



Steve's motion to reconsider and found that it was a final and appealable order. Steve appeals, contending the court erred as a matter of law in including his remainder interest in the partition sale. We reverse and remand.

¶ 3 There is no dispute regarding the ownership interest of the parties. As previously stated, Danny owns a life estate in an undivided one-half interest in 120 acres, and Steve owns an undivided one-half interest in fee simple in the 120 acres plus the remainder interest for Danny's life estate. Steve acknowledges that Danny has a right to request partition of the property (see *Westerdale v. Grossman*, 312 Ill. App. 3d 884, 728 N.E.2d 67 (2000)), but finds fault with the court's order granting Danny's request. Steve contends that the court erred in ordering a sale of the property rather than dividing the real estate in kind, and further asserts that the court should not have included his remainder interest in the ordered sale. We agree.

¶ 4 Section 17-101 of the Code of Civil Procedure (Code) (735 ILCS 5/17-101 (West 2010)) provides in part:

"When lands, tenements, or hereditaments are held in joint tenancy or tenancy in common or other form of co-ownership and regardless of whether any or all of the claimants are minors or adults, any one or more of the persons interested therein may compel a partition thereof by a verified complaint in the circuit court of the county where the premises or part of the premises are situated."

While "other form of co-ownership" appears broad enough to encompass the situation presented here, as recognized in *Poruba v. Poruba*, 396 Ill. App. 3d 214, 919 N.E.2d 1066 (2009), a life tenant and a remainderman are not co-owners of the property. The owner of a life estate and the remainderman do not have a concurrent right to possession of the real estate. Rather, a life estate and a remainder interest are two separate estates in land. There is nothing to partition. The instrument that granted one the life estate and the other a remainder has already partitioned their respective interests. *Poruba*, 396 Ill. App. 3d at 215-

16, 919 N.E.2d at 1067-68. Danny therefore cannot force a partition sale of the remainder interest of Steve. See also *Westerdale v. Grossman*, 312 Ill. App. 3d 884, 728 N.E.2d 67 (2000) (holder of life estate in one-third interest could partition from fees held by other two owners but life estate would remain intact and remainder would remain intact). Each tenant in common has an absolute right to partition land only if the partition action will not circumvent established principles of law or public policy. *Westerdale*, 312 Ill. App. 3d at 886, 728 N.E.2d at 69. By allowing partition under these circumstances, we would, in essence, be allowing a life tenant to control a greater estate than he owns, against all established principles of property law.

¶ 5 We therefore conclude that Danny, as a life tenant, is not entitled to force the sale of Steve's remainder interest, because as holder of a life estate with no concurrent right to possession with the remainderman, he is not a joint tenant, tenant in common, or co-owner with Steve, as required under the Code. 735 ILCS 5/17-101 (West 2010). Accordingly, the trial court should not have included Steve's remainder interest in the sale. We recognize that the trial court's order states the premises could not be divided among the parties without manifest prejudice, but it offers no specific reasons to support this conclusion. We find it difficult to understand why this is true when faced with the division of 120 acres as opposed to a single-family residence. We also recognize that a life estate, as a practical matter, is not a marketable commodity, but this does not give Danny the right to contravene established principles of property law. The provisions allowing partition were designed to ensure that the holders of life estates or tenants for years would not be deprived of the value of their interests. A fee simple estate, traditionally viewed as the greater estate, should not be affected by life estate holders who use partition as a means of forcing those holding in fee to suffer.

¶ 6 For the reasons stated above, we reverse the judgment of the circuit court of

Montgomery County and remand the cause for further proceedings.

¶ 7 Reversed and remanded.