that they will be unhappy if they have to move, is not sufficient. The party opposing a sale must establish a likely negative impact more serious than the inevitable adjustments and disruptions which all families face when parents decide to separate.
- r. A pending equalization claim may also be relevant. The court cannot compel one joint tenant to sell to the other. *Martin v. Martin* 1992 CanLII 7402 (ON CA). Nor can it give either joint tenant a right of first refusal. *Dibattista v. Menecola* 1990 CanLII 6888 (ON CA). But a recipient of an equalization payment may propose to set that entitlement off against their former spouse's share of the equity in the home. If a sufficiently particularized proposal seems viable -- and especially if it would benefit a child -- sale should be delayed to allow proper consideration of that option. *Chaudry v. Chaudry* 2012 ONSC 2149 (SCJ).
- s. The court must consider and attempt to guard against potential prejudice. Are there realistic issues or claims yet to be determined on a final basis, which would be prejudiced or precluded if a property is ordered to be sold at the temporary stage?

[18] In applying the facts of this case to the legal principles, I find as follows:

- (a) The onus is on the husband to establish that there is a sufficient reason for me to exercise my discretion to refuse the partition and sale of the Demaine property.
- (b) The husband argues that he will suffer irreparable damage if the Demaine property were sold because the beneficial ownership of the property has not yet been determined. I do not agree that irreparable damage will be caused to the husband's property claims, provided all of the net proceeds of sale from the Demaine property are held in trust, pending a determination of his equitable claims in the property.
- (c) This takes away from the wife's argument that the Demaine property must be sold now, prior to the ownership of the property is determined, because she needs to access her equity from the property, given that she is suffering financial hardship by having to pay rent for her current accommodation with the child, and having to carry the cost of the Redpath property without contribution from the husband. This argument is based on her claim that the Demaine property not only be partitioned and sold but that she immediately receive a sum of money from the net proceeds of sale, albeit, she is agreeable to a holdback of some funds in trust.

- (d) When the Court asked the wife what she seeks in terms of a payment from the Demaine proceeds, her counsel was not able to articulate a specific amount. Initially, she submitted that the wife ought to receive 50% of the net sale proceeds and later, she submitted that she would be agreeable to having whatever sum the Court deemed appropriate to release. This position ignores the fact that she also inconsistently states she has a 90% interest in the Demaine property.
- (e) Neither party prepared a draft net family property for the court. Accordingly, the Court has no way to know which party owes the other an equalization payment. Further, calculations were not completed to show the range of an equalization payment that could be owing, using the title documents, as in placing 90% of the fair market value of the Demaine property on the wife's side of the ledger and 10% on the husband's side of the ledger, or in some other amount, such as 50% on each party's side, or as the husband argues 100% on his side of the ledger.
- (f) The wife's arguments regarding the ownership of Demaine were inconsistent. Her notice of motion seeks both a declaration that she owns 90% of Demaine and 50% of Demaine.
- (g) Furthermore, given that this is a short marriage, neither party assessed the *Family Law Act* s.5(6)(e) claims given that their period of cohabitation was less than 5 years.

- [19] On the conflicted record before me, I am unable to reach a conclusion that the financial circumstances of the parties are such that a sale of the Demaine property will be the inevitable result at trial. Furthermore, the evidence on record is not clear at this motion stage that the monthly carrying costs of the Demaine property are currently unsustainable. Rather, there are tenants in the Demaine property which offset the expenses.
- [20] While the wife has a prima facie right to the partition and sale of the Demaine property, her interest in the Demaine property, if sold, will be entirely held in trust by a real estate lawyer, if I order it sold. This is directly related to the fact that the court does not have any information regarding either party's property claims.
- [21] The husband's resulting trust claim and/or his unjust enrichment claim have not yet been determined and it is, therefore, quite possible that in addition to his 10% interest in the Demaine property, he may also have equitable title to a much higher interest. Equitable claims are highly fact based and the parties are nowhere near being able to determine the strength of these claims. Questioning has not yet been conducted. In fact, neither party has even sought leave for Questioning.
- [22] As set out in *Rawluk v. Rawluk*, 1990 CanLII 152 (SCC), the court must first determine the "ownership piles" before equalization can be determined in order to find out which party owes the other an equalization payment.
- [23] I do not agree with the wife's argument that the Demaine property must be sold now because the husband's argument that Demaine is excluded from equalization cannot stand.

During the argument of the motion, in answer to a question from the court, the husband confirmed that he is not arguing that the Demaine property is excluded property as defined in s.4(2) of the *Family Law Act*.

- [24] The wife's need for funds will not be satisfied by the partition and sale of the Demaine property now because, as stated above, the Court cannot make an order releasing any of the net proceeds of sale to either party, given that neither party, particularly the wife who seeks the release of proceeds, has provided the court with a basis to know what the range of each party's position is with respect to equalization.
- [25] Frankly, the motion for partition and sale of the Demaine property is premature. A motion for partition and sale of a jointly owned property ought not to be brought, if a party seeks the release of proceeds, before the court when there are ownership issues that need to be determined without proper evidence showing the court the ranges of each party's property entitlement and, certainly, not without draft net family property statements.
- [26] The wife did not have an appraisal completed as to the fair market value of the Demaine property on the date of marriage or the date of separation. The husband attached an appraisal of the Demaine property to his affidavit as an Exhibit showing that its fair market value as at the date of marriage on November 21, 2020 was \$850,000, and an appraisal of the Demaine property as at the date of separation on January 14, 2024, was \$1,035,000. This means, that the increase in the property's fair market value between the two relevant dates is \$185,000, which will be subject to an equalization, not considering the mortgage or other deductions associated with the property. For example, the court does not have information about the mortgage balance on the date of marriage or date of separation. The court also does not know if there are capital gains associated with the property given that it is not the parties' principle residence. The wife's motion materials do not comment on whether she agrees with the appraisal reports produced by the husband or whether she intends to challenge the report and obtain her own expert report.
- [27] Furthermore, until the ownership of the Demaine property is adjudicated, it is not known on which spouse's side of the ledger the increase in the property's fair market value should appear.
- [28] The court scheduled a Settlement Conference today to move this matter along. The wife's motion is dismissed without prejudice to her right to return the motion only after net family property statements can be produced with proper evidence. Only then, will the Court be in a position to know what amount of proceeds can be released to the parties, if at all, and what can be held in trust.

ORDER

- [29] This court makes the following order:
- (a) The wife's motion for the partition and sale of the Demaine property is hereby dismissed without prejudice to her right to return the motion only after the financial disclosure is completed and the parties can provide the court with net family

property statements so the court can determine each party's property claims with some certainty.

- (b) The parties shall attend a Settlement Conference on January 16, 2026, at 11:00 a.m.
- (c) The parties shall endeavor to settle the issue of costs. If they are unable to do so, the husband shall serve and file written costs submissions of no more than 3 pages, not including a bill of costs or offers to settle within 14 days of the release of this Endorsement. The wife shall serve and file responding written costs submissions of no more than 3 paged, not including a bill of costs or offers to settle within 7 days of being served with the husband's written costs submissions.

M. Kraft, J.

Date: July 30, 2025