

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA),
SWAT.
FORM "A"
FORM OF ORDER SHEET.

R.

Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary
1	2	3
	02.03.2018.	<p data-bbox="711 645 1036 682"><u>W.P.No.232-M/2018.</u></p> <p data-bbox="711 733 1481 808"><u>Present:-</u> Mr.Arshad Iqbal, Advocate for the petitioners.</p> <p data-bbox="711 897 1481 1103"><u>MUHAMMAD NASIR MAHFOOZ, J:-</u> Through the present petition petitioners seek the following relief:-</p> <p data-bbox="854 1154 1432 1514"><i>“on acceptance of this revision petition the impugned orders/judgments of the learned lower courts/revenue hierarchy may kindly be set aside and the record of the partition petition may be remanded/sent back for the proceedings of appeal pending before the learned Additional Deputy Commissioner, Swat”.</i></p> <p data-bbox="711 1564 1481 2295">2. Brief facts of the case as per the instant petition are that respondents submitted an application for partition under section 135 of the Land Revenue Act, 1967 in the court of Additional Assistant Commissioner, Kabal. The petitioners contested the same by filing replication. The learned Additional Assistance Commissioner, Kabal after hearing both the parties accepted the partition application on 24.09.2012.</p>



3. Dissatisfied with the aforesaid order, petitioners preferred an appeal before the Additional Deputy Commissioner, Swat but in the meanwhile, an application for status quo regarding disputed property has been filed by the respondents, which was accepted vide order dated 12.09.2013.

4. Feeling aggrieved, petitioners filed civil revision before the Additional Commissioner, Malakand Division Saidu Sharif which was dismissed being unheard on 05.10.2016 and the plea of respondents for partition was accepted and the record was sent back to the Additional Assistant Commissioner, which was further sent to Tehsildar concerned. Thereafter, petitioners approached the Senior Member Board of Revenue by filing revision petition, which was dismissed vide order dated 29.12.2017, hence, the instant writ petition.

Arguments heard and record perused.

5. On 24.09.2012 the revenue officer performed functions as a trial forum for the purpose of section 135 of the Khyber Pakhtunkhwa Land Revenue Act, passed an order appointing Naib Tehsildar, Kabal as a commission



to carry out partition proceedings amongst the parties according to the revenue record and submit his report within a shortest possible time. None of the party was aggrieved against this order. In the meanwhile, when the partition proceedings were going to be carried on, an order for maintenance of status quo regarding any alienation etc in the suit property was passed on 12.09.2013. Aggrieved against this order, some of the parties filed an appeal before the Additional Commissioner, Malakand, which was dismissed on 05.10.2016. Further aggrieved, present petitioners filed civil revision before the Member Board of Revenue-II, Khyber Pakhtunkhwa which has been dismissed through the impugned order dated 29.12.2017.

6. As the main lis between the parties is pending for partition of the suit property that is already in the process and this writ petition is only outcome of the order of status quo which is totally misconceived. As no question of ouster of jurisdiction for violation of any statute is involved, so constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 could not be entertained in such like matters. The learned revenue forums who are ceased of main lis



have got jurisdiction to allow the parties to maintain status quo till final decision in the partition proceedings so that any party should not suffer and may not face difficulties in getting his due share in every nature of the property subject matter of the partition. It is the basic concept of partition proceedings, that each joint owner should get his due share and if any joint owner has transferred any property in excess of his share in joint ownership, it has to be adjusted against his share or sold in much valuable portion.

7. In the province of Khyber Pakhtunkhwa Section 135 of the Land Revenue Act provides for partition of agricultural lands which are entered in the revenue record but the constructed properties are still dealt with by Partition Act, 1893. This Act only provides for some matters which are involved in the partition proceedings but does not give sufficient details to regulate these partition proceedings. Contrary to this, there is Punjab Partition of Immovable Property Act, 2012 which has laid down sufficient and exhaustive procedure for partition proceedings. The mode and manner of these partition proceedings is also provided in the said Act which has made it very much convenient



for the public/aggrieved persons to seek partition and get their shares separated in accordance with law. People suffer for considerable long time to get their shares of the property and then take physical possession due to lack of detailed set of procedure. Order 20 Rule 18 of the Code of Civil Procedure provides for separate possession of share in the partition proceedings but no proper detailed procedure for the convenience of parties is provided therein.

8. It is high time that the Provincial Government may consider enacting a partition act in line with the Punjab Partition of Immovable Property Act, 2012 (Act IV of 2013) so that the ordinary litigant may face less inconvenience. Copy of this order be sent to the Law Department Khyber Pakhtunkhwa as well as to the Senior Member Board of Revenue for doing the needful.

9. Accordingly, this writ petition is dismissed in limine.

Announced.
Dt.2.03.2018.


JUDGE

5/3

(A.K.KHAN)

HON'BLE MR. JUSTICE MUHAMMAD NASTIR MAHFOOZ.