

PROVINCIAL ASSEMBLY OF THE PUNJAB

NOTIFICATION

10 November 2012

No.PAP-Legis-2(155)/2012/773. The following Bill, which was introduced in the Provincial Assembly of the Punjab on Thursday, 8 November 2012, is hereby published for general information under rule 93(1) of the Rules of Procedure of the Provincial Assembly of the Punjab, 1997:-

Bill No.38 of 2012

THE PUNJAB PARTITION OF IMMOVABLE PROPERTY BILL 2012

A
Bill

to amend and reform the law relating to partition of immovable property.

Preamble.— Whereas it is expedient to amend and reform the law relating to expeditious partition of immovable property and to provide for ancillary matters;

It is enacted as follows:-

1. Short title, extent and commencement.— (1) This Act may be cited as the Punjab Partition of Immovable Property Act 2012.

(2) It shall extend to whole of the Punjab.

(3) It shall come into force at once.

2. Limitation on scope.— Nothing contained in this Act shall be deemed to affect any law providing for the partition of agricultural land or land subservient to agriculture.

3. Definitions.— (1) In this Act—

(a) "Code" means the Code of Civil Procedure, 1908 (*V of 1908*);

(b) "Court" means the Court of original civil jurisdiction competent to entertain and decide suits for partition of immovable property;

(c) "immovable property" means an immovable property, other than agricultural land or land subservient to agriculture, jointly owned by two or more persons;

(c) "internal auction" means the auction of the immovable property amongst the co-owners of the property in which at least two co-owners are eligible to participate; and

(e) "mesne profits" means the approximate rental benefit which the co-owner in possession of the immovable property gains to the exclusion of any other co-owner during the pendency of the suit under the Act.

(2) An expression used in this Act but not defined shall mean the same as in the Code.

4. Suit for partition of immovable property.— An owner of immovable property may file a suit for partition of the property, giving details of the property, citing all other co-owners as defendants and attaching all the relevant documents in his reach or possession.

5. Appearance of defendants and consequence of non-appearance.— (1) The Court shall issue notice to the defendants for appearance on a date, not later than ten days, through the process serving agency and registered post or courier service and, where possible, also through electronic and telecommunication means.

(2) Copies of the plaint and the documents annexed with the plaint shall be attached with the notice under subsection (1) served through the process serving agency and sent by registered post or courier.

(3) If a defendant fails to appear and the Court is satisfied that the notice has not been served on the defendant or the defendant is willfully avoiding the service of the notice, the Court may direct service of the notice by—

- (i) affixing a copy of the notice at some conspicuous part of the residence of the defendant; or
- (ii) publication in the press, electronic media or any other mode.

(4) If the defendant fails to appear on the date fixed and the Court is satisfied that the notice had been duly served, it may proceed *ex-parte* against such defendant.

(5) If an *ex-parte* order is passed against a defendant, he may, within fifteen days from the date of knowledge, apply to the Court for setting aside the *ex-parte* order and shall submit along with the application the written statement and attach with such written statement copies of all the relevant documents in his reach or possession.

(6) If the defendant submits the written statement and shows sufficient cause for his non appearance, the Court may set aside the *ex parte* order on such terms as it may deem fit.

6. Written statement.— (1) Subject to section 5, a defendant in a suit for partition of immovable property shall file the written statement within thirty days of his first appearance in the Court and shall attach with the written statement copies of all the relevant documents in his reach or possession.

(2) If a defendant fails to file the written statement within the period mentioned in subsection (1), the Court shall strike off his defence and in that event he shall not be entitled to lead any evidence.

7. Mesne profits pending adjudication.— (1) On the first date of hearing or as soon as thereafter, the Court may, pending adjudication of the suit, direct the co-owner, in possession of the immovable property, to deposit, either on monthly or quarterly basis, such interim mesne profits in the Court as it may determine on account of share of a co-owner not in possession of the property.

(2) If an order under subsection (1) is passed, the co-owner in possession of the property shall deposit the amount on or before the date fixed by the Court and, in the absence of any such order, on or before 15th of the month or the first month of the quarter for which the amount is due.

(3) If the co-owner fails to deposit the amount under this section within the time specified under sub-section (2), the Court shall—

- (a) in case he is plaintiff, dismiss his suit; and
- (b) in case he is defendant, strike off his defence and in that event, he shall not be entitled to lead any evidence.

8. Question of title or share.— (1) When there is a dispute as to the title or share in the immovable property, the Court shall decide such question before proceeding further in the suit under this Act.

(2) The determination of a question of title or share of the immovable property by the Court under subsection (1) shall be deemed to be a decree in terms of the Code.

9. Appointment of referee for partition.— (1) If all the co-owners agree in writing on partition of the immovable property through appointment of a referee, the Court shall appoint a referee for partition of the property within such specified or extended time as the Court deems appropriate.

(2) Subject to the restrictions imposed under any law governing town planning, the referee shall decide whether the immovable property is partible and if so, the referee shall propose partition of the immovable property.

(3) Notwithstanding anything in subsection (1) but subject to subsection (2), the Court may, on an application of one or more co-owners who desires his or their shares in the immovable property partitioned, appoint a referee who shall determine whether such share or shares is partible and if so, he shall propose partition of the property to that extent.

(4) The referee may, with the written consent of two or more co-owners of the immovable property, combine the shares of such co-owners in the proposal of partition.

(5) The Court shall affirm the proposal of the referee for partition of the immovable property through decree unless the Court is satisfied that the proposal is in contravention of any law.

(6) The Court may fix the fee of the referee to be paid by the co-owners according to their respective shares in the immovable property.

10. Internal auction.— (1) If on the date fixed by the Court for the purpose, the co-owners fail to submit written agreement about the partition of the immovable property through appointment of a referee or the referee is of opinion that the property is not partible or the Court finds that the proposal of the referee is in contravention of any law, the Court shall determine the reserve price of the immovable property and direct sale of the property through internal auction on the next date of hearing.

(2) The Court shall require the co-owners to be present in person or through their authorized agents on the date of internal auction.

(3) The internal auction shall be conducted in the Court and the Court shall maintain record of internal auction which shall form part of the suit.

(4) Any two or more co-owners of the immovable property may submit their written offers or counter written offers until one of them makes the highest written offer.

(5) The Court shall declare the highest bidder as auction purchaser in internal auction and direct the auction purchaser to deposit the auction price within fifteen days of the auction but the auction purchaser may deduct from the auction price to be deposited such amount as equals his share in the immovable property.

(6) If the auction purchaser deposits the auction price under subsection (5) within the prescribed time, the Court shall confirm the sale, put the auction purchaser in possession of the property and distribute the auction price amongst the other co-owners according to their respective shares.

(7) If the auction purchaser fails to deposit the auction price under subsection (5) within the prescribed time, the Court shall fix another date for internal auction but such auction purchaser shall not participate in the subsequent internal auctions.

(8) The second or subsequent internal auction shall be held, as far as possible, in accordance with the procedure contained in this section for the first internal auction.

11. Open auction.— (1) If the co-owners refuse to participate in the internal auction or only one co-owner shows his willingness to participate in such auction or the internal auction under section 10 has failed, the Court shall fix the reserve price of the immovable property and direct open auction of the property.

(2) A co-owner of the immovable property may participate in the open auction of the property.

(3) The Court shall appoint a court auctioneer for conducting the open auction and fix fee of the court auctioneer to be paid by the co-owners in proportion to their respective shares in the immovable property.

(4) The court auctioneer shall submit in the Court an auction plan in the form of a public notice which shall include detailed specifications of the immovable property, the time, date and place of open auction, and the amount of bid security for participating in the open auction, and the Court may approve the auction plan with or without modification and direct its publication in such manner as it deems appropriate.

(5) The court auctioneer shall conduct open auction under the auction plan approved and published by the Court and direct the highest bidder to deposit—

(a) earnest money equal to twenty per cent of the bid price immediately on the close of bidding; and

(b) the remaining amount of the bid price in the court within seven days.

(6) The court auctioneer shall maintain the record of the auction proceedings and return the bid security to unsuccessful bidders but shall adjust the bid security of the highest bidder in the bid price.

(7) The court auctioneer may, in an appropriate case, accept deposit under clause (a) of subsection (5) in the form of cash, crossed cheque, demand draft or banker's cheque against a receipt.

(8) The court auctioneer shall, immediately after conclusion the auction, deposit in the Court the auction price collected by him along with the auction report.

(9) If the highest bidder deposits the auction price under subsection (5), the Court shall confirm the sale, put the highest bidder in possession of the property and distribute the auction price amongst the co-owners according to their respective shares.

(10) If the highest bidder fails to deposit the auction price under subsection (5), the amount deposited by him shall stand forfeited and the immovable property shall be put to open auction again, as far as possible, in accordance with the procedure contained in this section.

12. Mesne profits.—(1) Subject to sections 10 and 13, the Court may, at the time of final settlement, award mesne profits to a co-owner not in possession of the joint immovable property by deducting the same from the share of the co-owner in possession of the property or by directing the co-owner in possession of the property to pay the same to the co-owner not in possession of the property.

(2) The Court shall, while awarding mesne profits under sub-section (1), take into account the interim mesne profits deposited under section 7.

13. Private settlement.—(1) All the co-owners of the immovable property may, at any stage of the proceedings before the date of open auction of the property, submit a private settlement in the Court.

(2) If the co-owners submit the private settlement under subsection (1), the Court shall pronounce judgment and decree in terms of the private settlement and cancel the order of open auction if already passed.

14. Time limit for disposal of the suit.—(1) The Court shall finally dispose of the suit under this Act within six months from the date of the institution of the suit, failing which, the Court shall submit the case to the District Judge, with cogent reasons, seeking extension of time for disposal of the suit.

(2) The District Judge may, subject to such conditions as he deems appropriate to impose, grant extension in time to dispose of the suit taking into consideration the facts and circumstances of the case.

15. Application of Act V of 1908.— Subject to this Act, the provisions of the Code shall apply to any proceedings under this Act.

16. Instructions of High Court.— The Lahore High Court may issue instructions necessary for purposes of this Act.

17. Repeal.—(1) The Partition Act, 1893 (IV of 1893) is hereby repealed.

(2) Notwithstanding the repeal of the Partition Act, 1893 (IV of 1893) and without prejudice to any previous proceedings in a suit, the suit for partition of immovable property pending in any court under the repealed Act shall be proceeded with and decided by the Court in accordance with the provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

The Government, on 8.3.2012, announced the Punjab Women Empowerment Package 2012 and promised to bring legal reforms, inter alia, acknowledging that inordinate delays are caused in partition cases in urban areas in the present scheme of things. It promised to legislate by bringing new law for curtailing the delays in the disposal of partition cases and suggest

mechanism to alleviate the problems being faced by joint owners due to protracted litigation.
Under the proposed law—

- (i) A joint owner may file a suit for partition of joint immovable property by making all the co-owners defendants in the suit.
- (ii) The Court shall immediately serve a notice on the defendants through expeditious process.
- (iii) If any party objects to partition of the joint immovable property, the Court shall proceed to auction the property amongst the co-owners after fixing the base price. If a co-owner fails to pay the price in case of being successful in this limited auction, he shall be debarred from participating in the next restricted auction of the joint property amongst the co-owners.
- (iv) If the co-owners fail or refuse to participate in restricted auction, the Court shall order open auction of the joint property giving the co-owner right to participate in open auction.
- (v) In case of any dispute about the title or share in the property, the Court shall decide such question before resorting to auction of the property.
- (vi) The parties may, at any stage of proceedings before any successful auction, enter into private settlement and the Court shall give effect to such settlement.
- (vii) The Court shall finally dispose of the suit for partition within 6 months from the date of institution of the suit, failing which, the Court shall submit the case to the District Judge seeking extension of time for disposal of the suit. The District Judge may, grant extension in time for disposal of the suit taking into consideration the facts and circumstances of the case.

The new law aims at providing mechanism for curtailing the delays in the disposal of partition cases to alleviate the problems, being faced by joint owners especially women due to protracted litigation. Hence this Bill.

MINISTER INCHARGE

**MAQSOOD AHMAD MALIK
SECRETARY**