



HARYANA STATE LAW COMMISSION

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TWELFTH REPORT

(SUPPLEMENT TO FOURTH REPORT)

**Recommendation to add Section 158-A in the
Haryana Land Revenue Act, 1887.**

Government of Haryana

HARYANA STATE LAW COMMISSION

**Justice H.S. Bhalla,
Chairperson**

**Mr. Kamal Kant,
Member**

**Mr. Mukesh Garg,
Member**

**Ms. Sangeeta Vardhan,
Part-time Member**

**Mr. Sandeep Kumar,
Member Secretary**

**Mr. Bhupinder Singh,
Registrar**

Government of Haryana

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(SUPPLEMENT TO FOURTH REPORT)

24 August, 2023

Recommendation to add Section 158-A in the Haryana Land Revenue Act, 1887.

The Haryana State Law Commission vide its Fourth report dated 21.06.2022 has sent to the Government of Haryana, the recommendations to amend Section 54 of the Code of Civil Procedure, 1908, on the observations made by Hon'ble Supreme Court of India. The Hon'ble Supreme Court in its decision in 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 observations made by the Hon'ble Supreme Court in paras 27 and 28 of the Judgment, the Haryana State Law Commission has taken up the matter for consideration. After due deliberations, consultations and keeping in mind that justice should be done as efficaciously as possible, Haryana State Law Commission, recommended

for amendment in Section 54 of the Code of Civil Procedure, 1908 vide its 4th report dated 21.06.2022.

It may be mentioned here that the State of Karnataka has already passed Code of Civil Procedure (Karnataka Amendment) Act, 1995 (Act 36 of 1998) on 29.12.1998 as under: -

“1. Short Title and Commencement: -

(1) This Act may be called for Code of Civil Procedure (Karnataka Amendment) Act, 1995.

(2) It shall come into force on such 1[date] as the State Government may, by notification in the official Gazette appoint.

1. Act came into force w.e.f. 1.2.2001 by notification. Text of the notification is at page 279.

2. Amendment of Section 54: -

For section 54 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908), the following shall be substituted, namely: -

“54. Partition of estate or separation of share. -

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 of such an estate shall be made by the Court in accordance with the law, if any, for the time being in force relating to the partition or the separate possession shares, and if necessary on the report of a revenue officer, not below the rank of Tahsildar or such other person as the court may appoint as Commissioner in that behalf.”

3. Transitional Provisions: -

Where before the commencement of this Act, the court had transmitted papers to the Collector to carry out partition under section 54 of the principal Act, and no final order effecting partition is passed by the Collector or any Gazetted subordinate of the Collector deputed by him in this behalf, before such commencement, such papers shall be re-transmitted to the court, concerned and which shall make partition of the estate or this separation of the share of such

an estate in accordance with section 54 of the principal Act, as amended by this Act.

4. Savings: -

(1) Nothing contained in this Act shall affect any order, act, right or liability which has been made, done, accrued or incurred before the commencement of this Act.

(2) Where, before the commencement of this Act, the Collector or any Gazetted subordinate of the Collector, deputed by him in this behalf has passed any final order effecting partition under Section 54 of the principal Act, and, -

(i) any appeal is preferred or proceeding is initiated against such final order, after such commencement; or

(ii) any appeal preferred or proceedings initiated against such final order, before such commencement is pending adjudication at such commencement; before any authority or a court or tribunal, such appeal or proceeding shall be continued or disposed of in accordance with the provisions of section 54 of the Principal Act, as if the said provisions had continued to be in force and as if this Act had not been enacted.”

Apart from this, the State of Kerala has also effected amendment of Section 54 of the Code of Civil Procedure, 1908 as under: -

“54. Partition of estate or separation of share.-

Where the decree is for the partition of an undivided estates assessed to the payment of revenue to the Government, other than land tax or property tax 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 Court in accordance with law, if any, for the time being in force relating to the partition or the separate possession of shares of such estates and if necessary upon a report of a Revenue Officer not below the rank of a Tahsildar or any other person appointed as a commissioner.”

However, the recommendation made by the Haryana State Law Commission, vide its 4th report for amendment of Section 54 of the Code of Civil Procedure, is under consideration of the Government of Haryana, it has come to the notice of the Haryana state Law Commission that

Section 158 of the Haryana Land Revenue Act, 1887 excludes the jurisdiction of civil court in matters which are within the jurisdiction of Revenue Officer such as matter relating to any claim for partition of an estate or any question as to the involvement of the land on the partition in an estate. Therefore, to make amendment of Section 54 of the CPC effective, it is further necessary that the provision should be made in the Haryana Land Revenue Act, 1887 in the form of saving clause or section. The Haryana State Law Commission is of the opinion that Section 158-A should be added in the Haryana Land Revenue Act, 1887 (as amended by Haryana Act No.15 of 2021 dated 5.4.2021), which shall read as under: -

“Section 158-A: - Saving of certain suits – Nothing in section 158 shall be held to prevent the Civil Court from entertaining any suit/proceedings regarding partition of any undivided estate assessed to payment of revenue to the Government or for the separate possession of a share of such estate, the partition of the estate or the separation of the share.”

The above section can be added after section 158 of the Haryana Land Revenue Act, 1887 as section 158-A, as saving to section 158.

If this section 158-A is added as suggested, it will not cost any financial burden to the State. Hence, amendment can be done without financial repercussions on the exchequer.

RECOMMENDATIONS.

The Haryana State Law Commission recommends addition of Section 158-A in the Haryana Land Revenue Act, 1887: -

“Section 158-A: - Savings of certain suits – Nothing in section 158 shall be held to prevent the Civil Court from entertaining any suit/proceedings regarding partition of any undivided estate assessed to payment of revenue to the Government or for the separate possession of a share of such estate, the partition of the estate or the separation of the share.”
