

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

CWP No.323 of 2017

Decided on 24th November 2025

Shri Pratap Chand (deceased) through his LRs and others

...Petitioners

Versus

Sh. Milap Chand and others

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

¹Whether approved for reporting?

For the petitioners: Mr. Vikas Rathore, Advocate.

**For the respondents: Mr. K.S. Thakur, Senior Advocate,
with Mr. Vaibhav Chauhan, Advocate,
for respondent No.1.**

**Mr. Pushpinder Jaswal, Additional
Advocate General, for respondents
No. 2 and 3.**

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioners have, *inter alia*, prayed for the following relief:-

*"That the impugned order dated 23.05.2016
contained in Annexure P-5 dated 23.05.2016 may
kindly be quashed and set aside."*

2. Brief facts necessary for the adjudication of this
petition are that on an application for partition of the suit land

being filed, a mode of partition was prepared on 06.02.1998, which was finalized by the Assistant Collector, 1st Grade, Tehsildar Baijnath on 20.01.2003. Feeling aggrieved by the fact that the Assistant Collector had not carried out the final partition in consonance with the mode of partition, an appeal was preferred by the present petitioners, copy whereof is appended with the petition as Annexure P-2. In para-2 of the appeal, it was categorically mentioned that the lower Court had failed to partition the land as per the mode of partition etc. Vide Annexure P-3, learned Sub Divisional Officer (C), exercising the power of Collector, Baijnath allowed the appeal by returning the following findings:-

"I have heard Shri G.R. Sood, Ld. Counsel for the appellant and Shri Jeet Ram Ld. counsel, for respondent. The facts of the case have already been highlighted above.

The order dated 20-01-2003 of AC 1st Grade is a strange one and also depicts careless attitude of AC 1st Grade in disposing of a vital revenue case. In the impugned order A.C. 1st Grade has discussed the division of a particular Khasra No. (without mentioning its number) between the two co-sharers and furthermore he has also divided 40 plants on this Khasra no. between two Without assigning any reasons for the division of this Khasra No. and the plants on it, A.C. Ist Grade has further ordered the applicant (Shri Milap Chand) to give Rupees 10,000/- to respondent (Partap Chand) in lieu of 20 plants being given to him (Applicant). AC 1st Grade

can assess the value of property to the divided during partition? The impugned order of Tehsildar does not contain any Collector substance to answer this query. After careful examination of court Balinash file and my personal visit to the spot on 18-03-2004. I could derive this information that Khasra No. much discussed in preceding contents is Khasra No. 311. In impugned order AC Ist Grade has simply endorsed the "Naqsha Ja" prepared by field kanungo and has made final order without discussing the facts and merits of the case and describing that the partition has been effected as per mode of partition. He has totally eluded from making his personal observations in the partition case having as many as 18 Khasra Numbers.

In view of my above discussion and lapses as pointed out in discussion I determine that order dated 20-01-2003 of AC Ist Grade is vague and not a proper order in the eyes of law. A.C. Ist Grade has failed to follow proper procedure in making order in this case, therefore, his order cannot be allowed to stand and the same is hereby set-aside. I hereby remand this case to AC Ist Grade. A.C. Ist. Grade must give his personal opinion about the division of the each Khasra No. and should write a speaking order. Though the main dispute is about the division of Khasra No. 311, but A.C. Ist Grade must appreciate present possession of co-sharers at spot and should strictly go by mode of partition. As far as Khasra No. 311 is concerned during my spot visit on 18-03-2004 I have found that only a small portion outside "Neel Kanta Fence" is in the possession of respondent. Major portion of this Khasra Nos. bears a fully grown orchard which is on possession of appellant. This Khasra No. may be deviled out of proportion of present possession as a last resort to complete the deficiency if any during the division of land of same nature.

At the same time during investigation AC Ist Grade should not refrain from appreciating a family settlement document dated 26-12-1987 between the two co-sharers, as the same as per cited case No.IV(2000) CLT 590 of Rajsthan High Court titled

Mohan Leelani versus Smt. Pevi bai & others contained in civil law times 2000, is not required to be necessarily registered and can be admitted in evidence. The file of this court be consigned to record room after due completion and the record of the Lower Court be returned.”

3. The findings returned by the learned Collector were upheld in the Revision by the learned Divisional Commissioner. However, in terms of impugned order Annexure P-5, learned Financial Commissioner, vide order dated 23.05.2016, has set aside the order passed by the Divisional Commissioner as well as the Collector and feeling aggrieved, the petitioners have filed this petition.

4. Learned counsel for the petitioners has submitted that the order passed by the learned Financial Commissioner is perverse for the reason that the order is based on a wrong premise that as there was no challenge to the mode of partition, therefore, the petitioners could not have laid any further challenge to the instrument of partition. He argued that learned Financial Commissioner failed to appreciate that as petitioners were not aggrieved by the mode of partition, there was no occasion for them to have had assailed the same and that they

had assailed the final partition on the ground that it was not in consonance with the mode of partition. He submitted that on this short count, the petition is liable to be allowed.

5. Though, Mr. K.S. Thakur, learned Senior Counsel for the private respondent, vehemently defended the order passed by the Financial Commissioner, however, having heard learned counsel for the parties and having perused the order passed by the learned Financial Commissioner as well as the other orders appended with the petition, this Court concurs with the submissions made by the learned counsel for the petitioners.

6. A perusal of the order passed by the learned Financial Commissioner demonstrates that what weighed with the learned Financial Commissioner was that there was no challenge by the petitioners to the partition which was carried out on the spot by the field agency in terms of the mode of partition prepared on 06.02.1998. It is specifically mentioned in Para-7 of the impugned order that the present petitioners were not aggrieved with the mode of partition and it is settled law that the possession of a co-sharer is possession of all. However,

this aspect of the matter was not dealt by the learned Financial Commissioner whether the findings returned by the learned Collector that the final partition was bad were correct findings or not as per record. Learned Financial Commissioner was bound to have had adjudicated upon this issue if it was to set aside the order passed by the Collector as upheld by the learned Divisional Commissioner. This not having been done, renders the order bad. As observed earlier also petitioners were aggrieved by final partition and not by mode of partition.

7. Therefore, in light of above observations, as this Court is of the considered view that the impugned order is not sustainable in the eyes of law, this petition is allowed. Order dated 23.05.2016 passed by the learned Financial Commissioner (Appeals) is quashed and set aside and the Authority concerned is directed to act upon the order passed by the Collector dated 06.07.2004 as upheld by the learned Divisional Commissioner and do the needful within three months from today. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

November 24, 2025
(Vinod)