

LHC: Internal Auction Must Fail Before Open Property Sale Under Punjab Partition Act

The Lahore High Court held that a partition property's open auction requires a lawfully failed internal auction, a reasoned reserve price and compliance with every material safeguard in Sections 10 and 11 of the Punjab Partition of Immovable Property Act, 2012.

Lahore High Court judgment analysis
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Case: Ghulam Muhammad v Muzammil Hussain and others | Civil Revision No. 09 of 2023

Court and date: Lahore High Court, Multan Bench | 8 September 2026

Judge: Justice Muhammad Sajid Mehmood Sethi

Citation and result: 2026 LHC 5783 | Revision partly allowed; limited remand

The ruling in one sentence

The Lahore High Court has held that jointly owned property cannot lawfully move from internal auction to open auction unless the record establishes the statutory contingency for that transition, and that a court cannot confirm the sale without reasoned findings on reserve price, the auction plan, notice, bidding and timely payment of the purchase price.

In Ghulam Muhammad v Muzammil Hussain and others, Civil Revision No. 09 of 2023, the Multan Bench partly allowed the revision and remanded the matter to the Executing Court. The preliminary partition decree remained intact. The Court did not declare the entire auction automatically void; it directed a focused determination of the petitioner's subsisting share and its market value, followed by an opportunity for the auction purchaser to pay that value before any fresh auction of the petitioner's share.

How the partition dispute reached the High Court

The respondents filed a suit for separate possession through partition of immovable property measuring four marlas and five sarsahies in District Sahiwal. The Executing Court first determined the parties' rights and respective shares through a preliminary decree.

The property was later found incapable of convenient division by metes and bounds. Proceedings therefore moved to disposal under the Punjab Partition of Immovable Property Act, 2012.

The preliminary decree was not challenged before the Lahore High Court. The dispute concerned only the later auction process and the order dated 17 May 2022 by which the Executing Court confirmed the sale in favour of respondent No. 1 and directed issuance of a sale certificate. The Additional District Judge dismissed the petitioner's appeal on 23 November 2022, leading to the revision under Section 115 of the Code of Civil Procedure, 1908.

The Rs 50 million offer and the later lower bid

The petitioner relied heavily on an offer of Rs 50,000,000 allegedly made by respondent No. 1 on 21 November 2020 and accepted on 18 December 2020. The later auction fetched Rs 36,500,000, a difference of Rs 13,500,000.

The High Court did not treat the earlier offer as a concluded private sale. Once partition proceedings had begun, disposal of the jointly owned property was governed by the 2012 Act. An accepted offer outside that statutory framework could not simply replace the process required by law.

At the same time, the earlier offer was important evidence of value and of what may have occurred during the internal-auction stage. The Executing Court could neither treat it as automatically binding nor ignore it without reasons. It had to determine whether the offer formed part of the internal auction, whether it was accepted in the manner required by Section 10, whether the offeror complied with the statutory deposit requirements and whether the internal auction was lawfully concluded or failed.

Sections 10 and 11 create a mandatory sequence

Section 10 gives the existing co-owners the first opportunity to acquire the property through an internal auction. The Court must determine the reserve price, require personal appearance or appearance through duly authorized agents, conduct the auction in Court and preserve a proper record. Written offers and counter-offers may continue until the highest offer is reached.

Section 11 governs open auction. It becomes available only when the co-owners refuse to participate in the internal auction, only one co-owner is willing while the others are unwilling, or the internal auction has failed.

The High Court held that the two methods are not interchangeable options that a court may select at will. Open auction is the statutory consequence of a failed or ineffective internal auction in one of the circumstances stated in Section 11. The record must therefore disclose why the internal mechanism ended and precisely what authorized the move to an open sale.

This sequence protects two interests at once. It gives co-owners the first opportunity to keep the property among themselves, while allowing exposure to the wider market where the internal process cannot produce a lawful result.

Why the requirements are mandatory

The Court treated the core conditions in Sections 10 and 11 as mandatory rather than directory. They protect proprietary rights in land being subjected to compulsory sale and form the legal foundation of the court's authority to confirm that sale.

Those conditions include a reasoned reserve price, exhaustion of the internal auction, lawful appointment of a Court Auctioneer, and preparation, approval and publication of an auction plan. Non-compliance with a foundational condition is not a minor irregularity that becomes harmless merely because bidding occurred or money was later distributed.

The judgment nevertheless avoids the opposite overstatement. Every procedural departure does not invalidate an auction. A court must distinguish an inconsequential irregularity from a defect affecting jurisdiction, the statutory foundation or the fairness of the sale. Here, the objections collectively went to the transition between auction stages, valuation, notice, publicity, bidding and payment.

The record did not establish lawful failure of the internal auction

The High Court found that the available record did not satisfactorily demonstrate several essential matters. It did not show a formal reserve-price determination supported by relevant material, proper participation requirements for every eligible co-owner, a recorded process of written offers and counter-offers, lawful treatment of the Rs 50 million offer, compliance by the highest internal bidder, or a sustainable declaration that the internal auction had failed.

Section 11 does not become operative merely because the Executing Court ultimately conducted an open auction. There must first be a factual and legal basis for moving away from Section 10.

The Court distinguished *Awais Gohar v Sumaira Adnan and another* (2024 CLC 251). In that case, the record showed repeated opportunities to a co-owner, continued non-participation and a reasoned conclusion that the internal auction had failed. Comparable findings were missing here.

The Court also relied on *Naseem Bibi and others v Imran Qayyum and others* (2025 CLC 813), which treated the statutory sequence, proper participation, reserve-price determination and the opportunity to submit written offers as material safeguards connected with natural justice and Articles 4 and 10-A of the Constitution.

A reserve price requires reasons and reliable valuation material

The petitioner had asked the Executing Court to fix the reserve price and referred to a schedule rate of Rs 680,000 per marla and a proposed value of Rs 800,000 per marla. The High Court made clear that those figures were not binding. They were, however, relevant material that required judicial consideration.

The Executing Court had to accept the figures on proper grounds or obtain other reliable valuation material and explain the price it fixed. A reserve price is not a mathematical formality. It protects co-owners against disposal at an unreasonably depressed value and supplies the benchmark against which the highest bid must be examined.

The emergence of a highest bidder therefore does not prove that an auction was lawful, transparent or capable of confirmation. Judicial approval requires an independent application of mind to the legality of the preceding process.

The auction plan, notice and publicity matter

Once the legal threshold for an open auction has been crossed, Section 11 requires appointment of a Court Auctioneer and submission of an auction plan in the form of a public notice containing the prescribed particulars. The Court must approve the plan and it must be properly published before bidding.

These safeguards are designed to attract meaningful participation, expose the property to the market and protect all co-owners. Defects in valuation, publicity and notice can depress competition and price. They cannot be dismissed merely because one participant ultimately offered more than the others who appeared.

The High Court drew assistance from judicial-auction authorities under other statutory regimes while carefully noting that their provisions could not be mechanically imported into the special 2012 Act. The broader principle remained relevant: a court-supervised sale must be fair, transparent and based on reliable valuation material.

The statutory payment timetable must be proved

Section 11(5) requires the successful open-auction bidder to deposit earnest money equal to twenty percent of the bid immediately after bidding ends and the balance within seven days.

The petitioner specifically disputed compliance with the payment requirement. The judgments below did not clearly identify the auction date, the date and manner of the twenty-percent deposit, the date of the remaining payment or the legal provision under which the deposits were accepted.

That omission was material. Under the 2012 Act, confirmation follows compliance with the statutory conditions; it does not arise merely from the announcement of a winning bid.

Section 15 makes the Code of Civil Procedure applicable only where it is not inconsistent with the special scheme. The Executing Court must therefore identify the governing provision before deciding whether a bidder paid validly and on time.

A specific challenge displaces the presumption of regularity

Official and judicial acts ordinarily carry a presumption that they were regularly performed. The judgment explains the limit of that presumption.

Where a party raises a specific objection and points to material suggesting non-compliance with mandatory preconditions, the court must require and examine actual proof. It cannot rely on the fact that the process reached completion and presume that every earlier step must therefore have been lawful.

The petitioner's reserve-price application and objections concerning notice, publication and deposit were sufficient to require express findings. Their absence could not be cured by a general presumption of regularity.

A co-owner may participate in the open auction

The High Court rejected any objection based merely on respondent No. 1 being a co-owner. Section 11(2) expressly permits a co-owner to participate in an open auction. Co-ownership did not disqualify respondent No. 1 from becoming the auction purchaser.

The real issues were the legality of the process and the extent of the purchaser's present proprietary interest. Respondent No. 1 had later acquired shares from some other co-sharers. Those acquisitions, if proved through legally admissible documents, had to be recognized when relief was framed.

Receipt of sale proceeds did not automatically cure the defects

Some co-sharers had received their shares of the sale proceeds. The Court held that later distribution or receipt of money cannot by itself validate a sale conducted contrary to the governing statute.

That did not mean every later transaction should be erased. Rights lawfully acquired by the auction purchaser from co-sharers who were not challenging them had to be separated from the petitioner's subsisting interest. The remedy had to protect the petitioner without unnecessarily disturbing independent rights validly acquired from others.

Why revisional interference was justified

A court exercising revision under Section 115 CPC does not normally disturb concurrent factual findings merely because another view is possible. Interference becomes justified when the courts below fail to exercise jurisdiction, act beyond jurisdiction, disregard mandatory statutory requirements, or base their conclusions on misreading, non-reading or omission of material evidence.

The present case fell within that exception. The decisive problem was not simply disagreement about facts; it was the absence of considered findings on the statutory preconditions for confirmation of a compulsory sale under a special law.

The carefully limited remand

The Lahore High Court partly allowed the revision only to the extent the auction affected the petitioner's subsisting share. It did not disturb the preliminary decree determining title and shares, and it did not declare the entire auction void.

The Executing Court must first determine the shares lawfully acquired by respondent No. 1 from other co-sharers and his resulting present interest. It must then determine the petitioner's remaining share and the market value attributable to that share on reliable and legally admissible material.

Respondent No. 1 must be given an opportunity to pay the petitioner the value fixed by the Executing Court. If payment is made within the prescribed time, no fresh auction of the petitioner's share will be required. If payment is refused or not made in time, only the petitioner's share must be subjected to a fresh auction under the 2012 Act and applicable law.

When fixing market value, the Executing Court must consider the earlier Rs 50 million offer, its alleged acceptance, the later Rs 36.5 million auction price, the applicable schedule rate and any other relevant valuation evidence. No single figure is conclusive, and any amount already received by or attributable to the petitioner must be adjusted.

The High Court directed the Executing Court to endeavour to complete the exercise within three months of receiving a certified copy of the judgment. No order as to costs was made.

Practical guidance for partition auctions

For executing courts, the file should separately record the reserve-price material, reasons for the valuation, attendance and authority of co-owners or agents, written offers and counter-offers, the result of the internal auction, and the exact statutory basis for moving to open auction.

For court auctioneers, the approved auction plan, its prescribed particulars, proof of publication, bid-security record, bid sheet and payment receipts should form a clear chronological record.

For a party challenging the process, a general allegation that the property sold cheaply will rarely be enough. The objection should identify the missing statutory step, the valuation material ignored, defective notice or publicity, and the exact dates and amounts of deposits.

For a successful bidder, later payment and distribution do not remove the need to prove that the statutory path to confirmation was followed. Where shares are separately acquired from co-owners, those transactions should be documented independently so that the court can distinguish them from rights claimed under the auction.

What the judgment does not decide

The ruling does not hold that every partition auction containing a procedural error is void. Only material defects affecting authority, statutory foundation or fairness justify that result.

It does not treat the Rs 50 million offer as a concluded sale or as conclusive market value. The offer is relevant evidence that must be assessed with the remaining valuation material.

It does not prohibit a co-owner from purchasing at an open auction. The 2012 Act expressly permits participation.

It does not reopen the preliminary decree or the shares originally determined by it. The remand concerns the later auction process, subsequent lawful acquisitions and the petitioner's remaining interest.

It also does not automatically order a new auction of the whole property. The first remedy is valuation of the petitioner's subsisting share and an opportunity for the auction purchaser to satisfy that value.

Conclusion

Ghulam Muhammad v Muzammil Hussain clarifies that the stages of a partition auction are legal safeguards, not administrative formalities. A court must first complete or lawfully terminate the internal auction, then justify the transition to open auction, fix a reasoned reserve price, approve and publish the auction plan, and verify payment before confirming the sale.

The judgment is equally important for the restraint shown in relief. Instead of unsettling every later right, the Lahore High Court confined the remand to the petitioner's subsisting share and required valuation and an opportunity to pay before any fresh auction.

This commentary is independent legal analysis for research and general information. The complete judgment, current statutory text and record of a particular auction should be checked before reliance in proceedings.