

The hand book of guide lines to
Registered Licensed Surveyors
Chapter 2 Court Commission Surveys.

(These are merely guide lines issued for the benefit of the Registered Licensed Surveyors. They shall not construed to be above any of the relevant enactments or orders given by a judge)

(A) General

The court will issue commissions to the surveyors to carry out a commission in terms of either the Civil Procedure Code or the Partition Act. The commissioner goes to the land as an officer of court where by his functions are very important as to assist the courts to come to a correct decision as what is intended by, the court con not be conducted by the Judge in person. In such instances the commissioner will be directed to make investigations and report to court. The commissioner will be the eyes and ears of the Judge

Court Commission Surveys can be classified in to two main groups as “L” cases and “P” cases. “L” cases are generally filed to provide, means of accesses, to settle boundary disputes or disputes regarding owner ship of land parcels. Some times there can be “L” cases for other reasons like ejectment. Commissions on ‘L’ cases are issued by the magistrates court also

(B) (1)-‘L’ Cases -:

The duty of the surveyor who is appointed as a commissioner. is to prepare the survey plan for the inquiry and it should be based on the plaint. A Copy of the plaint should be strictly there annexed to the commission. The case will be conducted under the Civil Procedure Code section 428. For ‘L’ Cases there is no separate legislation like the Partition Act. There is no specified time period to give notice of survey. A weeks notice preferably by registered post is sufficient. Generally as there is no execution of a deed, a schedule of boundaries may not be essential on the plan . There is no need to strictly follow any specimens of revenue plans issued to surveyors. The surveyor can give any additional information if he thinks they will be helpful to the courts at the inquiry. Many courts allow the commissioner to collect the full survey fee in advance direct from the party who has taken the commission. Once the fee is collected the surveyor should execute the commission at the earliest . When the survey is done and plans drawn up the surveyor is not permitted to hold on to the plan till the relevant party pays the balance survey fee. The surveyor should organize his work in such a way that similar situations will not arise. The completed plan should always accompany a report. There is no specimen given for surveyors report for “L” cases. It will be just a narration of what took place . it is most important, the surveyors’ independent, unbiased, decisions be also transparent, as the surveyor will be held accountable. There for the surveyor must in good faith. fairly listen to all parties. This is the golden duty lying upon any person who decides anything .

(B)(ii)- 'P' Cases -:

Partition Act No 21 of 1977 governs the conduct of partition cases No 5 of 1981, No 6 of 1987, No 32 of 1987 and No 17 of 1997 are the subsequent amendments to the Principal Enactment. The following are guide lines compiled with the help of some senior experienced survey commissioners. For any inconsistency, orders given by a judge or what is there in the statute supersede these guide lines. Commissions for Partition cases are issued in two parts namely Preliminary Survey and Final Partition. All letters, notices and reports have to follow the formats given as schedules in the Partition Act. Surveyors should be mindful that in addition to the Partition Act and its subsequent amendments there are New Law Reports (NLR) which are now called Sri Lanka Law Reports. A supreme court judgment given against a judgment of the District Courts will be published as an enactment. They are called N L R R or SLLRR

(B)(ii)(i) Preliminary Survey

- (1) When a commission is received for a Preliminary Survey the first thing a surveyor should do is to note down the date of receipt of the commission as it might be of some use later and the returnable date of the commission in the surveyors diary. Maintain a permanent Register for court commissions.
- (2) On receipt of a commission please check the annexed papers, including the plaint. If there are any omissions or any document missing write to the Registrar. You are not expected to write to the D.J. or the Attorneys
- (3) It is essential that you give at least 14 days notice (verbal as well as written) for the survey. The notice has to be sent by Registered post to each and every plaintiff / defendant individually even if some of them are residing at the same address. After the first day of the survey you can inform the subsequent dates verbally or through a messenger provided you can convey the message to each and every interested party.
- (4) For partition cases there is only one Preliminary Survey. A commission obtained, either by the plaintiff or a defendant to have an additional area surveyed or to reduce some area, is a supplementary survey.
- (5) When you visit the site for the survey it is preferable that you stay out doors in a shade and record all statements from the plaintiff and the defendants. You may not go in to houses for this purpose. Not only one should be honest but also one should appear to all, that he is honest and sincere. All announcements, recoding of oral statements and checking documents submitted by interested parties should always be done in the open. No room should be left for any suspicion on the proper conduct of the survey.
- (6) The plaintiff or his nominee in writing giving reasons for his absence or any other defendant, who may have obtained the commission should invariably be present to point out the boundaries for the survey. The absence of other defendants should not be a reason for not executing the commission.

- (7) It is necessary that due consideration is paid to the four boundaries, situation, name of the land, extent as given in the plaint. If there is a difference between the boundaries stated and the boundaries pointed out, the survey however may be carried out according to how it is pointed out. If the variation is small it may be surveyed and reported. If it is not, the matter re the deference could be included in the surveyors report. It is often noticed that participants try to create confusion in the mind of the surveyor by giving contradictory information. In such cases it is always preferable to adhere to the information supplied by the plaintiff in the survey commission, while giving any other varying information in the surveyors report, as decided relevant by him. It may be necessary to superimpose any plan, referred to, in the schedule of the plaint. There are rare occasions the plaintiff is unable to provide even a photo copy of such plan. However this should not be a reason not to proceed with the survey. In such cases if the plaintiff can point out the definite boundaries on ground the survey could be carried out and the court provided with a comprehensive report for any suitable action.
- (8) In partition action it is imperative survey to the land as required by the partition Act. The preliminary plan returned to courts by the surveyor is a statutory plan. Section 18 of Partition Act specifies the duties of the commissioner. 18 1(a) is a very important section where the surveyor has to state clearly whether the land surveyed and land described in the schedule of the plaint is substantially the same or not.. It is easier for the surveyor to arrive at a definite conclusion when the schedule refers to a survey plan. If not the surveyor can point out in his report about major differences, if there are any, so that the court can make further investigations and take a decision.
- (9) On superimposition of an old survey plan if it is noted that small portions of adjoining lands are getting included or parts of the corpus already surveyed getting excluded, it is necessary that the surveyor visits the land again to demarcate these severance lots on ground and to note any buildings or plantations that may get included or excluded. These severance lots demarcated on ground need to be pointed out to the affected parties and those lots have to be separately lotted. If there are any new parties coming in, vide section 16 of the amendment No 32 to the partition Act, they have to be noticed by the surveyor to appear in courts at the next calling date.
- (10) In some cases the extent of land is given in the schedule in relation to sowing capacities such as Lass, Bushels, Amunu etc. These measurements varies according to zones. The annexed document gives some guide Lines to these measures. Those figures are only rough estimates descended from generation to generation and hence liable to differ. A surveyor may have these figures in mind just to have a rough idea about the extents involved

- (10) In view of para (B) (ii)(i) 5 it is advisable for a surveyor, when attending courts to give evidence for a case, not to step in to any lawyer's chambers to discuss matters regarding that case. Not even on any other matter which can lead to suspicion by the other party.

(B)(ii)(ii) **Final Partition**

- (1) The normal procedure is the commission for the final partition to be issued to the same surveyor who executed the preliminary survey commission. This is a requirement in the Partition Act. section 27 (3). On receipt of the commission it is essential that the surveyor study the commission very carefully even several times, making notes of important directives given. If the partition of the land is according to shares it is necessary that the sum of all shares add up to unity. If not the commission should be returned to courts requesting a rectification of the list of shares.
- (2) If the preliminary survey has been done by another surveyor it is necessary that the commissioner obtains the field notes and a tracing of the corpus from the case records filed in courts. If it is possible the survey lines have to be reopened and boundaries verified. However for some reason the old survey lines can not be reopened then as an alternative the land has to be re surveyed and the old boundaries of the preliminary survey are laid down, where if necessary, and adopted after a superimposition. Surveyor should not deviate from the outer boundary of the corpus on which the interlocutory decree (ID) is entered
- (3) it is advisable that the BOD of the sub division is prepared in consultation with the parties concerned, in the field itself . After all the parties have spent a lot of many and time, going through the partition action and it is important that their requirements are, as far as possible , accommodated. Of course any special instructions given in the ID should be given priority. The surveyor may visit the site on an appointed date to discuss with the parties as to how the subdivision is to be done and prepare a scheme of partition. On a subsequent date the partitioned lots are demarcated on ground. Some surveyors visit the site with the drafting equipment to prepare the BOD and demarcate the lots on the same day. this is possible specially when the land to be subdivided is comparatively small. There is no objection to either method. However calling parties to the surveyors residence for discussions should be avoided. Serious planning is necessary when preparing the BOD. Once the BOD prepared and blocks demarcated on ground, generally they should not be altered by the surveyor him self or on the request of any of the parties. This can lead to problems and the parties will loose confidence on the surveyor.

- (4) According to section 30 of the partition Act No 21 of 1977 the written notice of survey has to be by registered post at least 14 days prior to date of survey. For the oral proclamation , unlike in the preliminary survey, it is sufficient if oral proclamation and display of the notice at the site is made at least 10 days before the Survey. (Section 30(3) of the partition Act)
- (5) According to the ID, however complicated the subdivision becomes due to buildings and other developments effected , specially after the preliminary survey, the surveyor should not seek further instructions from courts. In courts the surveyors are regarded as experts in their field. The subdivision has to be carried out according to the best of his knowledge and experience . if there are any problems they could be included in the surveyors report. Even if there are encroachments by the adjoining land owners the surveyors duty will be to cut out the blocks according to the ID and report to courts. The surveyor can summon the encroacher, show him the boundaries laid down and request him to appear in courts at the next trial date if he so desires. (see para 8 here)
- (6) It is very necessary that the surveyor shows on plan all existing buildings at the final partition. However it is not necessary to show any buildings that were there at the time of the preliminary survey but now demolished.
- (7) The value of the land partitioned tends to increase considerably after the final decree. Hence it is the duty of the surveyors to see that the land is subdivided in the most profitable manner.
- (8) According to sections 14 and 28(6) of the amendment No 17 of 1997 to the Partition Act which stipulates that the surveyor should pay attention to all written laws, regarding subdivision of land, such as minimum plot size , proper access, vehicle turning areas and so on, subject to any special orders given in the ID. Any subdivision regulations that could not be accommodated need to be reported in the surveyors report, with the certificate given in section 14(4) of the amendment. There is no provision provided to get the final partition plan approved by the Local Authority or the Town planner. Of course subsequently it is their discretions to issue or not a development permit for any lot If according to the ID the shares to be blocked out are less then the minimum plot size declared by the UDA or the Local Body of that area the surveyor should persuade the parties to agree to have their shares as undivided in one lot that will come within the minimum plot size. They should give their consent in writing, if they refuse to give their consent in writing the surveyor should inform courts and seek instructions for a sale or auctioning the land as stipulated in the said amendment to the Partition Act.
- (9) It is not proper to amalgamate unallotted shares with allotted shares . This will dilute the title to allotted shares.
- (10) The most important documents in a partion action are the final decree, the partition plan and the surveyors report. They have to be preserved for a long period. Hence the surveyors should be mindful to use quality paper for his plan & report
- (11) unlike in the preparation of the plan of the preliminary survey where all buildings are marked with numerals or alphabets and described in detail in the

surveyors report for the inquiry , the buildings in the plan of the final partition need to be described in the usual manner like (P) permanent Building (Ty) Temporary Building and so on . when after the case is over and the parties obtain copies of the final partition plan they do not get a copy of the surveyors report. The final partition plan must be able to stand of its own with all the necessary details. It should not be a part of the surveyors report or even the final decree.

- (12) After the inquiry on the preliminary plan, it is the Interlocutory Decree (ID) that will be issued to the Survey Commissioner for the subdivision of the land. It is an interim order which is liable to change. The partition plan, prepared based on the ID, can be challenged by any of the parties to the case if he/she is not satisfied with the subdivision done, giving reasons to the satisfaction of the court . Usually the protest accompanies an Alternate scheme of partition. This alternate scheme is merely a proposal which could be prepared by any registered Licensed Surveyor and it need not have a schedule of boundaries. If the courts decides to accept the alternative proposal, generally the same commissioner will be ordered to alter the blocking out on ground according to the alternate scheme and prepare a revised partition plan. This will be done by the commission and an invoice submitted to the courts re the additional expenses involved. This claim is normally approved by court unless the revision has become necessary due to the commissioner not having carefully considered the options available originally, before preparing and submitting the partition plan to courts in the first instance.

(c) Valuation

- (1) Under the partition Act valuation is done for two particular reasons. That is to balance the value of the subdivided lots and to ensure that reasonable compensation is paid in connection with the improvements effected to an undivided land. What is expected from the surveyor is to work out the appraised value and not the market value. Valuation should not be made for the litigants to pay large sums as compensation According to the New Law Reports 21 page 33. In valuing a building the ‘LESSER’ cost, between the cost of construction at that time together with the maintenance cost and the present value, need to be adopted. Regarding plantations the cost incurred in planting and maintaining is to be adopted and not the market value. For example a Jak tree which could grow without much efforts carries an appraised value vary much less than its market value
- (2) any new buildings constructed or improvements to existing buildings or any plantation done after the preliminary survey should not be taken in to account for the valuation . this is because the courts will not decree on any improvements done after the preliminary survey and also the parties are not expected to do any improvements after the preliminary survey.

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