

PARTITION UNDER LAND LAWS AS APPLICABLE IN STATE OF HARYANA

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ABSTRACT

Land is any part of the earth's surface not covered by a body of water, the part of the earth's surface occupied by the continent and is lands. The partition of land is an important concept under the land laws. The study in hand investigates for the provisions of land laws that are meant for partition of the piece of land. The state of Haryana was earlier the part of joint Punjab and it come into existence on the 1st Day of November, 1966. The state of Haryana adopted the Punjab Land Revenue Act, 1887, the provisions of which are applicable in Haryana territory. The chapter IX with title "Partition" is studied and examined in order to provide for the understanding of the various provisions dealing with partition of land. It is dream of nearly each and every human member of this living world to occupy and possess land and subsists title of it. The land so occupied is of the exclusive title and possessing right not to be disturbed and interfere by any other in the utilization of piece of land. Land Estate may have several co-sharers. To utilize exclusively the respective shares in land estate, one has to move an application for partition.

Keywords: *Application, Land, Mode, Partition, Revenue*

I. METHODOLOGY

The information is extracted primarily from primary sources of data like published books research journal, civil law journals, case laws available. Moreover the detail study done so as to present the different circumstances existed during the phase of partition. The title of the partition application are provided in the research paper at the end under the reference section.

II. OBJECTIVES: The present investigation aims the following:-

1. To compile the information in the shape of legal provisions provided for the partition.
2. To aware the applicant who wish to move his land partitioned about the path to be followed before and during the partition process.

III. INTRODUCTION

If we talk about the subject matter of present research paper chapter IX of the Punjab Land Revenue Act, 1887 provides for sections 110-126. Under the different headings of these sections explanatory procedure for partition of land holdings are given. The right of the co-sharer for getting their share of land partitioned without any restrictions are contemplated. It is the basic condition for partition that co-sharer who wish to get his land share

partitioned from joint property must show that he or she had clear title qua the land that are going to be partitioned. If there is absence of clear title then all proceedings of partition are nullity. There have been judicial pronouncements that generate for rights of co-sharers alongwith the settlement of their liabilities such as a co-owner has an interest in the whole property and also in every parcel of it. So far as possession of joint property by one co-owner is concern, is in the eye of law, possession of all even if all but on are actually out of possession. A mere occupation of a larger portion or even of an entire joint property doesnot essentially amount to ouster as the possession of one is deemed to be on behalf of all. Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owner who has been out of the possession of the joint property except in the event of ouster or abandonment.

IV. DISCUSSION

The consent of financial commissioner in express mode shall be required for the affect the joint liability of the land or the land owners there of fore the payment of revenue of the land or operate to create a new estate and if any terms and conditions is attached to the consent of Finance commissioner that shall be binding to the partition. Afterward, the partition of a tenancy shall not without the express consent of the landlord, affect the joint liability to the co-sharers for the payment of rent thereof.

• WHO MAY APPLY FOR PARTITION

Any joint owner of land or any joint tenant of a tenancy in which a right of occupancy is in existence may apply for partition to the revenue officer for partition of his share in the land or tenancy but subject to the conditions that at the date of application the share is recorded under chapter IV as belonging to him or if his right to the share has been established b a decree which is still in subsistence at that date or if a written acknowledgment that right has been executed by all persons interested in the admission or denial thereof. It is held by the court that where a group of land owners hold land in joint ownership and are reflected as owners in common of the khewat, they would continue to remain owners in possession of land, through described as being situated in different khataunis, rectangles, Khasra or killa numbers doesnot alter the nature of property held in common or the rights of co-sharers flowing therefrom. It the co-sharer had sold specific khasra/khewat/khatauni numbers still the purchaser would have stepped into the shoes of the seller and would have become a co-sharer in the total land and would not have become the owner exclusively. It is to be important to mention here that the land in the lal lakir is non-agricultural and beyond jurisdiction of revenue officer to consider such a land for the purpose of partition. The revision was dismissed in deficiency of any evidence of reference to some family partition that was made 20 years ago. On the point of family partition, the Assistant collector, collector and the divisional commissioner have recorded considered findings that the same is not supported by any documentary proof or evidence. When the land is joint, it is the right of each co-sharer to get his share partitioned. There is no reason to differ with the well reasoned concussent findings of the lower revenue courts.

- **JOINT APPLICATION FOR PARTITION**

When the land of different villages were part of one hadbast (revenue estate), before redemarcation of the area the person who was co-sharer in both the khewats he has the competence to move joint application for partition as the one hadbast was bifurcated into two and became separate hadbast.

- **MODE OF PARTITION**

If the opportunity to raise the objection was not avail in the original hearing and the same cannot be permitted in the appeal. The opportunity availing was in respect of finalization of the Naksha bey. When all the parties have agreed with regard to mode of partition and a detailed and reasoned order has been delivered by the assistant collector 1st grade there is no platform to go in appeal. Value and quality of land should be taken into account at the time of partition. Possession alone cannot be the basis of partition.

In review petition, mode of partition was approved and upheld by the collector. There is no filing of appeal or revision, that order became final. There is no authority on part of successor collector to review the order and set aside the mode of partition collector should hear the appeal in the light of mode of partition. If the final partition was approved. It was challenged. The mode of partition was also not challenged within the prescribed time. It was not open to the parties to challenge the mode of partition and final order partition together.

- **RESTRICTION & LIMITATIONS ON PARTITIONS**

Certain limitations are given in the Punjab Land Revenue Act, 1887 as per which places of worship and burial grounds held in common before partition shall continue to be so held after partition but this is subject to anything otherwise agree among the parties and record their agreement and file it with the revenue officer

The partition of any embankment, watercourse, well or tank any land on which supply of water to any such work may depend, any grazing ground and any land which is occupied as the site of a town or village which is assessed to land revenue. May be refused for partition by the revenue officer if he is of the opinion that such partition of property is likely to cause inconvenience to the other co-sharers or other persons directly or indirectly interested therein. On the application of a joint owner of land would necessary sever into two or more parts of the land comprised in the tenancy of a tenant who have the right of occupancy, may be a sufficient reason for disallowance of the partition as it would affect that tenancy. The revenue officer may allow the partition after the assent of the tenant for severance. If the landlord raise objection to the partition of a tenancy, it is sufficient for the absolute disallowance of the partition thereof.

- **NOTICE OF APPLICATION FOR PARTITION**

On the receipt of the application under the chapter IX of Punjab Land Revenue Act, 1887 (Sec-111), the revenue officer shall if it is in order and not open to objection on the face of it, fix a day for the hearing thereof and serve notice of the application and of the day so fixed on such recorded co-sharers as have not joined in the application and if the share of which partition is applied for is a share in a tenancy, on the landlord also. If the revenue officer thinks fit, that there are other persons who are directly or indirectly interested in the application for partition the notice is to be served or proclamation is to be made for information to such persons. There is issuance of summons for appearance. The service is executed by affixation of summon by the process server. It

was held that process server is not competent to decide what mode of the substituted service is to be adopted for securing the appearance of the petitioner. The expert proceedings are not sustainable.

- **ADDITION OF PARTIES**

The revenue shall ascertain whether any of the co-sharers desire the partition of their respective shares also and if any of them so desire, and he shall add them as applicants for partition on the day fixed for hearing or on any other day to which the hearing may be adjourned.

- **ABSOLUTE DISALLOWANCE OF PARTITION**

The revenue officer may in his opinion, if there exists good and sufficient cause, after the examination of such co-shares and other persons as may be present on that day, refuse the application that results in absolute disallowance of partition. He shall record the ground for his refusal of application.

- **ADMISSION PROCEDURE FOR APPLICATION**

If the revenue officer does not refuse the application for partition, he shall ascertain the question, if any, in dispute between any of the persons interested distinguishing between question as to title in the property of which partition is sought and question as to the property to be divided or the mode of making the partition.

- **SEPERATE APPLICATION FOR DIFFERENT KHEWATS**

The partition of joint agricultural land through revenue officers is primarily done khewatwise. There is need of a separate application for each khewat. In one application more than one khewats can be joint together where the co-shares in all such khewats, irrespective of the quantum of shares are common and not otherwise, meaning thereby partition of such khewats cannot be done by clubbing them together in one application.

- **DISPOSAL OF QUESTIONS AS TO TITLE IN PROPERTY TO BE PARTITIONED**

If divided there is any question as to title of the property, the revenue officer may decline to grant the application of partition until the question has been determined by a competent court or he may himself proceed to determine the question as though he were such a court. When the revenue officer himself proceeds to determine the question the rules shall be applied.

a. If the question is one over which a revenue court has jurisdiction, the revenue-officer shall proceed as a revenue court under the provisions of the Punjab tenancy Act, 1887 (XVI of 1887)

b. If the question is one over which a Civil Court has jurisdiction, the procedure of the Revenue-Officer shall be that applicable to the trial of an original suit by a Civil Court and he shall record a judgement and decree containing the particulars required by the Code of Civil Procedure to be specified therein.

c. An appeal shall lie from the decree of the revenue-officer under clause (b) as though that decree were a decree of a Subordinate Judge in an original suit.

d. Upon such an appeal being made, the District Court or High Court, as the case may be, may issue an injunction to the Revenue-Officer requiring him to stay proceeding pending the disposal of the appeal.

e. From the appellate decree of a District Court upon such an appeal, a further appeal shall lie to the High Court if such a further appeal is allowed by the law for the time being in force.

- **DISPOSAL OF OTHER QUESTIONS**

When there is a question as to property to be divided, or the mode of making a partition, the Revenue-officer shall, after such inquiry as he deems necessary, record an order stating his decision on the question and his reasons for the decision. An appeal may be preferred from an order under sub-section (1) within fifteen days from the date thereof, and when such an appeal is preferred and the institution thereof has been certified to the revenue-officer by the authority to whom the appeal has been preferred the revenue-officer shall stay proceedings pending the disposal of the appeal. If the applicant for partition is dissatisfied with an original or appellate order under this section, and applies for permission to withdraw from the proceedings in so far as they relate to the partition of his shares, he shall be permitted to withdraw therefrom on such terms as the revenue-officer thinks fit. When an applicant withdraws under the last foregoing sub-section the Revenue-officer may where the other applicant if any desire the continuance of the proceedings, continue them in so far they relate to the partition of the shares of those other applicants.

- **ADMINISTRATION OF PROPERTY EXCLUDED FROM PARTITION**

When any such property as is referred to in section 112, clause (2), is included from partition, the Revenue-officer may determine the extent and manner to and in which the co-sharer and other persons interested therein may make use thereof, and the proportion in which expenditure incurred thereon and profits derived there from, respectively, and to be borne by and divided among those persons or any of them.

- **DISTRIBUTION OF REVENUE AND RENT AFTER PARTITION**

The amount of revenue to be paid in respect of each of the holdings into which land has been divided on a partition, and the amount of rent to be paid in respect of each of the portion is into which a tenancy has been so divided, shall be determined by the Revenue-officer making the partition. The determination of the Revenue-officer, as to the revenue to be paid in respect of each holding, shall, where the estate in which the holding is situate is subject to a fixed assessment, be deemed to be an order under section 56, sub-section (1). Where new estates have been created at the partition and the land-revenue has been fraudulently or erroneously distributed among them, the State Government, may, within twelve years from the time of discovery of the fraud or error, order a new distribution of the land-revenue among the several estates on a estimate of the assets of each estate at the time of the partition, to be made conformably to the best evidence and information procurable respecting the same.

- **DELIVERY OF POSSESSION OF PROPERTY ALLOTTED, ON PARTITION**

An owner or tenant to whom any land or portion of a tenancy, as the case may be, is allotted in proceedings for partition shall be entitled to possession thereof as against the other parties to the proceedings and their legal representatives, and a Revenue-officer shall, on application made to him for the purpose by any such owner or tenant at any time within three years from the date recorded in the instrument of partition under the last foregoing section, give effect to that instrument so far as it concerns the applicant as if it were a decree for immovable property.

• **AFFIRMATION OF PARTITION PRIVATELY EFFECTED**

In any case in which a partition has been made without the intervention of a Revenue-officer, and party thereto may apply to a Revenue-officer for an order affirming the partition. On receiving the application, the Revenue-officer shall inquire into the case, and, if he finds that the partition has in fact been made, he may make an order affirming it and proceed under sections 119, 120, 121 and 122, or any of those sections, as circumstances may require, in the same manner as if the partition had been made on an application to himself under this chapter.

The Financial Commissioner may make rules for determining the costs of partitions under this chapter and the mode in which such costs are to be apportioned. When by established custom any land in an estate is subject to periodical redistribution a Revenue-officer may, on the application of any of the land-owners, enforce the redistribution according to the custom, and for this purpose may exercise all or any of powers of a Revenue-officer in proceedings for partition. The Revenue-officer by whom proceedings may be taken under this Chapter shall be a Revenue-officer of a class not below that of Assistant Collector of the second grade.

V. CONCLUSION

The applicant of the partition should have the proper knowhow about the process and procedure of the partition laws. The procedure of the partition laws. The procedure is the platform to make the land partitioned. The revenue office should exercise the powers to partition the land estates within domain and by following the prescribe procedure for the same. The conditions provided for the application for partition in section III should be implemented and followed wisely there must be clear cut title of the applicant in the land to be partitioned or there must in subsistence right of occupancy. The partition of land should be done khewatwise but if there are common co-shares in the two different khewat then the application of partition may be clubbed together by the Revenue officer. The revenue authorities should follow the mode of partition in such a way so as to cause the maximum convenience to the co-sharers. Every co-sharer must be served notice as given in section 113 and be provided opportunity to present his part before the revenue authorities with respect to the partition of land. The revenue office may refuse for the partition, if there exist good and sufficient cause. The reason for disallow absolutely the application for partition must be recorded. The revenue officer is under authority to add the name of the applicant if any of the other co-sharer want his store to be partitioned on the day of hearing or on other day to which hearing is adjourned.

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