



HARYANA STATE LAW COMMISSION

FOURTH REPORT

Recommendation to amend Section 54
of The Code of Civil Procedure

Government of Haryana

HARYANA STATE LAW COMMISSION

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Government of Haryana

HARYANA STATE LAW COMMISSION

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21.06.2022

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To get actual physical possession of share of an undivided estate/immovable property assessed to the payment of revenue to the government i.e. separate possession of a share of such an estate, in a suit for partition, is very difficult for the litigants as the procedure under the existing law is very complicated. The Hon'ble Supreme Court in its decision in the case of **Shub Karan Bubna alias Shub Karan Prasad Bubna Vs. Sita Saran Bubna and others**, reported in (2009)9 SCC 689 observed in paras 27 and 28, as under:

"Paragraph 27: In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get

a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant.

Paragraph 28: *We hope that the Law Commission and Parliament will bestow their attention on this issue and make appropriate recommendations /amendments so that the suit will be a continuous process from the stage of its initiation to the stage of securing actual relief."*

In view of the above observation made by the Hon'ble Supreme Court in paras 27 and 28 of the Judgment, the State Law Commission has taken up the matter for consideration.

2. The facts of the case before the Supreme Court in nutshell were as under:

One Sita Saran Bubna (hereinafter referred to as 'first respondent') and his mother filed a suit for partition against one Shub Karan Bubna alias Shub Karan Prasad Bubna (hereinafter referred to as 'the petitioner') and two others in the court of the First Addl. Judge, Muzaffarnagar in the year 1960 for partition and separate possession of their one-third share in the plaint schedule properties, i.e., three non-agricultural plots, some movables and for rendition of accounts. After contest the suit was decreed on 25-2-1964 directing a preliminary decree for partition

to be drawn in regard to the one-third share of the plaintiffs in the said plots and a final decree to be drawn up through appointment of a commissioner for actual division of the plots by metes and bounds. Feeling aggrieved, the petitioner and others filed an appeal before the Patna High Court which was dismissed on 29-3-1974. The first respondent filed an application on 01-5-1987 for drawing up a final decree. The petitioner filed an application on 15-4-1991 to drop the final decree proceedings as it was barred by limitation. The said application was dismissed by the trial court holding that once the rights/shares of the plaintiff had been finally determined by a preliminary decree, there is no limitation for an application for effecting the actual partition/division in accordance with the preliminary decree, as it should be considered to be an application made in a pending suit. The said order was challenged by the petitioner in a revision petition which was dismissed by the High Court by order dated 15-1-2009. The petitioner filed Special Leave Petition seeking leave to appeal against the said decision of the High Court.

3. The appellant contended that when a preliminary decree is passed in a partition suit, a right enures to the plaintiff to apply for a final decree for actual division of the suit properties by metes and bounds; that whenever an application is made to enforce a right or seeking any relief, such application is governed by the law of

limitation; that an application for drawing up a final decree would be governed by the residuary Article 137 of the Limitation Act, 1963, which provides a period of limitation of three years; that as such right to apply accrues on the date of the preliminary decree, any application filed beyond three years from the date of preliminary decree, i.e., 12-3-1964, or at all events beyond three years from the date when the High Court dismissed the defendant's appeal, i.e., on 29-3-1974 would be barred by limitation. The Hon'ble Supreme Court after discussing at length dismissed the Special Leave Petition holding that when a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till the final decree is passed. Further, it is held that it is the duty and function of the court and to perform such function does not require a reminder or nudge from the litigant. Thus, what is held by the Supreme Court is that no limitation is applicable to an application filed by the first respondent on 1-5-1987 for drawing up of a final decree. The Supreme Court in para 31 of the Judgment concluded as under:

"In so far as final decree proceedings are concerned, we see no reason for even legislative intervention. As the provisions of the Code stand at present, initiation of final decree proceedings does not depend upon an application for final decree for initiation (unless the local amendments require the same). As noticed above, the Code does not contemplate filing an application for final decree. Therefore, when a preliminary decree is passed in a partition suit, the proceedings should be

continued by fixing dates for further proceedings till a final decree is passed. It is the duty and function of the court. Performance of such function does not require a reminder or nudge from the litigant. The mindset should be to expedite the process of dispute resolution."

All this shows that the plaintiffs could not get their share physically till 2009, to which they were held entitled to in the preliminary decree in 1964. This is the pitiable condition of the provision of passing of final decree. Therefore, there shall be a comprehensive provision of section 54 of CPC touching upon all the aspects of physical partition and sale.

4. **History of law of Section 54 of C.P.C. in Haryana:**

Sec.54 reads as under: - **Partition of estate or separation of shares:**

"Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any Gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates".

5. The other relevant provisions of CPC relating to partition are given below:

Order 20 Rule 18: "Decree in suit for partition of property or separate possession of a share therein - Where the Court passes a decree for the partition of property or for the separate possession of share therein, then, --

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any Gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of Section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in

the property and giving such further directions as may be required."

Order 26, Rule 13:

"Commission to make partition of immovable property.

- Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by Section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree."

6. Preliminary decrees are divided into two classes, those in which further action for final decrees is to be taken forthwith by the courts *suo-moto* without any application from a party and those in which subsequent proceedings for passing final decrees do not arise as a matter of course. The former are directed to be treated as pending and shown as such in the monthly returns and the records of such suits are to be retained in the original court until final decrees are passed therein, while the latter are to be treated as disposed of and shown as such in the monthly returns and the records should be forwarded to the record keeper of the District Court and may be called for when subsequently required. A partition decree under Order 20, Rule 18(2) is included in the former class of preliminary decrees and one under Order 20, Rule 18(1) is included in the latter class, be it noted, of preliminary decree. These instructions are being followed ever since the Civil Procedure Code of 1908 was enacted, and a partition decree, whether under Sub-rule (1) or under Sub-rule (2) of Rule 18, is classed as a preliminary decree (See AIR 2001 Bom.303

Annasaheb Rajaram Nagane and another Vs. Rajaram Maruti Nagane and others).

7. Under this provision (Sec. 54 and Order 20 Rule 18(1)) when court passes decree declaring rights of the parties and entitlement for partition in regard to agricultural lands, the suit ends once for all. In the case of the execution of the decrees pertaining to partition and separate possession of agricultural lands assessed to revenue, the Civil Court only declares the shares of the parties and the authority concerned has to effect partition or division by metes and bounds, as envisaged by Section 54 of C.P.C. Collector is the authority concerned to effect partition. Once the papers were sent to the Collector, the Civil Court has no control over the proceedings taken by the Collector. The Civil Court cannot direct the Collector to effect partition in a particular manner after the papers were sent to him. Therefore, Section 54 C.P.C. makes it absolutely clear that the execution is not at all contemplated in the case of decrees for partition and division of agricultural lands. What the Civil Court has to do is to transmit the papers to the Collector for actual partition and possession.

8. **In Ganapatrao Roajirao Desai v. Balavant Krishnaji Desai (1965)2 Mys.L.J. 768** Full Bench of Karnataka High Court had already held in:

Para 16.....

"in respect of matters entrusted to the Collector under Sec. 54 of the CPC, neither the Code nor any other

provision of law empowers the Civil Court to correct, modify or re-open the partition effected or the orders thereto passed by the Collector.(page 780).

Para 17.....

Parties aggrieved by partition effected by the Collector under Sec. 54 of the CPC have a right of appeal under State Land Revenue Act to the Divisional Commissioner or to the Officer immediately superior to the officer who effects the partition (page 785)."

9. The revenue departments generally not accustomed to carry out such work, were not able to cope up with the same, entrusted to it by civil court. There were so many representations from Bar Associations resultantly the Karnataka State legislature amended section 54 of the Code of Civil Procedure (Karnataka Amendment Act, 1995) enabling the court itself to effect partition.

10. Problem to be tackled as desired by Supreme Court:

Problem of delay in physical partition has to be tackled by amending legislation as suggested by the Supreme Court of India. For that purpose one has to remember that the suit for partition could relate to agricultural land and/or non- agricultural property. Is it not better to have uniform law for all kinds of property is a thought which should be bestowed in this regard?

11. Categories of suits and problems:

A study of types of litigations approaching courts which ultimately call for partition of property can be broadly classified as under:

(i) Simple suit for partition, be it of agricultural land or non- agricultural property, where there is general denial as defence and as such admits of passing preliminary decree declaring rights and leaving parties to work out physical partition in final decree proceeding.

(ii) Complicated suits where either alienations done are liable to be ignored as not binding or need to be adjudicated as to its validity as preliminary to find out eligibility to get preliminary decree for partition.

- Though it is possible to suggest different procedure for different category of suits mentioned above, in the interest of uniformity of legislation, it would be proper to bring about preliminary decree in all categories of suits, after deciding rights of all parties and to relegate the stage of final decree later on in all categories of suits.

- Study of litigations also indicates that normally

a party who is in possession of property and gets some benefit out of it would resist the proceedings so as to gain as much time as possible. It is really this trend which keeps the case pending. The procedural laws, with right of appeal and revision/writ, enable the dilatory tactics to be adopted by such party.

- Is it possible to provide some remedy by way of penal provision to overcome this trend and to see that the party in possession does not bring about such delaying tactics is the other consideration which should weigh with the proposed legislation.

12. Suggestion of proposed legislation.

In place of existing Sec. 54, the following section shall be substituted,

"54 Partition of immoveable/moveable property through court process:-

1. In a suit where the ultimate relief claimed is one for partition of the properties including immoveable property involved in the suit, the Court may pass an interim decree, be it called preliminary decree, declaring the entitlement of right of partition and

declaring quantum of share of each of the parties entitled as per finding of the Court irrespective of whether such party has sought separation of his share or not. If any such party to whom share is declared has not paid court fee payable under law, the same shall be payable before such party takes his share during the final decree proceedings.

2. Any of the parties to such preliminary decree, having right to obtain physical partition of the property as per the said declared entitlement, may apply to the court to bring about physical partition of the property involved in the said decree for partition. Such application can be filed by the successor of the party so entitled to apply. Such application shall be numbered and treated as final decree application.
3. Upon service of notice to the other parties concerned on the application that may be presented under sub-section (2), it shall be competent for the Court to appoint either an advocate or an engineer or any other suitable person including any surveyor or revenue official of the Government as the court deems fit, as Commissioner, to bring about physical partition of immoveable property.
4. In such final decree application, based on such Commissioner's report or by means of any other acceptable evidence, if the Court comes to the

conclusion that such physical partition is not equitably possible, it shall be competent for the Court to bring about sale of the said immoveable property under directions and supervision of the court and after deduction of all lawful expenses distribute the net sale proceeds to the parties entitled to the same. If sale is ordered, Court shall fix the terms of sale and direct the commissioner to bring about auction of the property. When the sale so held is confirmed, the Court shall issue sale certificate to the successful bidder declared as purchaser. Such purchaser shall be entitled to obtain possession of the property covered by the sale certificate through process of court in the same proceedings.

5. In the course of such proceeding if the Court is satisfied that any of the party to the suit, found to be in possession of such property, caused undue delay to bring about actual division or sale as mentioned above, the Court may impose on such erring party such exemplary cost as the circumstances of the case may warrant, including by way of monetary compensation payable to the aggrieved party. Such exemplary cost and compensation when fixed shall be a charge on the property allotted to the erring party found to be guilty of causing such undue delay.

6. In the course of bringing about physical partition, it shall be competent for the court to issue suitable directions and exercise control for the progress of the proceedings of partition. After receiving report of the Commissioner, the court shall consider the same and may pass suitable order accepting it, modifying it or call for further report. The finally accepted report and sketch, if any, shall form part of the final decree which shall be passed by the court. The parties shall be bound to pay the stamp duty in accordance with Haryana Stamp Act for engrossing the final decree.
7. If the Court appoints Taluk Surveyor or any other revenue official of the area to bring about such partition in relation to agricultural lands, the Court shall send the intimation to the jurisdictional Tahasildar who shall supervise the work of such official. It shall be the duty of such official to act according to the order of the court. If the Court is satisfied on the basis of the materials placed before it that the official is not performing the duty effectively, the Court may send report to the High Court to initiate proceedings of contempt of court against such erring official.
8. If the property to be partitioned consists of moveable property and chose in action such as deposits in bank and the like, the Court may bring

about such partition by suitable mode as befits such property involved for partition and pass suitable order thereon.

9. For the purpose of bringing about partition in the manner aforesaid, the Court may direct the parties to either deposit in advance or pay from out of the sale proceeds of the partible property, such sum of money as may be deemed necessary by the Court for meeting the expenses of bringing about the partition or sale as aforesaid.
10. The Revenue and Survey Department shall be bound to accept and implement the partition brought about by the Court in the manner aforesaid.

Explanation I: Property involved in the suit as mentioned in sub-section (1) shall be such property which the Court finds as partible in the course of the judgment. Its description may be corrected suitably if commissioner reports any error after holding local inspection.

Explanation II: For the purpose of sub-section (6), the Court may examine the circumstances of the case whereby applications are filed one after the other and the court has found it untenable and as such the court forms

the objective opinion that the concerned party was hindering the progress of the proceeding to bring about partition.

13. Objects and reasons for the above provisions:

At present law is spread out half heartedly in Sec. 54, Order 20 Rule 18 and Order 26 Rule 13 of CPC. We need a comprehensive provision touching upon all aspects of physical partition and sale. Hence, the section of this nature is drafted.

- (1) Preliminary decree is quite necessary in partition suit to relegate the actual division to second stage. In view of the very nature of partition suit physical partition cannot be done simultaneously with declaration of entitlement for partition. Right has to be declared in favour of all parties who are entitled, because otherwise while physically dividing the property one who does not get his share will start filing application for grant of share. To avoid such contingency, rights of all should be declared during preliminary decree. What are the properties to be physically divided can be ascertained even at the stage of final decree. This is necessary to avoid multiplicity of suits. For this purpose, Explanation I is drafted. This is to avoid present ambiguity and the cause for delay. If revenue of Court fee has to be protected a

provision can be added to give direction to pay court fee before taking the share. Subsection (1) is drafted on this basis.

(2) Plaintiff himself need not be applicant for final decree; any party to whom share is declared in preliminary decree can apply for final decree. Sub-section (2) is clarificatory of this aspect. If party dies or assigns his rights, his successor is enabled to apply.

(3) During final decree, only notice has to be issued to concerned parties, and there is no need for an enquiry. Preliminary decree concludes all aspects. Hence appointing commission to bring about physical partition has to be ordered. No other enquiry is necessary. Who can be commissioner for such purpose is choice of the court. At present for non-agricultural property court commissioner and for agricultural land revenue officials are to be appointed in view of Order 26 Rule 13 and Order 20 Rule 18 of CPC. This has to be avoided and to bring about uniform certainty about who can be appointed as commissioner for division discretion is given to the court. Hence, the proposed sub-sections (3) and (4). These Sub-sections are drafted in such a way that as regards to non-partible property, sale by auction has to be ordered. In that regard, the present problem of executing sale deed when auction takes place is

avoided. Registration process has become complicated with requirement to comply with the computerized system. If sale certificate is issued, stamp duty will be collected and as regards registration the procedure is as per sec. 89 of Registration Act. Copy of sale certificate has to be filed and that is the end of the matter. Hence, sub-section (4) is drafted, and it is clarificatory and conforms to the present practice also.

(4) Sub-section (5) is the penal provision meant to check dilatory tactics. It is another form of compensatory costs which is known to CPC. What is delaying tactics is left to court's decision by introducing Explanation II as drafted.

(5) Sub-section (6) is drafted to clarify that the court is having ultimate say in the matter of partitioning the property.

(6) Sub-section (7) is drafted relating to agricultural land. To prevent arguments of propriety of Tahasildar delegating his work to his subordinate, proposed sub-section (7) is drafted, enabling any revenue official to be commissioner. If revenue officials are appointed as commissioner for a division, how it is to be regulated is indicated in it. To curb the delay by such an official, power to punish for contempt is

provided in it.

(7) Sub-section (8) is drafted to cover partition of moveable, bank deposits etc. At present, there is no specific provision in this regard.

The above section can be substituted in the place of present Sec. 54. Pending cases would not be affected because either Court Commissioner or revenue officials as Commissioner are covered by the section as now drafted.

If section is drafted as suggested, it will not cost any financial burden to the State. Hence, amendment can be done without financial repercussions on the exchequer.

RECOMMENDATION

The Law Commission recommends substitution of Section 54 of CPC by the following section:

"54. Partition of immoveable/moveable property through court process:-

- (1) In a suit where the ultimate relief claimed is one for partition of the properties including immoveable property involved in the suit, the Court may pass an interim decree, be it called preliminary decree, declaring the entitlement of right of partition and declaring quantum of share of each of the parties entitled as per finding of the Court irrespective of whether such party has sought separation of his share or not. If any such party to whom share is declared has not paid court fee payable under law, the same shall be payable before such party takes his share during the final decree proceedings.

- (2) Any of the parties to such preliminary decree, having right to obtain physical partition of the property as per the said declared entitlement, may apply to the court to bring about physical partition of the property involved in the said decree for partition. Such application can be filed by the successor of the party so entitled to apply. Such application shall be numbered and treated as final decree application.

- (3) Upon service of notice to the other parties concerned on the application that may be presented under subsection (2), it shall be competent for the Court to appoint either an advocate or an engineer or any other suitable person including any survey or revenue official of the

Government as the court deems fit, as Commissioner, to bring about physical partition of immoveable property.

(4) In such final decree application, based on such Commissioner's report or by means of any other acceptable evidence, if the Court comes to the conclusion that such physical partition is not equitably possible, it shall be competent for the Court to bring about sale of the said immoveable property under directions and supervision of the court and after deduction of all lawful expenses distribute the net sale proceeds to the parties entitled to the same. If sale is ordered, Court shall fix the terms of sale and direct the commissioner to bring about auction of the property. When the sale so held is confirmed, the Court shall issue sale certificate to the successful bidder declared as purchaser. Such purchaser shall be entitled to obtain possession of the property covered by the sale certificate through process of court in the same proceedings.

(5) In the course of such proceedings, if the Court is satisfied that any of the party to the suit, found to be in possession of such property, caused undue delay to bring about actual division or sale as mentioned above, the Court may impose on such erring party such exemplary cost as the circumstances of the case may warrant, including by way of monetary compensation payable to the aggrieved party. Such exemplary cost and compensation when fixed shall be a charge on the

property allotted to the erring party found to be guilty of causing such undue delay.

(6) In the course of bringing about physical partition, it shall be competent for the court to issue suitable directions and exercise control for the progress of the proceedings of partition. After receiving report of the Commissioner, the Court shall consider the same and may pass suitable order accepting it, modifying it or call for further report. The finally accepted report and sketch, if any, shall form part of the final decree which shall be passed by the Court. The parties shall be bound to pay the stamp duty in accordance with State Stamp Act for engrossing the final decree.

(7) If the Court appoints Taluk Surveyor or any other revenue official of the area to bring about such partition in relation to agricultural lands, the Court shall send the intimation to the jurisdictional Tahasildar who shall supervise the work of such official. It shall be the duty of such official to act according to the order of the court. If the Court is satisfied on the basis of the materials placed before it that the official is not performing the duty effectively, the Court may send report to the High Court to initiate proceedings of contempt of court against such erring official.

(8) If the property to be partitioned consists of moveable property and chose in action such as deposits in bank

and the like, the Court may bring about such partition by suitable mode as befits such property involved for partition and pass suitable order thereon.

(9) For the purpose of bringing about partition in the manner aforesaid, the Court may direct the parties to either deposit in advance or pay from out of the sale proceeds of the partible property such sum of money as may be deemed necessary by the Court for meeting the expenses of bringing about the partition or sale as aforesaid.

(10) The Revenue and Survey Department shall be bound to accept and implement the partition brought about by the Court in the manner aforesaid.

Explanation I: Property involved in the suit as mentioned in sub-section (1) shall be such property which the Court finds as partible in the course of the judgment. Its description may be corrected suitably if commissioner reports any error after holding local inspection.

Explanation II: For the purpose of sub-section (6), the Court may examine the circumstances of the case whereby applications are filed one after the other and the court has found it untenable and as such the court forms the objective opinion that the

concerned party was hindering the progress of
the proceedings to bring about partition.
