

Book IV.
Title LII.¹

Concerning alienation of things held in common.
(De communium rerum alienatione.)

4.52.1. Emperor Gordian to Apollodorus, a veteran.

If no usucaption or long silence (of ten or twenty years) protects the purchaser of your portion of the land which, you suggest, was sold by the coheirs of your paternal uncle, your right to an action in rem remains unaffected. But if the law renders the purchaser secure, you are at liberty to sue those who sold your portion illegally.

Note.

If the purchaser bought in good faith, without knowledge of the defect, he could acquire title by prescription, otherwise not. C. 3.2.3 and 4; C. 7.26 headnote. C. 4.51.1.

4.52.2. The same Emperor to Herennianus, a soldier.

It makes a great deal of difference whether your coheirs sold the common property, or whether the fisc, which was part owner, sold the whole, in accordance with the privilege which it has (in such cases). For if the sale was made by the fisc, it is good sense that its good faith should not be disturbed.² But if your coheirs sold the whole, the sale cannot affect your portion, even though the purchaser paid part of the price to the fisc, in accordance to the former's order, and gave a due bill for the remainder.

Note.

If the fisc and some private individual held property in common, it had a right to sell the whole. This was a privilege of the fisc. C. 10.4.1. The joint private owner had in such case only a claim for his proper portion of the price. But no such privilege was extended to other parties.

4.52.3. Emperors Diocletian and Maximian and the Caesars to Aurelius Eusebius.

You are wrongly persuaded that an undivided portion of property held in common can, before judgment of partition, be sold only to an associate and not to a stranger.

Note.

A joint owner of property had a perfect right to sell his interest to any person he wished and at any time he wished, provided, however, that when an action for the partition of the property had been brought and issues had been joined, no such sale could be made, because the law forbade transfer of property while it was in litigation. C. 3.37.1; C. 8.36.

4.52.4. The same Emperors and the Caesars to Ulpianus, a soldier.

Your brother could not sell your portion while you were a soldier. But it does not become a soldier's dignity that his portion should, upon the payment of the price, should be turned over to you.

¹ [Blume] Rev. 2/22/32.

² Blume struck disturbed and penciled in an alternate reading, which is illegible. From the context, however, it appears as if something of similar meaning was intended. Scott has "impugned." See 6 [13] Scott 113.

Note.

The soldier's brother could not share the former's portion; on the other hand, he had the right to sell his own, and the soldier could not ask to have it turned over to him upon paying the value of it. That course, however, was possible in a partition action. C. 3.36 headnote.

4.52.5. The same Emperors and the Caesars to Olympianus.

If you were older than twenty-five years and unwittingly sold property owned in common by you with your brothers, you must pay such purchaser his damage when he is evicted from the portion of the others, though no purchase-instrument or special agreement was made.

Note.

The law implied a warranty for quiet enjoyment when property was sold. C. 8.44.8 note. But that was not true if the purchaser had knowledge of the defect. C. 3.38.7; C. 8.44.27. If a person was under twenty-five years of age, he was, under the law of Rome, considered a minor, and hence would have had restitution to his former rights. C. 2.21 et seq.