



**278 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-6753-2018

Date of decision : 18.05.2026

BALWINDER SINGH & ANR

....Appellants

Versus

DARSHAN SINGH THR. LRS & ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

**Present : Mr. Amit Arora, Advocate
for the petitioners.**

**Mr. Ashish Aggarwal, Advocate
for respondents No.5 and 6.**

PANKAJ JAIN, J. (ORAL)

Challenge in the present revision petition is to the order dated 08.05.2018 passed by Additional Civil Judge (Senior Division), Khadur Sahib, whereby application filed by the petitioner seeking passing of the final decree of partition of the land, stands rejected.

2. Petitioner filed suit for partition. The same was decreed vide judgment and decree dated 10.06.2008. Preliminary decree was passed. The appeal preferred against the same stands dismissed vide judgment and decree dated 14.05.2009 passed by Additional District Judge, Tarn Taran.

3. As per the decree that has attained finality, the petitioners herein have been held entitled to the extent of 1/4th share out of the total suit land measuring 09 Kanal 14 Marlas. The petitioners moved an application for



passing of the final decree of partition. The same has been dismissed by the Trial Court, observing as under:

“5. After hearing both the counsel for the parties and going through the file carefully, I am of the considered opinion that applicant/plaintiff alleged that the applicants/plaintiffs are entitled for 2 kanals 6 marlas out of suit land measuring 9 kanals 14 marlas. They are entitled for their possession on the basis of preliminary decree and accordingly, the final decree be passed in their favour of 02 Kanals 6 marlas against the respondent and the possession of the same be delivered to them. The applicant/plaintiffs have alleged that they entitled for 2 kanals 6 marlas as per their share but it has not been proved by the applicants that the share of other co sharers is much more in their possession than their actual share. They have not proved the fact that who is in excessive share from whom the applicants/plaintiffs can recover their possession. Local commissioner was also appointed, report of Local Commissioner is silent on the said fact but it has proposed that where the maximum area is lying vacant, the applicants/plaintiffs should be delivered the possession from the same. But however it is not legally maintainable when it is not proved that who is in excessive share of the suit property. Perusal of report reveals that the possession is to be delivered as per the proposed partition from the khasra no.486(2-12) where maximum areas is lying vacant after removing some construction from it which is raised by the defendants/respondents more than their share. But the report does not reveals the fact that how much share they have encroached from which the plaintiff is entitled and which construction is to be removed. It is also not proved that the construction can be compensated with monetary relief. It is not proved by applicant/plaintiff that the remaining co sharers are in their actual possession of the suit property and only the defendants residing in khasra no. 486, are in their excessive share and they have encroached the share of the applicant/plaintiff. The final decree cannot be passed, it will effect the execution and will make



the execution in executable in future. The possession cannot be delivered to the applicants in such situation. The final decree cannot be passed without proper demarcation of all the co sharers in the suits property and also showing which is the co sharer is in excessive share. There are also passage in the suit property which is also to be adjusted from the share of the applicants/plaintiffs. Plaintiffs/applicant is entitled for his share from the person in excess of his share after making all the adjustments with regard to the passage or any other common site left for the common use as such the final decree stands dismissed but however, the applicant/plaintiff is liberty to file a fresh application for final decree after making the proper demarcation of share of all the co sharers and also demarcating the share of the co sharers who are in excessive possession.

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4. In the considered opinion of this Court, if the Trial Court was of the opinion that the report submitted by the Local Commissioner was not clear and the Court was incapacitated from ascertaining the extent of possession of the parties, rather than dismissing the application for passing of the final decree, the Court should have appointed Local Commissioner afresh. Once the preliminary decree has been passed, the Court was bound to take the *lis* to its logical end by passing a final effective decree so that the litigants can enjoy the fruits of the same.

5. Principles governing disposal of application for passing of final decree in a suit for partition have been elaborately laid down by Supreme Court in the case of **Shub Karan Bubna @ Shub Karan Prasad Bubna vs. Sita Saran Bubna and anothers, (2009) 9 SCC 689**, as under:



8. Once a court passes a preliminary decree, it is the duty of the court to ensure that the matter is referred to the Collector or a Commissioner for division unless the parties themselves agree as to the manner of division. This duty in the normal course has to be performed by the court itself as a continuation of the preliminary decree. Sometimes either on account of the pendency of an appeal or other circumstances, the court passes the decree under Rule 18(1) or a preliminary decree under Rule 18(2) and the matter goes into storage to be revived only when an application is made by any of the parties, drawing its attention to the pending issue and the need for referring the matter either to the Collector or a Commissioner for actual division of the property. Be that as it may.
9. The following principles emerge from the above discussion regarding partition suits:

9.1) In regard to estates assessed to payment of revenue to the Government (agricultural land), the court is required to pass only one decree declaring the rights of several parties interested in the suit property with a direction to the Collector (or his subordinate) to effect actual partition or separation in accordance with the declaration made by the court in regard to the shares of various parties and deliver the respective portions to them, in accordance with section 54 of Code. Such entrustment to the Collector under law was for two reasons. First is that Revenue Authorities are more conversant with matters relating to agricultural lands. Second is to safeguard the interests of Government in regard to revenue. (The second reason, which was very important in the 19th century and early 20th century when the Code was made, has now virtually lost its relevance, as revenue from agricultural lands is negligible). Where the Collector acts in terms of the decree, the matter does not come back to the court at all. The court will not interfere with the partitions by the Collector, except to the extent of any complaint of a third party affected thereby.



9.2) In regard to immovable properties (other than agricultural lands paying land revenue), that is buildings, plots etc. or movable properties :

(i) where the court can conveniently and without further enquiry make the division without the assistance of any Commissioner, or where parties agree upon the manner of division, the court will pass a single decree comprising the preliminary decree declaring the rights of several parties and also a final decree dividing the suit properties by metes and bounds.

(ii) where the division by metes and bounds cannot be made without further inquiry, the court will pass a preliminary decree declaring the rights of the parties interested in the property and give further directions as may be required to effect the division. In such cases, normally a Commissioner is appointed (usually an Engineer, Draughtsman, Architect, or Lawyer) to physically examine the property to be divided and suggest the manner of division. The court then hears the parties on the report, and passes a final decree for division by metes and bounds.

The function of making a partition or separation according to the rights declared by the preliminary decree, (in regard to non-agricultural immovable properties and movables) is entrusted to a Commissioner, as it involves inspection of the property and examination of various alternatives with reference to practical utility and site conditions. When the Commissioner gives his report as to the manner of division, the proposals contained in the report are considered by the court; and after hearing objections to the report, if any, the court passes a final decree whereby the relief sought in the suit is granted by separating the property by metes and bounds. It is also possible that if the property is incapable of proper division, the court may direct sale thereof and distribution of the proceeds as per the shares declared.



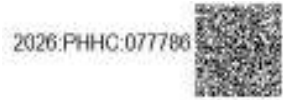
9.3) As the declaration of rights or shares is only the first stage in a suit for partition, a preliminary decree does not have the effect of disposing of the suit. The suit continues to be pending until partition, that is division by metes and bounds, takes place by passing a final decree. An application requesting the court to take necessary steps to draw up a final decree effecting a division in terms of the preliminary decree, is neither an application for execution (falling under Article 136 of the Limitation Act) nor an application seeking a fresh relief (falling under Article 137 of Limitation Act). It is only a reminder to the court to do its duty to appoint a Commissioner, get a report, and draw a final decree in the pending suit so that the suit is taken to its logical conclusion.

5. In view thereof, the present revision petition is disposed off with a direction to the Trial Court to appoint a Local Commissioner afresh and seek his report on the following issues :

- (i) the extent of the existing possession of the co-sharers in the joint land; and
- (ii) the proposed partition.

On receiving the aforesaid report, the Trial Court thereafter shall call for the objections from the parties on the proposed partition and shall adjudicate the same and pass a final decree.

6. Keeping in view that the suit is of the year 1997, this Court is sanguine that the Trial Court shall complete the entire exercise expeditiously,



preferably within a period of 09 months from the date of receipt of certified copy of this order.

7. Ordered accordingly.

May 18, 2026

(Pankaj Jain)
Judge

Dpr

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No