

Quirk in law strips blacks of land

Lawyers, land traders seek out estates to buy, force auctions

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Associated Press

Lawyers and real estate traders are stripping Americans of their ancestral land today, simply by following the law.

It is done through a court procedure that is intended to resolve land disputes but is being used to pry land from people who do not want to sell.

Black families are especially vulnerable to it. The Becketts, for example, lost a 335-acre farm in Jasper County, S.C., that had been in their family since 1873. And the Sanders clan recently lost 300 acres in Pickens County, Ala., that had been in their family since 1919.

The procedure is called partitioning, and this is how it works:

Whenever a landowner dies without a will, the heirs inherit the estate in common, with no one person owning a specific part of it. If more family members die without wills, things can get messy within a couple of generations, with dozens of relatives owning the land.

Anyone can buy an interest in one of these family estates; all it takes is a single heir willing to sell. And anyone who owns a share, no matter how small, can go to a judge and request that the entire property be sold at auction.

Some land traders seek out such estates and buy small shares with the intention of forcing auctions. Family members seldom have enough money to compete, even when the high bid is less than market value.

"Imagine buying one share of Coca-Cola and being able to go to court and demand a sale of the entire company," said Thomas Mitchell, a University of Wisconsin expert on partitioning. "That's what's going on here."

This can happen to anyone who owns land in common with others; laws allowing partition sales exist in every state.

However, government and university studies show black landowners in the South are especially vulnerable because up to 83% of them do not leave wills.

Blacks have lost 80% of the 5.5 million acres of farmland they owned in the South 32 years ago, according to the U.S. Agricultural Census. Partition sales account for half of those losses, according to land experts such as Jerry Pennick, regional coordinator for the Federation of Southern Cooperatives.

A judge is not required to order a partition sale just because someone requests it. When the property is large enough for each owner to be given a useful parcel, it can be fairly divided. When those who want to keep the land outnumber those who want to sell, the court can help the majority arrange to buy out the minority.

But when partition sales are requested, judges nearly always order them, government and university studies show,

"Judges order partition sales because it's easy," said Jesse Dukeminier, an emeritus professor of law at the University of California at Los Angeles. Appraising and dividing property takes time and effort, he said.

Partition statutes exist for a reason: to help families resolve impossible tangles that can develop when land is passed down through several generations without wills.

But the process doesn't always work as intended. Land traders who buy shares of estates with the intention of forcing partition sales are abusing the law, declared a 1985 study done for the Commerce Department by the Emergency Land Fund, a nonprofit group that helped Southern blacks retain threatened land.

Legal fees for bringing partition actions can be high — often 20% of the proceeds from the land sales. Families, in effect, end up paying the fees of the lawyers who separate them from their land.

Moreover, black landowners cannot always count on their own lawyers. Sometimes, the Commerce Department study found, attorneys representing blacks filed partition actions that were against their clients' interests.

The Associated Press studied 14 partition cases in detail, reviewing lawsuit files and interviewing participants. The cases stretched across Southern and border states.

Each case was different, each complicated, with some taking years to resolve. But in almost every case, land traders bought small shares of black family estates, sometimes from heirs who were elderly or mentally disabled, and then sought partition sales.

All 14 estates were acquired from black families by whites or corporations, usually at bargain prices.

In the 1990s, a South Carolina real estate trader named Audrey Moffitt sought a 335-acre estate in Jasper County, S.C., that had been owned by the Beckett family since 1873.

Frances Beckett, a 74-year-old widow with a fourth-grade education, was one of 76 heirs to the estate. According to court papers, she was bedridden with terminal cancer.

The dying woman accepted Moffitt's offer of \$750 for her 1/72 interest — worth \$4,653, according to a subsequent appraisal by a real estate consultant. An appeals court would later call it the only "true" appraisal of the property.

Moffitt then bought out six other heirs for a total of \$6,600, court papers show. Among them, she paid Edward Stewart, 88, a man with no formal education, and Flemn Woods, 80, with a third-grade education, a combined \$5,800 for their one-sixth interest. It was worth \$55,833, according to the subsequent appraisal.

Moffitt filed her partition action in January 1991. Beckett family members countersued, alleging Moffitt had secured the elderly heirs' signatures improperly. A special referee in the Court of Common Pleas ruled that the estate be sold.

The property was broken into two pieces that were auctioned separately. Fifty acres were purchased by a real estate broker for \$75,000 at a December 1991 sale. Of this, \$12,864 went to Moffitt for her shares and almost \$20,000 was taken for court costs, leaving \$42,331 for the family. Today the 50 acres are assessed at \$200,000.

Moffitt bought the remaining 285 acres for \$146,000 in February



Lewis Cook of Carrollton, Ala., takes a moment to read his mail across from the Pickens County Courthouse. The courthouse houses most of the local property records, including those of the Sanders family. The black family lost 300 acres of timberland that had been in the family for 83 years in a 1998 partition sale.

1992. (That included \$24,338 she paid to herself for her own shares.)

Two years later, however, an appeals court ruled that the signatures of the elderly Beckett heirs were obtained illegally and called Moffitt's dealings with them "unconscionable."

When Moffitt paid an additional \$45,075 for the shares, however, the court validated the partition sale.

With the additional payment, Moffitt's outlay for the land totaled \$198,425, court papers show. Deduct the \$37,202 she received from the partition sales for her own shares of the estate, and her true outlay was \$161,223.

Moffitt has since broken up the property and resold it to a locally

Last of a three-part series

prominent family and several area businesses, records show. In one transaction, she swapped part of the old Beckett land for adjoining property, which she then sold.

Her proceeds from these sales, property records show, total \$1,708,117 — almost 11 times what she paid for the property.

Moffitt of Varnville, S.C., replied in writing to a letter requesting comment. She defended the dealings described as "unconscionable" by the court, calling her payments to the elderly Becketts "fair value."

She characterized the Beckett ownership as "a convoluted mess" that made the land unmarketable. She added: "The heirs could have done for themselves what I did, but for generations had not done so. It is difficult sometimes to get two people to agree; getting 30 or 40 or more people all to agree to sell or keep and use their property would be virtually impossible, in my experience."

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M.L. Wheat of Millport, Ala., wanted to buy 300 acres of Pickens County, Ala., timberland, which had been in the Sanders family for 83 years. In early 1996, he talked price with one of the owners, Ivene Sanders. They met in the office of

Wheat's lawyer, William D. King IV.

When Wheat learned buying the land would require reaching agreement with about 100 heirs, he backed away from the deal.

Then, in May of that year, the story took a turn.

King, who had represented Wheat, filed a partition action on behalf of 35 members of the Sanders family, naming other heirs as defendants.

Only two family members signed the complaint seeking the sale: Ivene Sanders, now 72, with a fourth-grade education, and his cousin, Archie Sanders, now 75, with a third-grade education. Court papers show both later insisted they did not understand what they were signing.

Several family members King listed as plaintiffs turned out not to own shares. All but five of the plaintiffs who did own shares joined Ivene and Archie Sanders in filing papers stating that they had not authorized King to pursue the partition action.

The Associated Press could find nothing in the record indicating the wishes of the other five plaintiffs.

Whose interest was King representing as he pursued the partition action? King would not comment beyond saying that the record speaks for itself.

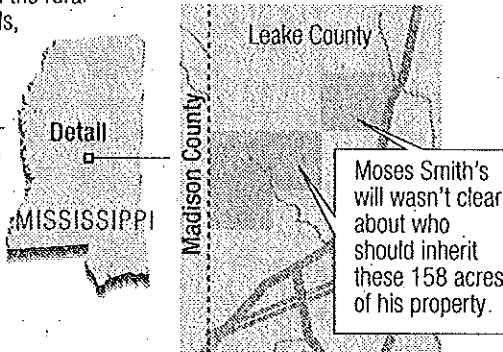
Family members who took a position on the sale — plaintiffs and defendants alike — were opposed, court records show.

Circuit Judge James Moore ordered an auction. The Melrose Timber Co. Inc., bought the property on Nov. 24, 1998, for \$505,000, court papers show.

It was not a bad price, but the family did not get all the money. King collected \$104,730 in fees and expenses. After court costs, \$389,170 were to be divided among 96 heirs, some of whom incurred legal fees fighting the sale. ■

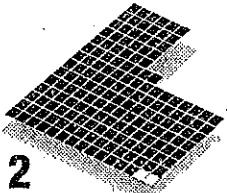
TORN FROM THE LAND
A FAMILY DIVIDED BY LAW

Families that pass down their land without wills or with vague wills are vulnerable to losing their property through a legal procedure known as partitioning. Blacks in the rural South seldom left wills, and experts say thousands of them have lost land through partitioning — land that had been in their families for generations. This is what happened to the Smiths of Carthage, Mississippi.



1
A HAZY INHERITANCE

When Moses Smith died in 1951, his will wasn't clear about who should inherit 158 acres of his land. As a result, his heirs came to own this land in common.



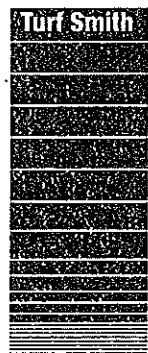
2
A FAMILY DISAGREEMENT

Over time, the heirs fanned out across the country while Smith's son, Turf, looked after the estate. In the 1970s, he asked his relatives for two acres so he could build a house for himself. One relative would not agree.

3 **DIVIDED AND SOLD**

Turf Smith went to court and asked that two acres be carved out of the estate. Instead, a judge ordered the entire 158 acres sold at auction and the proceeds divided among all 25 heirs, based on their shares. Once this process had begun, the Smiths were powerless to stop it.

ESTATE BREAK-DOWN BASED ON HEIRS' SHARES



4
OUTBID, OUTDONE

Smith scraped together \$41,000 to buy back all of his family's land. But a land speculator, W.O. Sessums, outbid him, paying \$98,000 for 156 of the 158 acres. After court costs, \$89,313 was divided among the 25 heirs.

HEIRS	AMOUNT EACH RECEIVED
1	\$9,043.81
5	8,087.99
1	7,442.76
2	4,044.00
2	3,721.38
1	2,853.05
1	2,818.54
1	2,450.90
7	1,024.13
1	919.09
3	245.09
TOTAL	\$89,313

5
IN THE END, TWO ACRES

At the auction, Smith was able to buy two acres for \$1,200. Within months, Sessums sold his 156 acres for an undisclosed sum to a subsidiary of Georgia Pacific Corp., a timber conglomerate. Today, the property is assessed at more than \$225,000 but probably has a higher market value.

