



# “Provisions Relating To Partition Of Property Under The Punjab Land Revenue Act, 1887: A Critical Appraisal”

Dr. Gurdeep Kumar,

Assistant Professor,

Lala Hansraj Phutela College of Law, Sirsa.

**Abstract:** The object of this paper is to examine the provisions of this act in relation to partition and their relevancy in present time. The partition refers to division of joint shares in the land. It is a process in which joint share in the property is divided. Partition can be made of agriculture land, residential land or commercial land. Thus, partition can be of agricultural or non-agricultural land. In different states different procedures are followed for the partition of the property. In Punjab and Haryana, partition of agriculture land paying land revenue is determined by the revenue officer. Co-owners may also make an agreement of partition with the consensus of all. Therefore, partition can be contested partition before the revenue officer or it may be of uncontested partition with the consensus of co-sharers. The Punjab Land Revenue Act, 1887 amended by 2017, 2020 and 2021 contains detailed provisions for partition of the agricultural land paying land revenue. Primary method for data collection has been used under this research paper. For referring foot notes, citation style of Indian Law Institute has been followed.

**Key Words:** Partition, Revenue Officer, Agricultural Land, Land Revenue, Joint Ownership. **Introduction:**

Partition is very important aspect of property. All the joint shares in the land can be partitioned. Land for partition includes agricultural land, commercial land and residential land and houses. Therefore, types land to be partitioned may be agricultural or non-agricultural land. In India various types of procedure are available in different statutes for partition of property. Procedure can be different in different parts of India. In Punjab and Haryana the Punjab Land Revenue Act, 1887 is followed in case of partition of agricultural land paying land revenue. Thus, it is in the sole domain of the revenue court in the state of Punjab and Haryana to divide joint ownership and joint tenancy. Chapter-IX of the act from sections 110-126 provides for detailed provisions in relation to partition of share of joint owners in the land and joint tenant in the

tenancy. To pace up the proceeding for partition, some provisions have been amended in this act by the amendments of 2017, 2021 for Haryana and by 2020 for Punjab.

**Meaning of Partition:** Partition of land refers to the division of individual shares in joint property. In case of joint property, the ownership rights of all the owners are equal. Partition is a process before the revenue officer in which shares in the property of joint owner or tenant are made separate and they become entitle to possession of their respective share. In undivided property, every co-sharer has right to use and enjoy each and every portion of the land. After partition, every portion of the property gets new title and each owner gives up his claim in the other portion.

#### **Advantages of Partition:**

- Owner of the property can use or dispose the property according to his will.
- Separate number of ownership is allotted to him by the revenue department.
- Liability to pay land revenue becomes individual or separate.
- It solves many problems in relation to paying land revenue.
- Each co-owner gets a share as per his entitlement.
- Owner can restrain interference of any other person in his own share of property.
- It makes an end to the future disputes in relation to possession and use of the property.

**Types of Partition:** Partition of the share in property is of two types contested partition and uncontested partition. In contested partition, co-owners do not consensual to the partition of the property and choose to contest the case. Contested partition can be affected by the revenue officer upon the application of the any of the parties wishes to go for partition. It is on the basis of principle of good to good and bad to bad land i.e. co-owners is granted share of equal value. Second, uncontested partition can be affected by the parties privately with family agreement.

**Procedure of Partition:** The Revenue officer has power to make partition of property under chapter IX of the act. Provisions in relation to power and procedure of partition have been provided from section 110 to 126 of the act. The revenue officer who conducts the proceedings for partition under this chapter shall be assistant collector second grade or of rank above such second grade. Procedure of partition by the revenue officer has been briefly described as under:

**Application for Partition:** Application can be moved before the revenue officer for the partition of share in the property by any joint owner of the land or any joint tenant of a tenancy.<sup>1</sup> However, revenue officer may, at the first hearing, add any co-shares as applicant if that co-shares desire to partition his share.<sup>2</sup> Revenue officer hearing the application must be equal or above the rank of assistant collector second grade.<sup>3</sup> In state

<sup>1</sup>The Punjab Land Revenue Act, 1887 (XVII of 1887), s.111.

<sup>2</sup>*Id.*, at, s.114.

<sup>3</sup>*Id.*, at, s.126.

of Haryana the application for is made before the *Tehsildar*. Owner or tenant must have right to the share in the property at the time of making application therefore:<sup>4</sup>

- Owner or tenant making the application must be mentioned in the records of rights at the date of making application.
- Decree of the court has established their share in the land or tenancy before the date of making application and their right must be subsisting at the date of application.
- Right to share has been acknowledged by the parties to the application.

#### **Documents to be attached with the Application:<sup>5</sup>**

- Proposed plan of partition which indicates the quality and location of land to be partitioned.
- A copy of the latest Jamabandi.

**Restrictions on Partition of Certain Properties:** After examination of the parties and other person, if it appears to the revenue officer that there is no sufficient ground for partition, he may disallow the application for partition. This is general rule and applies in each case, of whatever the property is under partition proceeding before the revenue officer. Therefore, revenue officer has vast power in relation to partition of the property. However, he will give reason for such refusal.<sup>6</sup>

In contested proceeding, the place of worship and burial grounds cannot be partitioned between co-shares if they are held in for common use. Revenue officer shall refuse the application in relation to this common land. However, it can be divided in uncontested partition by the agreement of the co-sharers. Co-sharers may also make rules for use of it one after the other.<sup>7</sup>

Where the properties to be divided are any watercourse, well, any grazing ground, and any land which is village site paying land revenue the revenue officer may decline the application on the ground that it may cause inconvenience to the co-sharers or person interested in it. He may also refuse the application on the ground that partition may decrease the usefulness of this land for the co-owners.<sup>8</sup> However, revenue officer may make rules for proper administration of the property. He may determine the extent and manner in which co-owners may use it. He may also decide the proportion of expenditure or profit to be paid or divided among co-shares.<sup>9</sup>

Where any of the joint owners make application for partition of the land comprised in tenancy of occupancy tenants and any of the tenants make objections against the application on the ground that land may divide

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<sup>4</sup>The Punjab Land Revenue (Haryana Amendment) Act, 2017, (12 of 2017), s.111.

<sup>5</sup> *Ibid.*

<sup>6</sup> The Punjab Land Revenue Act, 1887 (XVII of 1887), s.115.

<sup>7</sup>*Id.*, at, s.112 (1).

<sup>8</sup>*Id.*, at, s.112 (2).

<sup>9</sup>*Id.*, at, s.119.

into many parts which may effects their tenancy rights, the revenue officer may refuse the application. And where objections are raised by any other co-owner, the revenue officer shall disallow the application.<sup>10</sup>

**Notice to Respondents:** Revenue officer after receiving application shall cause , if it is not objectionable, notice to be send to the opposite parties/ respondents who have not joined as applicant in the application. The respondents shall reply to the application and shall submit their plan of partition with cogent reasons.<sup>11</sup>In case of partition of share in the tenancy, revenue officer shall send notice to the landowner of the property. He may also send notice to any other interested person in the partition to submit their replies and plan of partition with cogent reasons.<sup>12</sup>

**Admission of Application:** The revenue officer may refuse the application for partition at the first date of hearing after examination of co-sharers and other person, if in his opinion there is no good and sufficient ground.<sup>13</sup> But, if he allows the application, he shall ascertain the questions, between the person interested in the partition, as to the title and as to the property to be divided or mode of making partition.<sup>14</sup>

**Settlement of Dispute by Conciliation:** Dispute of partition may be referred for conciliation with the intervention of the elders where the property is situated. Where it appears to the revenue officer that a settlement may be affected by conciliation he may formulate or reformulate the terms of the settlement and refer the dispute for conciliation through elders. If settlement is entered into by the parties through written deed, the revenue officer shall pass the partition order in accordance with the deed and issue a partition deed. Where the dispute is not settled by conciliation, the revenue officer shall hear the case on matter and decide accordingly.<sup>15</sup>

**Power to Refer Dispute to Arbitration:** Revenue officer with the consent of the parties may refer partition dispute pending before him to the arbitration. Further, a collector or assistant collector first grade has power to refer the dispute to the arbitration without the consent of the parties.<sup>16</sup> He may also decide the number of arbitrators to be appointed by the each parties and period within which award is to be made.<sup>17</sup> Revenue officer may accept, modify or reject the award after hearing both the parties and after recording reasons for doing so in his decision.<sup>18</sup>

**Disposal of Certain Questions:** Where there is question as to title, revenue officer may stay the proceeding till the decision of the competent court on question of title.<sup>19</sup> He may himself decide that question if he has jurisdiction to decide it as a revenue court and shall follow the procedure mentioned in the Punjab Tenancy Act, 1887.<sup>20</sup>

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<sup>10</sup>*Id.*, at, ss.112.(3), (4).

<sup>11</sup>The Punjab Land Revenue (Haryana Amendment) Act, 2017, (12 of 2017), s.113 (a).

<sup>12</sup>*Id.*, at, s.113 (b).

<sup>13</sup>The Punjab Land Revenue Act, 1887 (XVII of 1887), s.115.

<sup>14</sup>*Id.*, at, s.116.

<sup>15</sup>The Punjab Land Revenue (Haryana Amendment) Act, 2017, (12 of 2017), s.115A.

<sup>16</sup>The Punjab Land Revenue Act, 1887 (XVII of 1887), s.127.

<sup>17</sup>*Id.*, at, s.128 (1).

<sup>18</sup>*Id.*, at, ss.134 (1), 135(1).

<sup>19</sup>*Id.*, at, s.117 (1).

<sup>20</sup>*Id.*, at, s.117(2)a.

Where question of title is such that civil court has jurisdiction to decide it, revenue officer shall follow the procedure of the Civil Procedure Code, 1908. Contents of the judgment and decree shall be as mentioned in the order 20 of the Civil Procedure Code, 1908. Appeal from such decree shall lie to the District Court and from appellate decree of District Court to the High Court. The District Court or High Court may stay the proceeding before the revenue officer till the finality of the appeal.<sup>21</sup>

Where there is question as to property to be divided or mode of making partition, the revenue officer shall decide it after inquiry in the question if necessary. He shall give reason for his decision.<sup>22</sup> Aggrieved party from the order may file appeal within 15 days from the date of order to the superior authority. In case of appeal filed, authority shall inform the revenue officer and on such information revenue officer shall stay the proceeding may till the disposal of the appeal. There shall be no second appeal and revision against appellate order. If applicant is not satisfied with the original order or appellate order he may withdraw the application for partition with the permission of the revenue officer. Revenue officer may impose fine upon applicant withdrawing the application or may impose other conditions as deem fit.<sup>23</sup>

**Instrument of Partition:** The revenue officer shall cause an instrument of partition to be prepared and date of partition to be recorded when partition was affected.<sup>24</sup>

**Delivery of Possession:** After partition, the owner or tenant shall be entitle to take in to their possession share allotted to them against the other co-owners or their legal representative. Where the possession of the share of land allotted to owner or tenant is not handed over to them, he may make application to revenue officer within 3 years from the date of partition. The revenue officer upon application shall give effect to instrument of partition and shall cause the possession to be handed over to them.<sup>25</sup>

**Time Limit for the Disposal of Partition Case:** The revenue officer will decide the partition proceeding within the period of 6 months from the date of application for partition. If he is not able to decide the case within such period he shall submit the case to the district collector within 15 days prior to the expiry of such period of 6 months for extension of time. Collector may grant one time extension for 3 months in exceptional cases after recording reasons.<sup>26</sup>

**Effect of Partition:** After partition, the landowners shall be jointly liable to pay land revenue in the absence of express consent of the Financial Commissioner for partition. Therefore, the liability of the joint owners to pay land revenue shall depend upon the consent of the Financial Commissioner. Where partition is affected without the express consent of the Financial Commissioner, the liability of the land owners shall be joint and several. Where the partition of the share has taken place with the express consent of the Financial Commissioner the liability to pay land revenue shall be separate.<sup>27</sup> While giving consent for partition the

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<sup>21</sup> *Id.*, at, s.117.

<sup>22</sup> *Id.*, at, s.118 (1).

<sup>23</sup>The Punjab Land Revenue (Haryana Amendment) Act, 2017, (12 of 2017), s.118 (3)

<sup>24</sup>The Punjab Land Revenue Act, 1887 (XVII of 1887), s.121.

<sup>25</sup> *Id.*, at, s.122.

<sup>26</sup>The Punjab Land Revenue (Haryana Amendment) Act, 2021, (19 of 2021), s.118A.

<sup>27</sup>The Punjab Land Revenue Act, 1887 (XVII of 1887), s.110 (1).

Financial Commissioner may attached conditions to the consent and the parties shall be bound to obey those conditions.<sup>28</sup>

**Private Partition:** Co-owners may enter in to an agreement for partition of their share in the land by mutual consent. After mutual agreement, any co-owner may apply to the revenue officer for confirming the partition. The revenue officer, after receiving the application and after such inquiry as deems necessary, may make an order affirming the partition.<sup>29</sup> The Revenue officer may also pass directions in relation to portion of land revenue to be paid by the co-owners,<sup>30</sup> and possession of the property.<sup>31</sup> The revenue officer shall cause an instrument of partition to be prepared and date of partition to be recorded when partition was affected.<sup>32</sup>

**Partition between Land Owners not Related by Blood:** Section 111A was added by the Punjab Land Revenue (Haryana Amendment) Act, 2021. This section applies to partition, only in cases where co-owners are not related by blood or where co-sharers are not husband and wife.<sup>33</sup>

Section 111A lays down that the revenue officer shall issue a sue moto notice to all the co-sharers to get their land partitioned by mutual consent within six months from the date of issue of the notice. This period of six months can be further extended of up to six months upon the application of any co-owner.<sup>34</sup>

Where an agreement in relation to partition was entered into among the co-sharers by mutual consent, the revenue officer shall affirm that partition within one month and direct the patwari to record the entry in mutation register.<sup>35</sup> While entering in to mutual agreement the co-owners are free to transfer land amongst themselves by way of exchange, gift, or sale. No stamp duty shall be levied on that transfer.<sup>36</sup> No appeal shall lie against partition by mutual consent.<sup>37</sup>

Where co-sharer failed to carry out partition by mutual consent, the revenue officer shall proceed to adjudicate and decide partition as in contested cases under section 111 of the act.<sup>38</sup> He shall adjudicate and decide the case within six months. Order of revenue officer in contested partition shall not take affect for 3 months from the date of order. A second opportunity shall be given to the parties to get partition by mutual consent within these 3 months.<sup>39</sup> An appeal may be preferred before the collector within the 30 days from

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<sup>28</sup>The Punjab Land Revenue (Punjab Amendment) Act, 2020, (21 of 2020), s.110.

<sup>29</sup>The Punjab Land Revenue Act, 1887 (XVII of 1887), s.123.

<sup>30</sup>*Id.*, at, s.120.

<sup>31</sup>*Id.*, at, s.122.

<sup>32</sup>*Id.*, at, s.121.

<sup>33</sup>The Punjab Land Revenue (Haryana Amendment)Act,2021, (19 of 2021), s.111A (1) proviso.

<sup>34</sup>*Id.*, at, s.111A (2).

<sup>35</sup>*Id.*, at, s.111A (3).

<sup>36</sup>*Id.*, at, s.111A (6)

<sup>37</sup>*Id.*, at, s.111A (7)

<sup>38</sup> *Id.*, at, s.111A (4).

<sup>39</sup>*Id.*, at, s.111A (6).

the date of order of partition in contested case.<sup>40</sup> However, no appeal or revision shall lie from the appellate order of the collector.<sup>41</sup>

**Conclusion:** It appears from the study that detailed provisions have been made for the partition of the share in the property. The shares of joint landowners in the land or shares of joint tenants in the tenancy may be separated. In spite of the detailed provisions, there is a lot of difference between the provisions mentioned in the act for partition and procedure followed by the revenue officers. In present day, in proceeding for partition various maps are prepared such as Map-A, (*Naksha-alif*) Map-B, (*Naksha-be*) Map-C (*Naksha-jim*). These maps are prepared by the revenue officer during the proceeding but there is no provision mentioned in the act regarding these maps. However, these maps are very essentials for partition of property but preparation of the maps takes too much time.

Amendments have been made in 2017 and 2021 to pace up the proceeding before the revenue officers in relation to partition of property. But, in present day, in spite of the amendments, partition of property takes a lot of time. Nature of proceedings, appeals or revisions consumes lot of time. Still today, the partition of property is very complex procedure and takes a lot of time.

#### **Suggestions:**

- Government should apply the provisions of the act strictly.
- Provisions related to Adjournment of the proceeding should be included in the act and penalty should be provided in case of delay by the parties or revenue officers.
- New techniques should also be introduced in the partition proceeding.
- Parents or elders should divide their property in their life time.

#### **References:**

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<sup>40</sup>*Id.*, at, s.111A (9).

<sup>41</sup>*Id.*, at, s.111A (10).

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