

**IN THE COURT OF SHERAZ QAMAR
CIVIL JUDGE-II, TAKHT BHAI, MARDAN**

Petition No.29/6 of 2023

Date of institution 08.02.2023

Date of Decision 11.02.2025

1. Mst. Rubina Said d/o Ghulam Said widow of Muhammad Zubair, 2. Bilal, 3. Muqbal, 4. Muzamil, 5. Faisal (Sons), 6. Maria d/o Muhammad Zubair (minors through guardian/mother) r/o Ward No.1 Baldia, Takht Bhai, presently residing at Nawa Kalay, Gojar Garhi, Tehsil and District Mardan **(Petitioners)**

VERSUS

1. Shah Faisal (son), 2. Mst. Zohra, 3. Mst. Salma (daughters), 4. Mst. Taj Bibi widow of Muhammad Zubair r/o Mills road, Gadi Baba, Pir Muhammad Khan Koat Road, Tehsil Takht Bhai, District Mardan **(Respondents)**

APPLICATION FOR GRANT OF FINAL DECREE

JUDGMENT

11.02.2025

1. Through this Judgment, the court is going to dispose of an application filed by Mst. Rubina & others (hereinafter referred as petitioners) against Shah Faisal & others (hereinafter referred as respondents) for grant of final decree on the basis of preliminary decree dated 03.11.2022.
2. Brief facts of the petition in hand are that, petitioners filed instant application contending that preliminary decree in suit No. 34/1 of 2022 was passed in their favour by this court vide judgment dated 03.11.2022. Therefore, it is

prayed that final decree in respect of mentioned property be passed in favour of petitioners.

3. Respondents were summoned through process of court, however, respondents did not appear before the court. Therefore, they were proceeded against ex.parte. Whereafter, the case file was fixed for arguments on appointment of local commission.
4. On 12.07.2023, the learned predecessor in court appointed **Mr. Mushtaq Ali Mohmand Advocate** as local commissioner with following directions:

- i. To measure the decretal property on the spot.*
- ii. To determine that whether the decretal property is partition-able or not.*
- iii. If point No.2 is answered in “yes”, then what should be the mode of partition?*
- iv. To determine market value of the decretal property in case the same is not partition-able.*
- v. To prepare the sketch/site plan of the proposed partition.*

5. Local commissioner after visiting the suit property submitted his report on 31.10.2023. The local commission in their report had submitted the mode of partition of the suit property. After submission of the report of local

commission, objections were called from both sides. Petitioners filed no objections on the report of commissioner.

6. Thereafter, local commissioner was summoned for recording his statement. The local commissioner **Mr. Mushtaq Ali Mohmand Advocate** recorded his Statement as CW.1, wherein he exhibited report commission as Ex. CW. 1/1 to Ex.CW.1/8 and endorsed his signature upon the same, being correct.
7. It is worth noting that the case file was put up for arguments on report of local commission however, in the meanwhile parties sought time for compromise, they were given time for compromise with directions that if compromise failed the file will be put up for order. After failing to compromise, the case file was adjourned for order. However, in the meanwhile vide the order sheet dated 14.09.2024, Defendant No.1/Respondent No.1 moved an application to set aside the ex. Parte decree but their said application i.e. 176/6 of 2024 was dismissed in default vide order dated 02.01.2025.
8. Arguments heard and record perused.
9. Perusal of record reveals that in pursuance of the court directions local commissioner namely **Mr. Mushtaq Ali Mohmand Advocate** visited the suit property and after

conducting the whole proceedings, submitted his report on 31.10.2023 with following observations;

- a. The local commission measured the disputed property and found 17 Marlas open dag on the spot in which share of plaintiffs is 11 Marlas & 100 feet.
- b. The local commission came to the conclusion that the disputed property is partition-able as the share of plaintiffs can be accommodated.
- c. The local commission annexed map with his report and proposed the portion of property measuring 11 Marlas & 100 feet for petitioners out of total property measuring 17 Marlas which is mentioned in the map as under;
 - Point “A” to “B” 15 feet
 - Point “B” to “C” 207 feet
 - Point “C” to “D” 15 feet
 - Point “D” to “A” 207 feet
- d. The local commission suggests that disputed property is partition-able. Therefore, there is no need to determine market value of the suit property. Whereas, the market value of

property situated in above mentioned area is twenty two or twenty three lacs.

- e. Lastly, local commission prepared map of the suit property and annexed the same with his report.

10. Thereafter, the local commission and other participants of the proceedings were summoned for recording their statements. In response to which, the local commission Mr. Mushtaq Ali Advocate appeared and record his statement as CW.1, wherein he exhibited his report as Ex.CW.1/1 to Ex.CW.1/8. Likewise, Adil Iqbal Patwari Halqa Moza Takkar and Mst. Rubina (plaintiff) submitted affidavits to the effect that local commission conducted whole proceedings in their presence. After that on the report of local commission objections were called from both sides. Petitioners filed their no objections on the report of local commission while respondents were already proceeded against ex.parte.

11. In view of above discussion, specifically the no objection of counsel for the petitioners on report local commission and also the map annexed with report of local commission thoroughly mentioned that the disputed property is partition-able and petitioners/decree holders as well as other

co-owners could be accommodated to the extent of their ownership in the suit property.

12. Since plan of partition envisaged in commission report seems genuine, hence, commission report is confirmed and final decree is passed in favour of petitioners/DHs on the basis of preliminary decree. No order as to costs.

13. File be consigned to record room after its necessary completion and compilation.

Announced

11.02.2025

Sheraz Qamar
Civil Judge-II, Takht Bhai,
Mardan

CERTIFICATE:

Certified that this judgment consists of (06) pages, each page has been read, signed and correctly by me where necessary.

Sheraz Qamar
Civil Judge-II, Takht Bhai,
Mardan

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Mst. Rubina & others vs Shah Faisal & others

Order-----
11.02.2025

1. Petitioners through counsel present. Respondents are already proceeded against ex.parte. Arguments of learned counsel for the petitioners already heard.
2. Vide my detailed Judgment of today separately placed on file consisting upon eight (06) pages, since plain of partition envisaged in commission report seems genuine, hence, commission report is confirmed and final decree is passed in favour of petitioners/DHs on the basis of preliminary decree. No order as to costs. Decree sheet be drawn accordingly.
3. File be consigned to record room after its necessary completion and compilation.

Announced
11.02.2025

Sheraz Qamar
Civil Judge-II, Takht Bhai,
Mardan