



ANALYSIS

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boundaries or identity of land

1963, No. 60

An Act to amend the Property Law Act 1952

[23 October 1963

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Property Law Amendment Act 1963, and shall be read together with and deemed part of the Property Law Act 1952 (hereinafter referred to as the principal Act).

2. Restrictions on accumulation—(1) The principal Act is hereby amended by repealing section 41, and substituting the following section:

“41. (1) No person (in this section called a settlor) shall settle or dispose of any property so as to direct or authorise the income derived from the property or from any accumulated income derived therefrom to be wholly or partially accumulated—

“(a) For any longer period than—

“(i) The life of the settlor; or

“(ii) Twenty-one years from the death of the settlor; or

“(iii) The minority of any person who shall be living at the death of the settlor; or

“(iv) The minority of any person who, under the trusts of the instrument directing or authorising the accumulation, would for the time being, if of full age, be entitled to receive the income so directed or authorised to be accumulated; or

“(v) Twenty-one years from the date of the making of the settlement or disposition in any case where the settlement or disposition takes effect during the lifetime of the settlor; or

“(vi) The minority of any person who shall be living at the date of the making of the settlement or disposition in any case where the settlement or disposition takes effect during the lifetime of the settlor:

“(b) For the purchase of land only, for any longer period than that mentioned in subparagraph (iv) of paragraph (a) of this subsection.

“(2) In every case where any accumulation is directed or authorised otherwise than as aforesaid, the direction or authority shall be void, and the income so directed or authorised to be accumulated shall, so long the same is directed or authorised to be accumulated contrary to the provisions of this section, go to such person as would have been entitled thereto if the accumulation had not been directed or authorised.

“(3) Nothing in this section shall extend to—

“(a) Any provision for payment of debts of the settlor or any other person; or

“(b) Any provision for raising portions for any child of the settlor, or any child of any person taking any interest under the instrument directing or authorising the accumulation; or

“(c) Any direction or authority touching the production of timber or wood upon any lands;

but all such provisions, directions, and authorities may be made and given as if this section had not been passed.

“(4) Where any property is settled or disposed of so as to direct or authorise the income which accrues from the property or from any accumulated income derived therefrom to be wholly or partially accumulated as from the date on which the settlement or disposition takes effect, it shall be presumed, unless a contrary intention appears from the terms of the settlement or disposition, that the accumulation is intended to continue for twenty-one years from the date on which the settlement or disposition takes effect.

“(5) In this section—

“(a) The expression ‘purchase’ means only a purchase properly so called:

“(b) References to the date on which a settlement or disposition takes effect mean—

“(i) The date of the death of the testator in the case of a settlement or disposition by will:

“(ii) The date of the making of the settlement or disposition in any other case.”

(2) Section 42 of the principal Act is hereby consequentially amended by inserting, after the words “trust for”, the words “or power of”.

(3) In its application to any settlement or disposition of property made by the will of any person who died before the date of the commencement of this Act, and to any settlement or disposition of property made otherwise than by will before that date, the principal Act shall be read as if subsections (1) and (2) of this section had not been passed.

3. Relief in cases of mistake as to boundaries or identity of land—The principal Act is hereby amended by inserting, after section 129, the following section:

“129A. (1) Where (whether before or after the commencement of this section) any person who has or had an estate or interest in any piece of land (in this section referred to as the original piece of land) has, while he had that estate or interest, erected a building on any other piece of land (that other piece together with any land reasonably required as curtilage and for access to the building being in this section referred to as the piece of land wrongly built upon), if the building has been so erected because of a mistake as to any boundary or as to the identity of the original piece of land, that person, or any other person for the time being in possession of the building or having an estate or interest in either the original piece of land or the piece of land wrongly built upon, or any other person mentioned in subsection (6) of this section, may apply to the Supreme Court, whether in any action or proceeding then pending or in progress and relating to the piece of land wrongly built upon or by an originating application, to make an order in accordance with this section.

“(2) If in the opinion of the Court it is just and equitable in the circumstances that relief should be granted to the applicant or any other person, the Court may in its discretion make an order—

- “(a) Vesting the piece of land wrongly built upon in the person or persons specified in the order:
 - “(b) Allowing any person or persons specified in the order to remove the building and any chattels and fixtures or any of them from the piece of land wrongly built upon:
 - “(c) Where it allows possession of the building to any person or persons having an estate or interest in the piece of land wrongly built upon, requiring all or any of the persons having an estate or interest in that piece of land to pay compensation in respect of the building and other improvements to the piece of land wrongly built upon to such person or persons as the Court may specify:
 - “(d) Giving the person who erected the building or any person or persons claiming through him the right to possession of the piece of land wrongly built upon for such period and on such terms and conditions as the Court may specify.
- “(3) Where appropriate, the Court may make any such order without ordering the applicant or any other person to give up possession of the piece of land wrongly built upon, or to pay damages, and without granting an injunction.
- “(4) Where the Court makes any order under this section, the Court may, in the order, declare any estate or interest in the piece of land wrongly built upon to be free from any mortgage, lease, easement, or other encumbrance affecting that piece of land, or vary, to such extent as it considers necessary in the circumstances, any mortgage, lease, easement, contract, or other instrument affecting or relating to that piece of land.
- “(5) Any order under this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit, whether as to the payment by any person of any sum or sums of money, or the execution by any person of any mortgage, lease, easement, contract, or other instrument, or otherwise.
- “(6) Every person for the time being in possession of the building or having any estate or interest in the piece of land wrongly built upon or in the original piece of land, or claiming to be a party to or to be entitled to any benefit under any mortgage, lease, easement, contract, or other instrument affecting or relating to any such land, and the local authority concerned, shall be entitled to apply for an order in accordance with this section, or to be heard in relation to any application

for or proposal to make any order under this section. For the purposes of this subsection the Court may, if in its opinion notice of the application or proposal should be given to any such person as aforesaid, direct that such notice as it thinks fit shall be given to that person by the applicant or any other person.

“(7) Any Magistrate’s Court shall have jurisdiction to exercise the powers conferred upon the Supreme Court by this section, and application may be made to a Magistrate’s Court accordingly, in any case where the value of the piece of land wrongly built upon (without the buildings thereon) does not exceed the amount to which the jurisdiction of the Magistrate’s Court is limited in civil cases, and in any case where a Magistrate’s Court would have jurisdiction in accordance with section 37 of the Magistrates’ Courts Act 1947:

“Provided that a party intending to invoke the powers given to a Magistrate’s Court by this subsection shall, except in any case where the Court derives its jurisdiction under that section, give notice of his intention to all other parties before the hearing, and in all cases any party shall be entitled as of right to have the action or proceeding or application transferred to the Supreme Court, or to appeal to the Supreme Court against any order purporting to be made by the Magistrate’s Court under this section.

“(8) Every order vesting any estate or interest in any person under this section shall for the purposes of the Stamp Duties Act 1954 be deemed to be a conveyance, and shall be liable to stamp duty accordingly.

“(9) Nothing in this section shall restrict the operation of section 129 of this Act.”

This Act is administered in the Department of Justice.
