

JUDGMENT SHEET
IN THE COURT OF MEMBER-V, BOARD OF REVENUE, JUD-III,
KHYBER PAKHTUNKHWA

SYED THASADUQ HUSSEIN

PETITIONERS

VERSUS

SYED WAJAHATH HUSSEIN

RESPONDENTS

Case No. 105/MBR-V/2023

Date of Institution; 25.08.2022

Date of Decision; 08.10.2026

REVISION AGAINST THE ORDER OF ADDITIONAL
COMMISSIONER KOHAT DATED 21.07.2022

This order intends to dispose of above mentioned revision filed by petitioners against the impugned order of Additional Commissioner Kohat, dated 21.07.2022 vide which appeal of respondents was accepted and order of ADC Hangu was set aside and order of AAC Hangu was restored whereby, partition was sanctioned.

2. Facts of the case are that respondents filed application for partition u/s-135 of the Land Revenue Act before the court of AAC Hangu in respect of suit land mentioned in partition application. Commission was appointed and then partition was sanctioned on 01.06.2021. Appeal of petitioners was accepted by ADC Hangu on 03.11.2021 and case was remanded to trial court for fresh partition. Appeal of respondents was accepted by Additional Commissioner Kohat vide impugned order, dated 21.07.2022 and order of appellate court was set aside and order of trial court was restored. Therefore, petitioners preferred this revision.

3. I have heard in detail learned counsels for parties and perused record of the case.


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4. Learned counsel for petitioners contended that partition was ex parte sanctioned and Additional Commissioner Kohat restored it in one-sided manner in violation of law, norms of justice and constitutional provision of fair trial. That petitioners were condemned unheard. That ADC Hangu correctly directed for fresh partition and directed parties to approach Civil Court for partition of two number Khasras. That valuable land in two number Khasras was allotted to respondents against the principles of partition. That out of eight Khasras allotment was made in only two valuable number Khasras to

respondents. That partition was sanctioned in absence of petitioners. That parties have already approached Civil Court.

5. On the contrary learned counsel for respondents opposed the stance and averred that issue raised in present revision was not agitated before subordinate Revenue Courts. That partition was concluded after fulfilling legal requirements. That number Khasras in civil suit are different from Khasras of partition. That number Khasras of civil suit are not included in partition and no title dispute is existing which was main point before subordinate Revenue Courts. That no injustice was made and fair and just partition was concluded. That there is no illegality in partition order and impugned order of Additional Commissioner Kohat.

6. From the valuable arguments of learned counsels for parties and record of the case it transpires that respondents 1 to 6 filed application for partition and record confirms that petitioners attended court and contested case. When proposed of partition was submitted by Commission in the court of AAC Hangu and objections were invited petitioners instead moved an application for sine die adjournment u/s-141 of the Land Revenue Act with stance that civil suit regarding Khasras 6146 and 5738 is sub judice before Civil Court. The AAC Hangu on 01.06.2021 sanctioned partition with observation that civil suit is about Khasra No. 5173 and Khasra No. 6146 has already been partitioned except 5m. It was held that there is no illegality in the proposed mode of partition.

7. Aggrieved of this order petitioners assailed it in appeal before the court of ADC Hangu and merits of mode of partition were agitated instead of title dispute, which was matter before trial court. The ADC Hangu on 03.11.2021 accepted it with findings that principle of kamil and naqis were violated by allotting valuable land to respondents. Due to civil suit partition of two number Khasras was referred to Civil Court. There are clear contradictions in this order and the observations are not backed by record of the case.

8. Aggrieved of this order respondents filed appeal before the court of Additional Commissioner Kohat and it was accepted vide impugned order, dated 21.07.2022 by setting aside order of appellate court and by restoring order of trial court. It was held that partition proceedings were completed among shareholders according to laid down procedure in justified manner.

9. In present case when petitioners have not objected to mode of partition u/s-142 of the Land Revenue Act, it has gained finality. Objections were invited by trial court but petitioners instead moved application for sine

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die adjournment u/s-141 of the Land Revenue Act though same issue was required to had been taken at the very beginning of proceedings when reply was submitted. Record confirms that it is not ex parte partition order but petitioners contested it. It is true that in the court of Additional Commissioner Kohat they were proceeded ex parte in absentia but they have not moved application for setting aside ex parte under O.9, R.13 CPC. Without surpassing the hurdle of ex parte they cannot get relief. Non fling of objections on mode of partition has closed the fate of petitioners and they cannot agitate merits of partition order now. This principle was settled in 1990 MLD 575, Peshawar, 2009 PLD 198 SC.

10. Coming to claim of title dispute, the civil suit was about Khasra No. 5173 and it is not included in mode of partition and nature of Khasra No. 5738 as per Revenue Record is abi, which is well within jurisdiction of Revenue Court. Similarly, Khasra number 6146 measuring 1k-8m has already been partitioned except 5m and its nature is also abi. The civil suit was dismissed by Learned Civil Judge-ii, Hangu on 03.11.2021 and it was held that petitioners are trying to stop partition proceedings before the court of AAC Hangu. Petitioners concealed the fact from this court. Further any Civil suit about no Khasras 5173, 5738 and 6146 will not create hurdles for a concluded partition.

11. The issue was raised by petitioners that valuable land was allotted to respondents in only two number Khasras instead of allotment in all eight number Khasras in bits and pieces. The aim of partition u/s-135 of the Land Revenue Act is to resolve issues and not to create further issues among co sharers. Allotment as far as possible should be made in a way that a co sharer utilize his share in befitting manner. If allotment of very little ownership in all eight number Khasras is made in bits and pieces, it will be of no use and such partition cannot be declared fair and just. After examining the mode of partition, it is observed that correct, just and fair partition was made and when petitioners have not objected to mode of partition they have missed the train.

12. Foregoing in view there are not merits in this revision and it is declined. The impugned order of Additional Commissioner Kohat, dated 21.07.2022 is having no illegality and same is upheld. Partition is now closed and passed transaction.

Order Announced
Dated 06.10.2026

Naeem Akhtar
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(NAEEM AKHTAR)
Member-V, Board of Revenue

Certified that this judgment consists of four pages & each page duly signed
by the undersigned.

(**NAEEM AKHTAR**)
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