

227

2026:PHHC:086218-DB 

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-312-2022 (O&M)

Kulwant Singh
State of Punjab and others

Vs.

...Appellant
...Respondent(s)

1.	Date when Order was reserved	05.05.2026
2.	Date of Pronouncement of Order	29.05.2026
3.	Date of uploading order	29.05.2026
4.	Whether operative part or full order is pronounced	Full
5.	Delay, if any, in pronouncing of full order, and reasons thereof	Not Applicable

CORAM: HON’BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON’BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Harinder Sharma, Advocate
for the appellant.

Mr. Yatin Bunker, AAG, Punjab.

Mr. Rai Singh Chauhan, Advocate
for respondent No.5.

Mr. Sahil Koundal, Advocate for respondent No.17.

DEEPAK MANCHANDA, J.

1. Through the present intra-court appeal, the appellant has assailed the impugned judgment dated 21.03.2022, whereby the writ petition filed by the appellant, being one of the petitioners therein, came to be dismissed.
2. The facts emerging from the pleadings in the present appeal are that the dispute pertains to partition proceedings in respect of land measuring 77 kanals 16 marlas situated in Village Pakhowal, Tehsil Dasuya, District

Hoshiarpur. Respondent No.5 initiated partition proceedings before respondent No.4—Assistant Collector, First Grade, Dasuya, whereupon the mode of partition was framed on 13.03.2009 (Annexure P-1), followed by the passing of the final order of partition on 31.08.2009 (Annexure P-2). Aggrieved against the said order, the appellant preferred an appeal before respondent No.3, which was allowed vide order dated 30.11.2010 (Annexure P-3) and the matter was remanded for fresh adjudication. Thereafter, the private respondents challenged the said order by way of a revision petition before respondent No.2—Divisional Commissioner, Jalandhar Division which came to be allowed vide order dated 15.01.2013 (Annexure P-4). Being dissatisfied with the aforesaid order, the appellant preferred a further revision petition before respondent No.1 i.e. the Financial Commissioner, which was partly allowed vide order dated 24.05.2018 (Annexure P-7), whereby the order passed by respondent No.2—Divisional Commissioner was set aside and the parties were directed to appear before respondent No.4 for further proceedings. The appellant thereafter assailed the said order by filing CWP No.30324 of 2018, which was dismissed by the learned Single Judge vide impugned judgment dated 21.03.2022. Hence, the present intra-court appeal.

3. Learned counsel for the appellant contends that the learned Single Judge has erroneously treated the substantial change in possession as a minor deviation. It is further contended that respondent No.1, while remanding the matter, wrongly confined the remand only to the issue of providing access/rasta, whereas the matter ought to have been remanded for fresh partition proceedings altogether, instead of permitting alienation and continuation of the defective proceedings. According to the appellant, the

learned Single Judge failed to appreciate that the entire partition proceedings stood vitiated on account of procedural illegality and arbitrary distribution of the land.

4. Learned counsel for the appellant also argued that the respondent No.5 was disproportionately benefited and the appellant has suffered loss of valuable frontage and compact possession, which has resulted in manifest injustice and irreparable loss qua partition proceedings and prays that the impugned judgment be set aside and fresh decision be made in accordance with Mode of Partition dated 13.03.2009 (Annexure P-1).

5. *Per contra*, learned counsel appearing on behalf of the respondent-State as well as learned counsel for respondent No.5 have opposed the submissions advanced on behalf of the appellant by contending that there is no infirmity in the impugned judgment passed by the learned Single Judge. It has been argued that, by and large, the possession of the parties has been maintained and the appellant has also been allotted a consolidated chunk in consonance with the settled principles governing partition proceedings and keeping in view his prior possession. They have further submitted that the grievance raised by the appellant regarding non-availability of access/rasta has already been duly redressed. Consequently, it is contended that the present intra-court appeal is devoid of merit and deserves to be dismissed.

6. We have perused the entire material available on record including the maps annexed with the present appeal and orders passed by the authorities culminated into the final order passed in the revision petition by respondent No.1-Financial Commissioner.

7. The relevant findings recorded by the learned Single Judge vide impugned judgment dated 21.03.2022 are reproduced hereunder:-

“Learned counsel for the petitioners has argued that even though access to the metaled road has been granted, the mode of partition has been violated. The petitioners have been granted their share at the backside whereas according to the mode of partition the possession of the parties was to be maintained. For this purpose he has referred to site plan Annexure P-8 which shows the position prepartition and Annexure A-2 which shows the position post-partition.

The mode of partition is on record as Annexure A-1. According to the same, possession was to be kept intact and less land was to be recovered from the adjoining area; every party was entitled to get frontage on the main road according to their share.

The argument can not be accepted because by and large possession of the parties has been maintained. The petitioners have been given a consolidated chuk in accordance with the settled principles of partition and keeping in view their previous possession. Their grievance regarding non-availability of access to the metaled road has been redressed. Some change in possession had to be carried out to complete the land of the parties in accordance with their shares and merely because the same has been done it can not be said that the mode of partition has been violated.”

8. Upon consideration of the pleadings on record as well as the submissions advanced by learned counsel for the respective parties, we find that the dispute pertains to partition proceedings between the appellant and the private respondents, which culminated in the framing of the mode of partition dated 13.03.2009 and the final order of partition dated 31.08.2009 (Annexures P-1 and P-2 respectively). A perusal of the mode of partition dated 13.03.2009 (Annexure P-1) reveals that both the parties, including the appellant as well as the private respondents, had jointly suffered statements before respondent No.4 and had expressed no objection to the proposed mode of partition, which thereafter came to be accepted. The relevant extract from the final order of partition dated 31.08.2009 is reproduced hereunder:-

“The field staff against prepared the partition papers and produce before the court, same were shown and to make understand to both the parties. That both the parties jointly recorded the statement before the court that presently they have no objections on the partition papers, so the partition paper prepared by the filed staff be accepted in the same position and applicants are directed to give the Rs.20/-. Stamp paper so that Sanad can be prepared.

9. Thereafter, the aforesaid order was challenged by the present appellant before respondent No.3 and vide order dated 30.11.2010 (Annexure P-3), the order dated 31.08.2009 (Annexure P-2) passed in pursuance of the partition proceedings was set aside and the matter was remanded back to respondent No.4. The remand was primarily on the ground that adequate opportunity of hearing had not been afforded to the appellant. Consequently, respondent No.4 was directed to grant proper hearing to the appellant and thereafter effect the partition afresh after removing all the irregularities. The parties were also directed to appear before the concerned Court. The relevant extract of the order dated 30.11.2010 (Annexure P-3) is reproduced hereunder:-

“That counsel for the appellant and respondents argued produce the authorities and after carefully verifying the documents in the record and I am arrived on the conclusion that Tehsildar-cum-AC 1st Grade, Dasuya, did not hear the appellant, so the order dated 31.08.2009 is set aside and Tehsildar-cum-AC 1st Grade, Dasuya is directed to carefully hear the appellant and again partition be effected after removing the all irregularities. So both parties are directed to appear in the Court of Tehsildar-cum-AC 1st Grade, Dasuya, on dated 30.11.2010.”

10. Thereafter, respondent No.5 assailed the aforesaid order before respondent No.2 by way of a revision petition under Section 13 of the Punjab Land Revenue Act, 1887 against the order dated 30.11.2010. Vide order dated

15.01.2013 (Annexure P-4), the order passed by respondent No.3 dated 30.11.2010 was set aside and the order dated 31.08.2009, passed pursuant to the partition proceedings accepting the mode of partition, was restored and upheld. However, liberty was granted to the appellant to avail the remedy before the competent Civil Court and, till such remedy was availed, the parties were restrained from alienating the suit property. The relevant extract of the order dated 15.01.2013 is reproduced hereunder:-

“I have heard the arguments advanced by both the parties and have also perused the record. The respondent may approach competent civil Court for remedial measure. Order of the lower court set aside. However, the parties are restrained to alienate the suit property for six months from today, so that any aggrieved party may approach civil Court/High Court, if they so desired.”

11. Aggrieved against the aforesaid order, the appellant again approached respondent No.1 by way of a revision petition, which came to be decided vide order dated 24.05.2018 (Annexure P-7). By virtue of the said order, respondent No.1 set aside the order passed by respondent No.2—Divisional Commissioner and remanded the matter back to respondent No.4 with a direction that a rasta/common passage be provided to the appellant as well as the respondents from the common chunk of land shown in purple colour adjoining the portions shown in green and yellow colours in khasra No.508/207. It was further directed that the remaining partition already carried out pursuant to the partition proceedings shall not be disturbed. The relevant extract of the order dated 24.05.2018 (Annexure P-7) is reproduced below:-

“I have heard the arguments of the Petitioners and the Respondent and have also gone through the record. The detailed Colour Map is attached at Page 28 and 29 of File which has been

carefully examined as Petitioners and Respondents drew attention to that repeatedly. The main argument which put forward by the Petitioners Kulwant Singh and Gurdev Singh is that earlier Shiv Charan was a co-sharer with them and as per pre partition map in every area he was in 1/3rd share. However, subsequently the area in one chunk of land having Khasra Nos. 592/207 and 578/207 abutting the main Metallic Road have been given to Shiv charan out of the land which was in joint possession with the Petitioners and Shivcharan. Admittedly by all parties by and large area which was in possession of Paramjit Singh and Hardayal Singh in green colour on the map and Harbans Singh and Avtar Singh shown in yellow colour after partition have not been disturbed and Petitioners have no grievance with them. The main contention of the Petitioners is that while Shivcharan was co-sharer with them and land shown in purple colour abutting the Metallic Road he was holding 1/3d share as co-sharer and Kulwant Singh and Gurdev Singh have been given no access to Metallic Road. Petitioners further submitted that after partition they have been given land shown in purple colour and major chunk of land is on the back side of this area and they have not been provided any Rasta to the Metallic Road. The Counsel for the Respondent No.1 submitted that Shivcharan's possession before and after partition is by and large the same with little adjustments and also any grievance against have submitted that Petitioner do not have any grievance against respondent No.1.

A perusal of the Map indicating the possession before partition and showing share of co-sharers after partition does indicate that while Kulwant Singh and Gurdev Singh and Shivcharan as co-sharers had an access to the road. However, subsequently after partition the situation changed and Shivcharan has been given a piece of land on the Metallic Road whereas the Petitioners have been given entire land in purple colour shown in the map on the back side having no access. This fact is admitted by all the parties. However, the Counsel for Respondent No.1 argued that the possession is as it existed in past. But the fact remains that access to the Metal Road has not been provided to the Petitioners. On an earlier hearing the Counsel for the Respondent No.1 had submitted that he had no objection if any proposal of Petitioners is considered without touching the land in his possession shown in Red colour on the Map. However, the fact remains that there is no access to Petitioners to Metal Road. This is important when one of the Petitioners has been working in Armed Forces and even Collector in his order has noted that opportunity of being heard was not given to them. Owing to above reasons I set aside the order of the Ld. Commissioner and remand the case back to Assistant Collector 1st Grade with the direction that vis-à-vis Petitioners and Shivcharan, a Rasta to Petitioners be provided within common chunk of land in Purple colour abutting Green colour and Yellow colour in Khasra No 508/207

Rest of partition carried out must not be disturbed. Parties are directed to appear before the Assistant Collector 1st Grade on 23.10.2018.”

12. After examining the relevant maps available on record as well as the findings recorded by the various revenue authorities, we do not find any merit in the submissions advanced by learned counsel for the appellant. The learned Single Judge has rightly observed that the appellant had already been duly compensated by allotment of his share on the back side in accordance with the mode of partition, which had been consciously accepted by the appellant without raising any objection at the relevant stage. It also stands admitted that the possession of the respective parties was to be maintained while effecting the partition proceedings.

13. Further, it is well established that partition can never be carried out with mathematical precision and some adjustments are always required to be made considering various factors like number of co-sharers in the joint land, shape of the land parcel under partition, location of land (whether abutting the road/passage or near to village abadi or town etc.), nature/value of land, source of irrigation, existing possession of the parties, provisioning of passage(s)/water-course(s), construction of hutments/houses etc. There may be other factors as well which may call for carving out of blocks of respective co-sharers, in a particular manner.”

14. We have also examined the site plan (Annexure P-8), which depicts the pre-partition position, as well as Annexure A-2 showing the post-partition position with reference to the mode of partition i.e. A-I. A perusal thereof reveals that the possession of the parties was intended to be substantially maintained and only a minimal portion of land was to be adjusted

from the adjoining area. It was further contemplated that each party would be entitled to frontage on the main road proportionate to its respective share. Further after considering the entire material available on record as well as the findings recorded by the learned Single Judge, we are also of the considered view that certain minor changes in possession were inevitable in order to allot land to the respective parties in accordance with their shares. Merely because such adjustments were effected cannot lead to the conclusion that the mode of partition was violated or abandoned. By and large, the sanctity of the mode of partition has been preserved and, in our opinion, the same has not been disturbed by any stretch of imagination.

15. Given the above discussion, we believe that there is no perversity, infirmity or error in the impugned judgment dated 21.03.2022 passed by learned Single Judge, hence, same does not require any interference.

16. Consequently, the Intra-Court appeal stands dismissed.

17. Pending civil miscellaneous application, if any, stands disposed of.

(DEEPAK MANCHANDA)
JUDGE

(HARSIMRAN SINGH SETHI)
JUDGE

29.05.2026

vanita

Whether speaking/reasoned :
Whether Reportable :

Yes
No