

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT

**W.P No: 1681-P of 2016**

Mazullah Khan

Versus

Mst. Taraja Begum and others.

JUDGMENT

Date of hearing.....03.02.2020

Petitioner (s) By Mr. Gul Sadbar Khan, Advocate. for petitioner.  
 Advocate.

Respondents by Mr. Saadat Ullah Khan, Advocate, for the Private  
 respondents.

Mr. Muhammad Riaz Khan, AAG .....for Official respondents.

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**MUHAMMAD NAEEM ANWAR, J:-**Through this constitutional  
 petition under Article 199 of the Constitution of Islamic  
 Republic of Pakistan 1973, the petitioner has assailed the order  
 dated 11.02.2016, of learned Member-II of Board of Revenue,  
 Khyber Pakhtunkhwa, (Respondent No.59), whereby the  
 revision petition bearing No.61/MBR-II/2012, filed by petitioner  
 was dismissed.

2. Facts, which are relevant for decision of this petition  
 are that the petitioner had purchased property, measuring 4  
 Kanal 7 ½ Marlas, on the basis of Mutation No.10107, dated  
 19.03.1996, from one Mst Tasleem Begum daughter of  
 Muhammad Sarwar Khan wife of Sirajud-Din Khan, regarding  
 which Mst Faima begum filed partition application for  
 separation of her share, before Revenue Officer, on 30.07.1996.  
 In the application for partition, petitioner was not impleaded  
 and, ultimately, the partition application filed by Mst Faima  
 Begum was allowed and the property was ordered to be  
 partitioned. Petitioner has submitted an application for setting

aside of partition decree and mutation No.10506, on the ground that at the time of filing of partition application, he was owner but was not impleaded in partition application, even otherwise neither he was informed through any mean nor any notice was ever issued, therefore, the entire process of partition proceeding was against the law, so, the same may be set aside and he should be impleaded. The application was contested and, vide order date 14.12.2010, his application was turned down, against which the petitioner filed an appeal before District Revenue Officer, Charsadda, where through an order dated 12.02.2011, the appeal filed by the petitioner was allowed and partition proceedings along with mutation were set aside. The order of DRO dated 12.02.2011 was challenged by Mst Taraja Begum (respondent No.1) before Additional Commissioner, Peshawar, Camp Court Charsadda, who through his order dated 11.02.2016, allowed the revision filed by respondent No.1 and set aside the order of DRO, however, he at the end of his order mentioned that;

**“Arguments and record perused. Record shows that partition proceedings had been completed on 04.07.2000. After sufficient long time the present respondent has approached the trial Court, which after hearing both parties have rejected the application of the present respondent. Record also further shows that share as per revenue record has also been allotted to the present respondent in the partition mutation and has not been deprived from his due share. Keeping in view the above the order of learned DOR Charsadda dated 12.02.2012 is hereby set aside while the order of the trial Court dated 14.12.2010 is upheld. However, to meet the ends of justice the trial Court is directed to call both the parties and give a chance of hearing to the present respondents and thereafter if necessary make amendment in the partition proceeding strictly according to law within a month time. Revision petition to this extent is accepted.”**

The petitioner being not satisfied, has filed the revision petition before Board of Revenue, KPK, Peshawar, where his revision petition was dismissed, hence, this petition.

3. Heard and record perused.

4. Undeniably, the petitioner was the owner in the property, which was subject matter of the partition, measuring 630 Kanan and 5 Marlas, vide Mutation No.10107, attested on 19.03.2016, his vendor was Mst Tasleem Begum, who was the owner in column of ownership. It is also evident from the revenue paper for the year 1919-92 (Ex.PW1/1) that this partition application was filed after attestation of mutation in favour of petitioner. It could not be said that respondents (Mst Taraja Begum or Mst Faima Begum) were not aware from this fact because Ex PW1/1 was placed on record by Mst Faima Begum. Section 135 of Land Revenue Act deals with the partition of agriculture property, which for convenience is reproduced as under: -

**“Section-135 Application for partition. Any joint owner of land may apply to a Revenue Officer for partition of his share in the land if: -**

- (a) at the date of application, the share is recorded under Chapter vi as belonging to him, or**
- (b) His right to the share has been established by a decree which is till subsisting at that date, or**
- (c) A written acknowledgement of that right has been executed by all persons interested in the admission or denial thereof.”**

5. There is no cavil with proposition that for the purpose of partition not only the owners should be the party to partition application but the entire joint property should be partitioned and could not be allowed to pick and choose a particular khasra number or Khata number (field number or

holding) and to exclude the others, as partial partition is not permissible. Likewise, without impleading a person/owner in the application for partition, the procedure adopted would be against the principle of natural justice and common law as well, and would not be allowed to give effect. The Revenue officer for dismissing the application has made the limitation as one of the ground which was not justified as limitation would be considered in case when the petitioner would have been party. As he was not party and contended no knowledge, then the limitation shall be considered from the date of knowledge.

6 In case titled **Mst Asia Rizi and others Vs Mian Muhammad Khan and others (2019 CLC 1333)**, it was held that:

**“In addition to supra, plaintiff in a suit is dominus litis who may choose persons against whom he wishes to litigate and he cannot be compelled to sue a person against whom he does not seek any relief and necessary party is a person who must be joined as party and in whose absence no effective decree can be passed at all by the Court. If a necessary party is not impleaded the suit itself is liable to be dismissed. Proper party is a person whose presence enables court to completely, effectively and adequately adjudicate upon all matters in dispute in suit, though he is not a person in favour of or against whom decree is to be passed. In the present case, as has been referred above, the respondent No.26 purchased the land from respondents Nos.18 to 25 and there is nothing on record to suggest that the land was partitioned prior to his purchase and it is settled principle of law that if a person purchases a land out of joint holding, he becomes a co-owner in the holding along with other co-owners and if the purchaser gets the possession of any land from the joint holding, such possession is always subject to the partition of Khata.”**

7. Legally, partition of property means to bring proceeding in the Court to force the physical division of property or to get separate the shares of any joint owner from the joint property. Partition is normally commenced by one of the

co-owner, filing an application before the Court of competent jurisdiction by impleading all the joint owners. Any person with an existing interest in the property may bring the action for partition and vice-versa against whom the partition is sought. By not impleading petitioner in partition application, irrespective of his share, would render the entire process in nullity.

8. This Court in case titled **Mst Waziran Mian through legal heirs and 29 others Vs Riaz Ahmed and 3 others (2011 YLR 1327)**, it was held that:

**“In the instant case the entire khata No.355 has been divided into four new khatas. As is evident from the record the entire khata was owned by numerous other persons besides parties to the present suit and all of them might have been benefited or injuriously affected with partition Mutation No.1125, for the reason by creating newly khata No.384 with regard to "Dakhelkari" (hereditary occupancy). The case of Allah Baldish etc, applicants before the appellate Court is glaring example of the above mentioned proposition, who were not party before the Court but have been deprived of their property through impugned judgments/decrees.”**

9. The petitioner being owner of the property was required to be impleaded as a party in the application and in whose absence no effective decree could be passed. Even otherwise, his undeniable rights to defend himself could not be snatched from him. Therefore, this petition is allowed, partition application shall be deemed to have been pending before the Revenue Officer, who shall implead the petitioner in the array of respondents and, thereafter, proceed ahead and decided application strictly in accordance with law.

**Announced:**  
**03.02.2020.**  
(Ayub)

**J U D G E**

Hon’ble Mr. Justice Muhammad Naeem Anwar.