

Chapter 14

PROCEDURE IN PARTITION CASES

Private Partition **14.1** Although no formal application has been made, the patwari is bound, under Chapter 8.1, to record voluntary partitions for orders in the mutation register as soon as they have been acted on. In passing orders on such mutations care must be taken not to treat as partitions of proprietary right arrangements which the parties did not intend to be permanent. Share-holders maybe content for years to have in their cultivating possessions less than their full share of a common holding without intending to give up any part of their rights of ownership. *If any of them objects to the record of the alleged partition and the attesting officer considers the objection valid, he should refuse mutation of names and refer the party seeking it to proceedings under Section 135 of the Himachal Pradesh Land Revenue Act 1954.*

But if the Revenue Officer finds that the objection is vexatious or frivolous and that fair partition has actually been carried out, he shall attest the mutation in accordance with facts proved under Section 38 of the H.P. Land Revenue Act, 1954.

Partition

14.2 Partition cases are excluded from the jurisdiction of the civil courts, (Section 171 (2) xvii and xviii) of the Himachal Pradesh Land Revenue Act). They are heard by a Revenue officer of a class not below that of an Assistant Collector, Ist grade (Section 138 of the Himachal Pradesh Land Revenue Act.. Only an officer who is empowered to decide the case should receive an application for partition. A qualified officer to whom the application has been presented can either conduct the whole enquiry himself or refer it, under Section 18(3) of the Himachal Pradesh Land Revenue Act to a revenue officer of a lower grade for investigation and report. The latter course is usually adopted and it is, as a rule, the best way of dealing with the case. But the officer before whom the case has been instituted is responsible for its proper conduct throughout and should exercise close supervision over the proceedings of the subordinate official to whom he has referred it for enquiry. A revenue officer, who in a disputed partition case, is competent to pass orders on reports received from Naib Tehsildar, without ever having the parties before himself distinctly fails in his duty. In particular, he is responsible that no undue delay takes place at any stage of the proceedings. In serious case of delay it is not sufficient to issue reminders. The cause of the delay must be ascertained, and, if it be avoidable, suitable action must be taken against the subordinate official concerned.

Partition Procedure during settlement Operations

14.3 (i) When the Settlement Operations are in progress in an estate, the partition cases shall be heard and disposed of by the Settlement Tehsildar who has been vested with the powers of Assistant Collector Ist Grade under Chapter-9 of H.P. Land Revenue Act, 1954. All pending partition cases shall be transferred by Tehsildar Mohal to settlement Tehsildar for disposal.

(ii) *The Settlement Tehsildar (AC Ist Grade) shall hear and decide the partition cases in the estate in which the land is situated and not elsewhere.*

(iii) *The partition proceedings in an estate under settlement must be completed in all respects before final attestation of an estate by Settlement Naib-Tehsildar so that the partition orders are given effect to in the settlement record or within a period of six months, whichever is earlier.*

(iv) *When a partition application is received by the Settlement Tehsildar after final attestation of an estate, by the Settlement Naib-Tehsildar and before handing over the settlement record to the District Collector, Settlement Tehsildar shall hear and decide the partition case within a period of 6 months or*

before handing over of settlement record, whichever is earlier.

Investigation by Naib-Tehsildar

14.4 It is to the Naib-Tehsildar in whose circle the estate concerned lies under the division prescribed in Land Administration Manual and in this Manual (Chapter 8, para 8.4) that the case is referred to investigation of report. But to avoid delay, AC 1st grade should hear and decide the case himself.

When settlement operations are in progress, he should himself conduct the first stage of the proceedings, including the method of partition (Paragraphs 14.8 to 14.14 infra). When the method of partition has been sanctioned, he may, if he thinks fit, send the file to the naib-tehsildar of the circle to complete the remaining stages of the case under his supervision. The Naib-Tehsildar will maintain no register, and the tehsildar will remain responsible that the Naib-Tehsildar carried out the work entrusted to him correctly and without undue delay in the estate.

Who may apply for partition

14.5 Any joint owner and any joint tenant, who has a right of occupancy in his holding, may apply for partition if—

- (a) his share is entered in the last record-of rights or
- (b) his right to a share has been established by decree of Court, or
- (c) his title has been admitted in writing by all persons interested in the admission or denial thereof (section 123). The mere fact that a man is a 'Landowner' as defined in section 4 (9) of the Himachal Pradesh land Revenue Act does not entitle him to apply unless he fulfills one or other of the above three conditions.¹

A mortgagee cannot apply for partition unless he proves that he is entitled to it by custom or by the term of his mortgage.²

Applications to be accompanied with an extract from jamabandi

14.6 The application should be accompanied with an extract from the last detailed jamabandi, giving usually the complete entry for the holding or holdings of which partitions desired. A note of any mutations attested after the filing of the last detailed jamabandi should be added. Although the petitioner may only wish to divide part of the joint holding, he should, as a rule, be made to file a copy of the entries for the whole, for the other shareholders may object to a partial partition.³ The names of all owners, mortgagees, and occupancy tenants must be given. If the revenue officer has no complete list of all the interested parties on his file, a great delays are certain to occur. If, however, the area to be divided is very large, consisting, e.g., of a whole village or patti, or of the common land of a whole village or patti, convenient abbreviations should be allowed in the extract. If the extract is manifestly incomplete, the application should be returned to the petitioner by the officer receiving it, with an order endorsed on it that it may be presented again accompanied with a proper extract. If the imperfection of the extract is not discovered till the case has been referred to the naib tehsildar, that officer should fix a reasonable time for the filing of a full extract, and, if the petitioner fails to comply with this order, he should return the application to the officer from whom he received it with the suggestion that it should be removed from the pending file.

Conduct of Partition Cases

14.7 Like mutation proceedings, every partition case shall be heard and disposed of by the Revenue Officer preferably in the estate in which the land is situated but not outside the patwar circle. In no case, it shall be heard and disposed of in the Tehsil Headquarter or outside patwar circle except for minor proceedings like collection of court fee stamps, process fee etc.

As laid down under rule 40 of Punjab Land Revenue Rules as applicable to H.P., in partition

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1. 9. P.R. 1895 (Rev.)
2. 4. P.R. 1903 (Rev.)
3. 77. R.R. 1887

ceedings the Revenue Officer shall make with his own hand a brief memorandum of statements of the parties and witnesses at the time when such statement is made. The Revenue Officer shall not cause to record statements from any officials like Reader or Ahlmad etc.

Attendance of parties

14.8 All parties interested should be summoned by the officer making the enquiry to appear (section 125 (a)). If they are so numerous that personal service on each of them is not reasonably practicable, the procedure laid down in section 21 (3) and 23 of the Himachal Pradesh Land Revenue Act is generally desirable and is preferable to postal service under section 21 (4) of the Himachal Pradesh Land Revenue Act, as the latter procedure involves the parties in unnecessary expense. Whether the parties are many or few, it is expedient to post up a proclamation on a village rest house or on some other conspicuous place in the village calling on any persons who may have objections to urge to appear and state them within a certain time. The date fixed should usually be that on which the parties have been summoned to attend. The summons and proclamations should be issued simultaneously. Dates should not be repeatedly changed because the parties have failed to appear. When the requirements of the law as regards the service of summons have been complied with, and the revenue officer is satisfied that all interested parties have had an opportunity of being present, he should proceed with the hearing on the date fixed, putting on the file a note of the names of any parties who have not appeared. In cases in which the share-holders are numerous, or which are likely to present any difficulty, it is advisable to hold the first hearing in or near the village in which the land is situated. The real points in dispute and the merits of any objections raised are in this way easily brought to light and can be properly tested. The failure to ascertain from the first what is the actual contention of those who oppose partition is a fertile cause of delays and wrong decisions.

Addition of parties to application

14.9 On the date fixed for the hearing or on any date to which the hearing may be adjourned, the revenue officer shall ascertain where any of the other co-sharers desires the partition of their shares also and, if any of them so desire, he shall add them as applicants for partition (section 126 of H.P. Land Revenue Act, 1954).

Rejection of application

14.10 The real points in dispute having been elicited by a careful examination of the parties, the Revenue Officer should consider whether there is any sufficient cause for absolutely rejecting the application (section 127). If so, he should report the case for the decision of the officer who referred it to him to inquiry. The latter should usually, before passing his final orders, give the parties an opportunity to appear before himself. The discretion to disallow partition given by the section 127 of the Himachal Pradesh Land Revenue Act should not be exercised arbitrarily but ordinarily on the grounds set forth in sections 123 and 124. Special attention should be given to the requirements of the village including those of non-proprietors in the matter of grazing, and the *Wajib-ul-arz* of the village should in every case be consulted. The question whether land can be partitioned in spite of an entry in the *wajib-ul-arz* must be dealt with under section 129 as a question of title.

Procedure when there are disputes as to title

14.11 If the investigation officer does not consider that there is any valid reason for rejecting the application entirely, but it appears that there are disputes as to title, which must be dealt with in the manner laid down in section 129, he should record clearly what the points in issue are, and return the case for the orders of the officer who is competent to decide it. He must not himself take action under section 129. Examples of disputes so as to question of title are—

- (a) The respondent denies the correctness of the entry in the record-of-rights;
- (b) The respondent admits the correctness of the entry in the record-of-rights, but asserts that the applicant is not in possession of his share, and is, therefore, not entitled to claim partition at all, or that he is not entitled to do so till he has had a settlement of accounts with respondent, or raises any other objection as to the *locus standi* of the applicant to ask for partition.

Preliminary enquiry where questions of title are raised.

14.12 If during the course of partition proceedings, an objection is raised by one of the parties that the question of title is involved, the Revenue Officer can not ignore such objection. He shall make preliminary enquiry and if he comes to the conclusion that such question of title is really involved, he should invoke the provisions of section 129 of H.P. Land Revenue Act, 1954, and proceed accordingly. (Sh. Bishewshar Nath Sharma Vs. Sushma Kaushik, 1981 LLT 83).

It has also been held by the Financial Commissioner (Revenue) Punjab that neither in law nor in equity is there any warrant for the proposition that partition proceedings must be stayed the moment a litigant utters the magic formula that a question of title is involved (1961 LLT page 21). The Revenue officer must conduct preliminary enquiry and cannot proceed with partition proceedings until the question of title is determined (14 PR) 1890. (Rev).

Mere raising of question of title does not make incumbent upon the Revenue Officer to accept it as he has to ascertain and determine whether a question of title is involved or not (1982 SLJ 9).

Procedure of Assistant Collector under Section 129

14.13 The Assistant Collector Ist grade on receiving back the file should himself examine the parties, and, if he finds that there is a question of title involved, either decline to grant the application for partition until the question of title has been determined by a competent court, or himself decide the questions of title raised under one or other of the procedure laid down in section 129 (b) (a&b). The cases which will involve action under this section may be divided broadly into two classes—first, those in which an applicant believing that the partition proceedings will give him an advantage over the opposite party has chosen that procedure in order to evade direct resort to the civil courts in respect of a question of title which he knows would be disputed; and, secondly, those in which the applicant is acting in a straight forward manner, that is to say, in which a partition is really desired by him and is the principal matter in which he requires official assistance. In the class of cases first mentioned the revenue officer should file the proceedings with leave to either party to apply to have them reopened, on showing that the point at issue had been determined by a competent civil court. In the latter class of cases a revenue officer should exercise the full jurisdiction vested in him by law, and should refrain from putting parties to the trouble of separate proceedings in a civil court, even although the question is one which would ordinarily fall within the jurisdiction of such a court. When the respondent in the partition proceedings puts forward an objection as to title the revenue officer should invariably, unless there is some special reason to the contrary, proceed to determine the question himself and not refer the objector to a civil court. When he stays proceedings until the question of title has been settled in a civil court, he should send the partition file to the record officer and treat the case in the quarterly business returns as a decided one. If, on the termination of the proceedings in the civil court, the applicant petitions to revive the partition case, the file will be restored to the register of pending cases and be reckoned in the business return as a new institution. If the revenue officer determines to hear the case himself and the burden of proof is on the applicant for partition, he should order the applicant to put in by a certain date a written statement giving full particulars of his claim. Similarly if the objecting party is the respondent in the partition proceedings he should be required to put in a written statement by a certain date giving full particulars of his objections. If either party fails or refuses to obey these instructions the revenue officer should pass orders under order VIII, rule 10 of the Civil Procedure Code (Act V of 1908). On a plaint being presented, he should record a brief note stating whether the question at issue is cognizable by a revenue court (section 129 (2) (a) or by a civil court, (section 129 (2) (b) of the Himachal Pradesh Land Revenue Act and consequently what his future procedure is intended to be. Although in case of appeal the appellate court would have to decide by what description of court the question was really cognizable, the note of the revenue officer will determine the course of appeal in the first instance and thus save both litigants and the appellate court much trouble.

Preparation of list of possession (Fard Kabza)

14.13 (A) *In a partition case in which no question of title is involved or where the question of title has been decided by the competent authority and the partition is required to be carried out, the Revenue Officer shall direct the Field Kanungo to prepare a list of possession (Fard Kabza) of the spot of the co-sharers in the presence of the parties, before preparing mode of partition. The Field Kanungo shall prepare the list as per direction of the Revenue officer and submit the same within a fortnight to the tehsil*

office. The list will be a basic document of possession and will be very helpful in preparing the mode of partition. In case there is a dispute regarding possession, the Field Kanungo shall report accordingly and the Revenue Officer shall decide such dispute before framing the mode of partition.

**Enquiry as to
methods of
partition**

14.14 (i) If there are no disputes as to title, or if all such disputes have been decided under section 129 and the case has been returned to him for report, the tehsildar should proceed to enquire into any question to the property to be divided and the method to be followed in dividing it (section 128 (b)). A map of the land to be partitioned should be obtained from the patwari and a statement showing the area to be divided and the share of the parties should be prepared. Form PTN.-I in the appendix is given as a specimen, but it may be modified to show further details when this is considered necessary. In reporting the mode of partition for sanction, the Naib-tehsildar should state clearly what are the points remaining for decision, and they should be fully dealt with. The first matter to be noticed is whether the applicants' share only will be separated off, the other co-sharers continuing to hold jointly, or whether all the shares will be divided. If there is any provision regulating partitions in the village administration paper, it should be referred to; if not, the absence of any such provision should be stated. It should be noted whether all the land is to be thrown into one account or whether different classes are to be distinguished. The distinction may consist in part being cultivated, part culturable waste and part barren. Some lands may be more valuable than the rest on account of its natural quality or its situation, or the existence of means of irrigation. Part may be mortgaged, or held by a tenant at-will who cannot equitably be turned out. It will, as a rule, be quite impracticable to give every man his exact share of every sort of land, and the investigating officers should set forth clearly how far deviation from the rule of equal proportions is to be allowed, and how men receiving inferior land are to be compensated by an increase in the area allotted to them or otherwise. In this connection efforts should be made to persuade co-sharers to abstain from insisting on an exact application of the rule of equal proportions where this would result in the formation of an excessive number of small scattered plots or fields. It should be pointed out that such a division of holding has many disadvantages from the point of view of agricultural efficiency. It entails waste of the cultivator's time and labour, and adds to the work of his bullocks by multiplying journeys to and from his land. It causes wastage of water and ever water-logging by involving the use of unnecessarily long, tortuous or badly aligned water courses from the wells, canals or other irrigation sources. It makes the sinking of wells, drainage, levelling and other agricultural improvements more difficult, while small fields may often be an obstacle to the employment of improved agricultural implements and machinery. Should the parties, nevertheless, desire the application of the rule of equal proportions of each class of land, the revenue officer has discretion under section 130 of the Himachal Pradesh Land Revenue Act, to refuse compliance if he thinks that the circumstances of the case render that rule inappropriate, and he may instead authorize duly specified deviations from it.

(ii) It is impossible to settle every detail till the partition is actually made on the ground. Something must be left to the patwari, aided if necessary by arbitrators; but to order a partition, "bali haz nakas wa kamil" as is constantly done, is to throw everything into the patwari's hand. The extent to which existing possession will be respected must be noted. It should be maintained, especially when it is of old standing, as far as this can equitably be done. If it is proposed to appoint arbitrators, the matters which they are to determine should be noted, and also what remuneration, if any, they are to receive. The value of the land, for the purpose of calculating the stamp duty on the instrument of partition, the amount of the stamp duty and all fees and costs, and the proportion of the total costs to be borne by the different parties, should be mentioned so that sanction to their recovery may be given. The stamp duty on instruments of partition should be calculated in accordance with item No. 45 read with item No. 15 in schedule I-A appended to the Indian Stamp Act II of 1889, as amended by the Indian Stamp (Himachal Pradesh Amendment) Act, 1970, (Act No. 16 of 1970). The provisions of the two items are reproduced below. Revenue Officers are warned that they should give immediate effect to any further amendment of the stamp law without waiting for a correction slip to this chapter:-

For the amount of the value of the separated share or shares of the property—

	Proper stamp duty
Where the amount or value secured does not exceed Rs 10.	Thirty paise
Where it exceed Rs 10 and does not exceed Rs 50	Sixty paise
Where it exceeds Rs 50 and does not exceed Rs 100	One rupee, fifteen paise
Where it exceeds Rs 100 and does not exceed Rs 200	Two rupees, twenty five paise.
Where it exceeds Rs 200 and does not exceed Rs 300	Three rupees, forty paise
Where it exceeds Rs 300 and does not exceed Rs 400	Four rupees, fifty paise
Where it exceeds Rs 400 and does not exceed Rs 500	Five rupees, sixty five paise
Where it exceeds Rs 500 and does not exceed Rs 600	Nine rupees
Where it exceeds Rs 600 and does not exceed Rs 700	Ten rupees, fifty paise
Where it exceeds Rs 700 and does not exceed Rs 800	Twelve rupees
Where it exceeds Rs 800 and does not exceed Rs 900	Thirteen rupees, fifty paise
Where it exceeds Rs 900 and does not exceed Rs 1,000	Fifteen rupees
and for every Rs 500 or part thereof in excess of 1,000	Seven Rupees, fifty paise

N.B.- The largest share remaining after the property is partitioned (or if there are two or more shares of equal value land not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated:

Provided always that—

- (a) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than five rupees.
- (b) where land is held on Revenue Settlement for a period—
 - (i) not exceeding forty years and paying the full assessment, the value for the purpose of stamp

duty, shall be calculated at not more than ten times the annual revenue; and

(ii) exceeding forty years and paying full assessment the value for the purpose of stamp duty shall be calculated at not more than twenty times the annual revenue;

(c) where a final order for effecting a partition passed by any revenue authority or any civil court, or an award by an arbitrator directing a partition, is stamped with the stamp required for and instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed five rupees.

(iii) "Value of the separated share or shares"—The value of entire property which happens to be the subject-matter of partition, is not taxable under the Article. What is taxable is the amount of the value of the separated share or shares of the property. The meaning of the words "separated share", is that the largest share, remaining after the property is partitioned (or, if there are two or more shares of equal value, and not smaller than any of the shares, then one of such equal shares), shall be deemed to be that, from which the other shares are separated, that is to say, what is dutiable under the Article is the amount of the value of the share or shares, partitioned off, and not the residue, which is treated as the largest share, irrespective of at whose instance the partition is made. The above principle had been lucidly explained by Sir James Westland, when introducing the Indian Stamp Bill, and he gave the following instructions:

(i) For equal shareholders, each having a four-anna share, agree to partition. The duty is levied on twelve annas of the value of the whole property. (Hence the shares being equal, one share of four annas is the residue and the duty is leviable on three shares of four annas each, i.e., 12 annas).

(ii) Of three shareholders, having respectively shares of one half, one-third and one-sixths, two apply to have their share partitioned off. The duty is levied on half the value of the property. (Then, the largest share of one-half is the residue and the duty is leviable on the shares of one-third plus one-sixth).

(iii) One shareholder, having two-thirds of a property, obtains separation from the remainder, who hold jointly one-third and who desire to continue to hold their shares jointly. The duty is levied on one-third of the value of the property. (Here, the largest share of two-thirds is the residue and the duty is leviable on the shares equalling one-third although two-thirds shareholder initiated the partition).

(iv) The attention of revenue officer is drawn to the necessity of considering in partition case any equitable claims which a shareholder who has spent money and labour in reclaiming ravine lands may have to protection from ejectment or to compensation as a preliminary to partition.

**Order of
Assistant
Collector on
method of
partition**

14.15 On receiving the file from the investigating officer, the officer empowered to decide the case should if he finds that there is a dispute between the parties on any of the points connected with the proposed mode of partition fix a date of hearing the case, and have the parties duly informed thereof, so as to give them an opportunity of appearing before him. On the date so fixed, he should examine, so far as may appear necessary, any of the parties who may be present, and should then record with his own hand his orders as to the method of partition, the amount of costs, and the proportion in which they are to be recovered from the different parties. The orders as to the method of partition should be clear and unmistakable, and care should be taken that every essential question raised by the investigation officer's report, or contained in the pleadings, is decided. Even in cases in which the investigating officer has indicated alternative courses, and a decision is required between them, it is too common to find vague and general terms of sanction used, such as "the method of partition proposed by the investigating officer is sanctioned." The case will then be returned to the investigating officer. Before taking any step to carry out the partition, the investigating officer should direct the parties to deposit the whole amount of the costs in cash

by a fixed date. If the money is not deposited within that period, the case should be forwarded to the officer empowered to decide it for orders. If the applicant is in earnest in desiring the partition he is often willing to pay in the whole costs, if the amount is not large, and the shares due from defaulters can ultimately, under section 103 (a) of the Himachal Pradesh Land Revenue Act, be recovered as arrears of land revenue and made over to the applicant. But if it appears to the Revenue office that the applicant has paid in his share of the costs, but that the respondent, in order to delay the case, refuses or neglects to pay his share he should order the amount due from the respondent to be at once recovered as an arrears of land revenue. All sums received as costs will be credited in the Revenue Deposit accounts and paid into the treasury, the number and date of the dakhila being noted under the tehsildar's signature in the tehsil register of partition cases. Such costs, as are not susceptible of speedy disbursement, should be treated as revenue deposits (civil) Account Code, article 195). Receipts for all disbursements will be put on the partition file.

Method of carrying out partition

14.16 If the partition is to be made by the patwari, the tehsildar should give him on the spot, if possible detailed instructions from which he should not be allowed to deviate. As little as possible should be left to the patwari's discretion, and he should not be called on to decide how land should be classified or to its respective value. Points of this sort are for the parties to agree upon among themselves; if they cannot agree, the tehsildar must decide them himself. He may, however, appoint arbitrators to do so, if the parties desire it, and he thinks their appointment is likely to lead to an equitable and speedy decision. The patwari should only be required to make a correct survey and record of the land to be partitioned, and of the manner in which they have been divided. Measurements are necessary if numbers are broken up, and in order to determine the proper boundaries of the joint fields, if these have been encroached upon to a serious extent by any of the shareholders. If the shares are equal and the particular parcels of land to be allotted to each shareholder are to be decided by lot, 'Kurras', in the form of Khatauni slips, should be prepared for each share, the names being left blank. When the partition is completed, the following papers must be drawn up by the patwari and put on the file:-

- (a) A tracing from the shajra showing the new field numbers. If the village has been measured on the square system, the square should be shown on the map and the position of the new numbers within the square should be correctly indicated.
- (b) A khatauni showing the names of the shareholders, and a full list of the fields allotted to each with their areas.
- (c) A field-book of all new fields.
- (d) A statement showing in separate columns the area to which each shareholder was entitled according to his recorded share and the area which he has actually received. A specimen form PTN. 2 is given in the appendix, but it may be modified to whatever extent appears desirable.

Employment of amins/chainmen forbidden

14.17 The employment of amins/chainmen to carry out partitions in ordinary cases is forbidden. In the case of partitions of small joint holdings the patwari can do any survey and record work required without detriment to his ordinary work. When a large area, such as the common land of a village or patti has to be divided, the patwari should in ordinary cases be responsible for the partition, but if the work is heavy a qualified assistant may be appointed to help him in carrying on his ordinary duties and the assistant's pay can be charged as part of the costs of the partition. The patwari himself should receive no extra remuneration for what is part of his proper duties.

Duties of Field Kanungo

14.18 (a) The papers filed in partition cases are often full of errors, which pass from them into the annual papers and are corrected with great difficulty when they come to light long afterwards in the course perhaps of a new settlement. The Field Kanungo is as responsible for the accuracy of the patwari's partition work as he is for that of his ordinary work, and this responsibility should be vigorously enforced. He is bound to see that the patwari is carrying out exactly the instructions he has received, and that the work is being done regularly and in order. If not carefully supervised, patwaris spend far more time than they need on partition cases. The map and khatauni should be tested and signed by the Kanungo. He must

compare the map and khatauni with each other and with the village shajra and the last jamabandi, and see that no numbers are omitted and none entered twice. He must check the entries as to the dimensions and areas of fields as he would check similar entries in the patwari's map and field book when re-measurement is going on. He should make the patwari take copies and himself sign these in token of their agreement with the original. The kanungo should then point out to the parties on the spot the lands allotted to each, making over at the same time to each shareholder a copy of the khatauni relating to his land attested by himself. In forwarding to the tehsildar or Naib-Tehsildar the map and the khatauni which are to be filed with the record, he should report that he has pointed out the land and distributed the khatauni to the parties. Mud pillars should be put up to define boundaries where numbers are divided. It sometimes happens that when the parties are asked by the tahsildar if they agree to the partition, they answer that they do not know what land has been allotted to each. And cases have frequently occurred of a man being allotted one field in the khatauni, but in reality getting possession of another. The patwari following the partition papers records him as holding the latter field merely as tenant-at-will, and the recorded proprietor may take out a notice of ejectment against him after he has been dealing with the land for years as full owner. It is, therefore, of the greatest importance that there should be no room left for misunderstanding as to the locality of each man's field or fields. In petty cases, the duty of pointing out his land to each shareholders may be entrusted to the patwari under a special order of the tehsildar recorded on the file.

Power to make provisions in the Consolidation scheme to partition joint lands and joint occupancy tenancies during consolidation operations

14.19 Under section 25 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, the Consolidation Scheme prepared by the Consolidation Officer may provide for a partition of land between the joint owners of land or between joint tenants of a tenancy in which a right of occupancy subsists in accordance with the share of each owner or tenant, as the case may be except question of title under Section 129 of H.P. Land Revenue Act, 1954, if—

- (a) such share is recorded under Chapter IV of the Act mentioned above, or
- (b) the right of such owner or tenant to such share has been established by a decree which is still subsisting at the time of preparing the schemes or
- (c) a written acknowledgement of such right has been executed by all persons interested in the admission or denial thereof.

Question of title raised in proceedings during consolidation—how to be decided?

14.20 If an objection is raised that a question of title was involved in the scheme under the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 which also provides for the partition of land, the authority should hold its hands in the matter of partition and let the parties obtain a decision from the competent court. They cannot dismiss the objection summarily unless they have arrived at a firm decision that no question of title was involved. But even in the latter case the conclusion is subject to a decision of civil court. They cannot decide the question of title themselves (Hukam Chand Vs Haryana State 1972 PLJ 248 (DB)). An officer under the Consolidation Act not being a revenue officer, cannot be deemed to be so and thus he has no power or jurisdiction to convert himself into a civil court while deciding a question of title in the course of a dispute with regard to the partition of land in consolidation proceedings. When he concludes that title is involved, a decision by a competent court is needed under section 129 of the H.P. Land Revenue Act, 1954.

Procedure to be adopted in partition cases during consolidation operations

14.21 *The Consolidation Officer while hearing the partition cases under Section 25 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, shall give reasonable opportunity of being heard to all the interested parties and allow partition, only if no question of title is involved.*

Duty of Kanungo Consolidation to give demarcation after repartition during consolidation operations

14.22 In an estate where repartition has taken place during consolidation operations, it shall be the duty of the Kanungo Consolidation to give demarcation to all the tenure holders of the holdings allotted to them, by actual measurement on the spot before publication of Shajra under section 30(1) of the Act *ibid*.

Attestation of partition before the tehsildar

14.23 On receiving the map and khatauni with the field kanungo's report, the tehsildar or naib-tehsildar must give notice to all the parties to appear and state whether they agree to the partition or not. Repeated notices should not be issued to absentees, but as soon as he is satisfied that all parties have had an opportunity of appearing, the tehsildar should dispose of the case, making any modification in the partition which are shown to be necessary and correct the khatauni accordingly. He should then send the case for sanction to the officer empowered to decide it. All corrections made by the Tehsildar should be communicated to the kanungo and patwari. The former should point them out to the parties on the ground and correct their khatauni, and the latter should correct his copy of the khatauni. If the tehsildar can arrange to collect the parties when he is in or near the village and dispose of objections on the spot, this stage of the proceedings will be shortened and much trouble saved.

Transfer of shamlat at partition

14.24 The attention of all Revenue officers dealing with partition cases is drawn to the ruling D 13 PR 1901 (Civil). The onus of proving that a deed relating to the transfer of specific land carried with it as necessary thereto a proportionate share of shamlat, lies, when the deed is silent upon the subject, upon the person who asserts that the gift operates to grant more than it purports to grant. In other words, if a deed of transfer does not specifically mention that a share of the shamlat is transferred with the land the presumption is that the shamlat is not transferred. Officers should not blindly follow the khawat, but should throw on alienees the onus of proving that they have a share in the shamlat.

Period for the disposal of partition cases by tehsildar mohal

14.25 *The Tehsildar Mohal shall dispose of a partition case in all respects where a question of title is not involved within 6 months from the date of institution.*

Where a question of title is involved and the same is decided by the Tehsildar himself as Revenue Court or Civil Court, he shall dispose of such case finally within a period of 9 months from the date of institution. The period spent in appeal or revision, if any shall be in addition to the above period prescribed.

The instrument of partition

14.26 When sanction has been received, any further correction in the papers which is rendered necessary by the order of the sanctioning officer must be made and communicated to the patwari and kanungo and to the parties. The kanungo should point out to the parties any changes in the allotment of land made under the order finally passed, and should correct their khataunis, after the period for appealing has elapsed without any appeal being lodged, or after any appeal that has been presented has been decided an instrument of partition must be drawn upon stamped paper by the officer empowered to decide the case. It should describe the claim and give a detail of the division effected with a reference to the order sanctioning it. The date on which the partition is to take effect must be noted. The form Ptn-3 given in the appendix may conveniently be followed and to each such instrument of partition in which new field numbers are shown in column 4 of the schedule a copy of the tracing of shajra referred to in paragraph 14.16 (a) *supra* should be attached. The instrument of partition should thus be complete in itself so as to enable a civil court in any subsequent litigation to ascertain from it without reference to any other files or records (1) what belonged to whom jointly; and (2) who got what severally. This object will be secured if the schedule of the form of instrument of partition given in the appendix is carefully filled up. Before sending the case to the record room, the deciding officer should ascertain that the sums paid in as costs have all been disbursed and that vouchers for the expenditure are on the file. If there is any balance he should pass a distinct order as to the manner in which it is to be disposed of.

Obtaining possession

14.27 As a rule, the parties will have not difficulty in obtaining possession of the lands allotted to them if the procedure laid down in paragraph 14.18 supra is carefully observed. But if any party to the proceedings is refused possession by another party he can, at any time within three years from the date entered in the instrument as that from which it will take effect, apply under section 134 to the revenue officer to be put in possession.

Mutation in consequence of partition

14.28 As soon as may be after the date mentioned in the instrument of partition as that from which it will take effect, the patwari should enter in his mutation register all changes consequent on the partition. Before sanctioning any mutation due to partition the attesting officer must satisfy himself that possession has been obtained. In the case of uncultivated land it is not necessary that there should be any tangible sign of the possession of the person to whom the land has been allotted so long as no one else is in adverse possession.

Sadar Kanungos and record keepers not to be employed in checking partition files

14.29 Sadar Kanungos and record keepers should not be employed in checking partition files. All needful checking can be done by the reader of the revenue officer who decides the case.

Employment of arbitrators

14.30 Illusion has been made in paragraphs 14.14 and 14.16 supra to the employment of arbitrators in partition cases. If the patwari is an experienced and trustworthy man, it is rarely advisable to appoint arbitrators, who cannot in any case prepare the partition papers without his help. Arbitrators nominated by the parties themselves are usually ignorant men, and each is apt to be the partisan of his own nominator. It will, therefore, generally be expedient for the tahsildar to advise the appointment of some man of more standing as umpire. In fact, it is often best to appoint some respectable man of influence in the neighbourhood, sole arbitrator (section 139 (2) (d) of the Himachal Pradesh land Revenue Act. The tahsildar should carefully explain to the arbitrator what they are expected to do, and should arrange that the patwari gives them the assistance they require.

Completion of partition papers and statements thereof

14.31 The patwari and Field Kanungo shall complete partition papers within 3 months from the receipt of mode of partition from Tehsil Office. In case they fail to complete papers within this period, they shall be held responsible for the lapse.

The Field Kanungo shall send the statement every month to the Tahsildar in the proforma given below:

Statement of completion of partition papers

1	2	3	4	5	6	7	8
Sr. No.	No. of Holdings	Name of Estate	Name of parties	Receipt of mode of partition	If pending, Reasons thereof	Date of completion of partition papers	Remarks

Duty of Tehsildar

14.32 The Tehsildar shall ensure that the partition papers are prepared within 3 months. In case the papers are not received in time, he should take action against the patwari and Field Kanungo.

Delivery of possession u/s 134 of H.P. Land Revenue Act, 1954 and submission of statement thereof.

14.33 The Field Kanungo shall deliver possession in partition case u/s 134 of H.P. Land Revenue Act, 1954 within the period specified in the warrant of possession issued from the Tehsil Office. The following statement shall be sent by Field Kanungo to the Tehsil Office after every month.

Statement of Execution of Warrants of Possession

Sr. No.	Name of estate	Details of warrant of possession	Date of receipt of warrant from Tehsil Office	Date of execution of warrant	If not executed, reasons for pending	Remarks
1	2	3	4	5	6	7

Tehsildar shall ensure that the warrants are executed by Field Kanungo in time. He shall convey remarks to Field kanungo every month on the above Statement submitted to him.

APPENDIX

Form PTN.-1 (Paragraph 14.14)

Statement of the area to be divided and the shares of the parties

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
No.	Name	Jama or share (whichever is measure of right)	Total area to be divided			Area to which owner entered in column 2 is entitled			Area already in possession of owner entered in column 2			Deficiency to be made good			Excess to be given up			Remarks		
			Cultivated	Uncultivated	Total	Cultivated	Uncultivated	Total	Nos.	Cultivated	Uncultivated	Total	Cultivated	Uncultivated	Total	Cultivated	Uncultivated		Total	

Form PTN.-2 (Paragraph 14.16)

Statement comparing area by share and area allotted

1	2	3	4	5	6	7	8	9	10
No.	Name of Share-holder	Share	Area according to share			Area allotted			Remarks
			Cultivated	Uncultivated	Total	Cultivated	Uncultivated	Total	

The entries in the first six columns will be taken from columns 1 to 3 and 7 to 9 of Form Ptn. 1. Details of soil may be added where necessary. The entries in column 10 will be made by the tahsildar himself.

FORM PTN.-3 (PARAGRAPH 14.21)

INSTRUMENT OF PARTITION

STAMP

Before _____, exercising the powers of an Assistant Collector of the 1st grade, under Section 7(3) of the Land Revenue Act. Partition case under chapter IX of the H.P. Land Revenue Act, 1954 (Act No. 6 of 1954), between A.B., first party, and D, second party. Claim to divide bighas/ghumaos of land value _____ held by them in mauza _____ hectare tahsil _____. Whereas this case came before me for final disposal at _____ on the _____ day of _____ and it was then ordered that partition be made of the land described in columns 1 and 2 of the schedule hereto annexed, and whereas the period of appeal against the said order has expired without an appeal being presented (or whereas the said order has been varied (or maintained) by an order of the _____ dated the _____ day of _____). This instrument of partition is now prepared in order to give effect to my order aforesaid, dated the _____ day of _____ (first order (as varied or maintained), by the order of the _____ dated the _____ day of _____ second order, if any) and it is hereby declared that this partition will take effect on and from the _____ day of _____ 19 .

Seal of the Assistant Collector 1st grade.

_____ Signature

Schedule

1	2	3	4	5	6
Joint Land (Before Partition)			Separate Land (Partition)		
Field number in village shajra	Area	Names of joint owners with jamabandi number	Field number in village shajra or in tracing of shajra hereto attached (in case of new numbers)	Area	Name of owners to whom field is allotted in partition

Note:- A separate entry should be made for each field number.