

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

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STATUS: Immediate

Bonheur v Caribbean (116/10) [2011] ZASCA 19 (17 March 2011)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal today dismissed an appeal against a decision of the South Gauteng High Court which held that the appellants had no right of pre-emption in respect of an undivided share of property in Morningside, Johannesburg, and that a co-owner of the property was not entitled to prevent the sale or mortgage of its undivided share of the property. It held also that the appellants could not prohibit the alienation of the share.

The appellants had argued that it had a right of pre-emption in respect of the share, arising from three agreements, to none of which they were party. The high court held that, pursuant to s 2(1) of the Alienation of Land Act 68 of 1971, such a right could arise only from a written document signed by the parties. This requirement had not been met and there was thus no right.

In the SCA the appellants conceded that there was no right flowing from any agreement, but argued that there was a partnership between the parties which required the consent of other partners to alienate their share. There was no evidence that there was any such partnership and this was not a case made out by the appellants in their application to the high court. The SCA rejected this ground as well.

The appellants argued also that a co-owner cannot sell or mortgage a share of the common property without the other co-owners' consent. That is not our

common law, and the SCA found that the high court had correctly rejected this argument as well.
