



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

REGULAR FIRST APPEAL NO.1841 OF 2012 (RES)

BETWEEN:

SRI M.V. GANESHA PRASAD
AGED ABOUT 55 YEARS,
S/O LATE M.L. VASUDEVAMURTHY,
COFFEE PLANTER,
R/AT BEHIND "LALITHA PRASADAM",
HOSAMANE EXTENSION,
CHIKAMAGALORE-577 101.

... APPELLANT

(BY SRI SRIVASTHAVA H.K., ADVOCATE)

AND:

SRI M.L. VASUDEVA MURTHY
AGED ABOUT 83 YEARS,
S/O LATE MYSORE LACHAIAH SHETTY,
SINCE DECEASED BY HIS LEGAL REPRESENTATIVES
WHO ARE RESPONDENT NOS.1,2,3,4,5,8,9,10.

1. SMT. A.R. KAMALA,
W/O A. RAMASHETTY,
AGED ABOUT 73 YEARS,
R/AT NO.425 (428) SRIKAMAL,
NEAR IYENGER MESS,
DEVAMBA AGRAHARA, MYSORE-570 001.
SINCE DECEASED
(R-2 TO R-5, R-9 & R-10 ARE
THE LR's. OF R-1 AMENDED VIDE
ORDER DATED 18.09.2024)
2. SMT. T.R. SATHYALAKSHMI
W/O T.R. RAMAPRASAD,
AGED ABOUT 59 YEARS,

Digitally signed by
MAHALAKSHMI B M
Location: HIGH
COURT OF
KARNATAKA



R/AT 115/1, SHARADA PRASAD,
BULL TEMPLE ROAD, NAGARAJA LAYOUT,
BANGALORE-560 018.

3. SMT. A.P RUKMINI
W/O A.PARANJYOTHI,
AGED ABOUT 56 YEARS,
R/AT NO.484, 1ST FLOOR,
VIRUPAKSHA NILAYA, 2ND MAIN ROAD,
4-T BLOCK, JAYANAGAR,
BANGALORE-560 041.
4. SMT. B.M. GAYATHRI NATARAJ,
W/O B.N. NATARAJ,
R/AT NO.1, MAHALAKSHMI NIVAS,
NAZARBAD EXTENSION,
MYSORE-570 001.
5. SMT. V. GIRIJA SRINIVAS,
W/O V. SRINIVASAN,
AGED ABOUT 58 YEARS,
R/AT NO.12, RAJARAJESHWARI KRUPA,
2ND MAIN ROAD, 4TH MAIN ROAD,
JAYANAGARA, BANGALORE-560 041.
6. SRI S.C. PARASHURAM,
S/O LATE SARGOD CHANDREGOWDA,
AGED ABOUT 46 YEARS,
COFFEE PLANTER, P.B.NO.47,
SETTY STREET, CHIKAMAGALORE-577 101.
7. SRI S.C. SRINIVASA
S/O LATE SARGOD CHANDREGOWDA,
AGED ABOUT 48 YEARS,
COFFEE PLANTER, P.B.NO.47,
SETTY STREET, CHIKAMAGALORE-577 101.
8. SMT. M.V. PARVATHAVARDHANA
W/O LATE M.L. VASUDEVA MURTHY,
AGED ABOUT 75 YEARS,
R/AT "LALITHA PRASADAM",
HOSAMANE EXTENSION,
CHIKMAGALUR-577 101.
SINCE DECEASED
(RESPONDENT NOS.2, 3, 4, 5 ARE LR's
OF R-8 VIDE ORDER DATED 18.09.2024;



R-8 DELETED VIDE COURT
ORDER DATED 08.03.2018)

9. SRI M.V. CHANDRASHEKAR,
S/O LATE M.L. VASUDEVA MURTHY,
AGED ABOUT 72 YEARS,
R/AT "SIRIDHAM", 26/27,
3RD CROSS, 7TH BLOCK WEST,
JAYANAGAR, BANGALORE-560 011.
10. SMT. M.V. GIRIJA W/O V. SRINIVASAN,
AGED ABOUT 58 YEARS,
R/AT NO.12, RAJARAJESHWARI KRUPA,
33RD BLOCK, 16TH MAIN ROAD,
4TH T BLOCK, JAYANAGAR,
BANGALORE-560 041.
(DELETED AS PER VIDE
ORDER DATED 27.11.2024)

... RESPONDENTS

(BY SRI G. KRISHNA MURTHY, SENIOR COUNSEL FOR
SMT. N.APARNA & SMT. G.K.BHAVANA, ADVOCATES FOR C/R-6 & R-7;
R-1 IS DEAD & R-2 TO R-5, R-9 & R-10 ARE LR'S OF DECEASED R-1;
R-8 IS DEAD & R-2 TO R-5 ARE TREATED AS LR'S OF R-8;
R-2, R-3, R-4, R-5 & R-9 ARE SERVED V/O. DATED 27.11.2024,
R-10 IS DELETED)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER 41 RULE 1
OF CPC, AGAINST THE JUDGEMENT AND DECREE DATED 04.07.2012
PASSED IN O.S.NO.176/1997 ON THE FILE OF ADDITIONAL SENIOR
CIVIL JUDGE & JMFC, CHIKMAGALORE, DISMISSING THE SUIT FILED
FOR PRE-EMPTION AND POSSESSION.

Date on which the appeal was reserved for Judgment	21.04.2025
Date on which the Judgment was pronounced	29.04.2025

THIS RFA HAVING BEEN HEARD AND RESERVED, COMING ON
FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED
THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MRS JUSTICE K.S. HEMALEKHA



CAV JUDGMENT

(PER: HON'BLE MRS JUSTICE K.S. HEMALEKHA)

The plaintiff has filed this present first appeal assailing the judgment dated 04.07.2012 in OS NO.176/1997 on the file of the Addl. Sr. Civil Judge, Chikmagalur, (hereinafter referred to as the "Trial Court" for short).

2. The plaintiff instituted the suit seeking enforcement of the right of preemption by placing reliance on clause No.18 of the registered partial partition deed (hereinafter referred to as 'deed', for short) dated 28.03.1975 and a direction to the defendants No.1 to 3 to sell the suit schedule property ('schedule property' for short) to him after settling the actual market value at which the said property is to be sold. The schedule property was allotted to defendant No.1 under the deed dated 28.03.1975. On 20.12.1995, defendant No.1 issued a notice expressing his intention to sell the schedule property and invited the plaintiff to exercise his right of preemption under clause 18 of the deed. It is stated by the plaintiff that the notice issued by defendant No.1 did not specify a price for the



schedule property, it only stated that the prevailing market price at that time would exceed Rs.60 lakhs. It is stated that defendant No.1 did not inform the plaintiff that he had been offered a firm offer for the sale of the schedule property, nor did he enquire with the plaintiff regarding the exercise of right of preemption before proceeding with the sale. Despite the plaintiff's response to the notice and raising concerns about the inflated price, defendant No.1 failed to engage in further communication or clarification before selling the schedule property to a third party. That the consideration amount stated in the sale deeds were deliberately inflated with an intent to exclude the plaintiff from exercising the right of preemption under clause 18 of the deed. The plaintiff avers that the sale of the schedule property by defendant No.1 in favour of defendant Nos.2 and 3 is null and void being not only contrary to the plaintiff's preemptive rights, but also in violation of the interim orders passed by the Courts in pending civil proceedings concerning the schedule property.



3. Defendant No.1, the father of the plaintiff filed written statement, the same was adopted by defendant No.4, mother of the plaintiff contending that the plaintiff had misconstrued the orders passed in civil proceedings which merely directed the *status quo* to be maintained and did not grant any injunction as prayed for by the plaintiff. It is averred that the schedule property was allotted to defendant No.1 under the deed dated 28.03.1975 and therefore, he is the absolute owner of the schedule property with full rights of alienation. He maintained that he had duly complied with clause 18 of the said deed by issuing a notice to the plaintiff, calling upon him to exercise his right of preemption. However, according to defendant No.1, the plaintiff, instead of exercising his right to purchase, responded with a reply disputing the defendant's right to sell the property on the basis that defendant No.1 allegedly owed him a substantial sum of money. Defendant No.1 contends that the plaintiff did not exercise his option to purchase as provided under clause 18 and the sale of the schedule property was therefore valid and within his rights as an absolute owner.



Defendant Nos.2 and 3, purchasers of the schedule property *intra alia* filed separate written statements supporting the sale in their favour with the similar plea as taken by the defendants No.1 and 4.

4. The Trial Court by the judgment arrived at a conclusion that defendant No.1 by issuing legal notice dated 20.12.1995 has fulfilled clause 18 of the deed and therefore the plaintiff's contention that he was not given an opportunity to exercise his right of preemption was not accepted. The Trial Court found that defendant No.1 has specifically mentioned the value of the property to be sold as "Rs.60 lakhs" . On the other hand the plaintiff in his reply notice did not show his readiness and willingness to purchase the schedule property, rather went on to dispute the legality of the deed and the right of the defendant No.1 to sell the schedule property and other disputes between them. The Trial Court by the judgment dismissed the suit.

5. The party-in-person at the first instance argued the matter for some time and the matter was directed to be



listed for further arguments. On 08.04.2025, party-in-person-appellant made a submission before us that he intended to engage the services of an advocate to argue the appeal on his behalf. To provide an opportunity to the appellant, we adjourned the matter to the next date i.e., on 17.04.2025. Counsel for the appellant appeared and requested us to provide him an opportunity to address his arguments.

6. Considering the submissions, we heard the counsel Srivatsa H.K., advocate for the appellant and Sri G. Krishnamurthy, learned Senior counsel along with Smt. N. Aparna and Smt. G.K. Bhavana, advocates for respondent Nos.6 and 7, on 21.04.2025.

7. Learned counsel for the appellant argues that the plaintiff had a contractual right of preemption under clause 18 of the registered deed dated 28.03.1975, which gave him the first right to purchase the schedule property if defendant No.1 intended to sell it. It is contended that notice issued by defendant No.1 was incomplete and defective, as it did not



mention a definite sale price, but only referred to a vague estimate exceeding Rs.60 lakhs, making it impossible for the plaintiff to effectively exercise his preemptive right. It is submitted that the reply of the plaintiff to the notice should not be treated as a waiver or a refusal to purchase as the plaintiff specifically disputed the inflated valuation and sought clarification, which defendant No.1 never responded to. Learned counsel further argues that the sale made in favour of defendant Nos.2 and 3 was done in bad faith, with deliberate inflation of sale consideration, to evade the plaintiff's right of preemption.

8. *Per contra*, learned Senior counsel appearing for the respondents would argue that defendant No.1 was allotted the schedule property under the registered deed dated 28.03.1975 and he was therefore the absolute and exclusive owner of the schedule property reserving full rights to deal with or alienate the property in any manner he deemed fit. It is argued that in compliance with clause 18 of the deed defendant No.1 issued notice dated 20.12.1995 to the plaintiff and other co-sharer, offering the right of



preemption as per the agreed terms. The notice issued under Ex.P3 clearly indicated intention of defendant No.1 to sell the schedule property and informed the plaintiff that the market value at that time would exceed Rs.60 lakhs. It is contended that the plaintiff instead of accepting the offer chose to dispute and raised irrelevant monetary claims against defendant No.1 alleging dues, without expressing any willingness to purchase the property. Further that since the plaintiff did not unequivocally agree to purchase the property, defendant No.1 was under no obligation to engage in further correspondence or negotiation as the right of preemption under clause 18 of the deed was time bound and once the plaintiff failed to act with reasonable time the defendant was free to sell the schedule property.

9. Relying upon the decision of the Apex Court in the case of ***Bishan Singh and others vs. Khazan Singh and another***¹ reiterated by this Court in the case of ***Sri Ramakrishnappa vs. Sri K.M. Anjinappa and another***²

¹ AIR 1958 SC 838

² ILR 2016 KAR 1727



learned Senior counsel submits that the right of preemption is a weak right and not a fundamental or absolute right.

10. Having heard the learned counsel for the parties, the point that arises for consideration is,

"Whether the Trial Court was justified in dismissing the suit filed by the plaintiff seeking enforcement of the right of preemption under clause 18 of the deed dated 28.03.1975?"

11. It is relevant to state here that the plaintiff has filed IA No.1/2025 seeking to amend the plaint. By way of amendment the plaintiff is seeking for a prayer of declaration that the sale deeds dated 14.10.1996 are not binding on him. In addition, the plaintiff has filed IA No.2/2025 seeking to produce the sale deeds as additional evidence. We may state here that the said IAs are heard along with the main appeal and same is considered in the later part of the judgment.

12. The dispute revolves on three documents – EX.P1, the registered deed dated 28.03.1975; EX.P3, notice



issued by the defendant No. 1 dated 20.12.1995 and EX.D1, the reply notice issued by plaintiff.

13. EX.P1, the registered deed dated 28.03.1975 is between defendant Nos.1, 4, 5, 6 and the plaintiff. Clause 18 describes the immovable properties fallen to the respective parties. Under the said clause, the schedule property fell to the share of defendant No.1. Clause 18 reads as under:

"18) If any of the parties to this deed wants to sell or transfer except by way of partition, the properties allotted to his or her share (except the 5th party to whom only cash is allotted), then, the parties so alienating the pro-parties shall give to the non-alienating parties the 1st option of purchasing or in any other manner acquiring the properties. The party alienating his or her share shall send a notice by Registered post to the other parties giving two month's time to exercise their right of pre-emption, and if the other parties agree to purchase the properties, the same shall be sold or transferred at the then fair market value, to be mutually agreed to between the parties and if they do not agree to the value then the same be referred to and settled by arbitration. If the non-



alienating parties do not exercise their option within two months from the service of notice on them, then the non-alienating parties will forfeit their claim to the right of pre-emption mentioned above.”

(emphasis supplied)

14. The plain reading of clause 18 makes it clear that it is binding on all the parties to the deed and constitutes a contractual obligation creating a right of first refusal in favour of the co-sharers. It states that the party intending to alienate his or her share shall;

- (1) send a written notice to other parties given two months time to exercise their right of preemption;
- (2) if the other parties agree to purchase the property the same shall be sold or transferred at the then fair market value;
- (3) to be mutually agreed to between the parties and if they do not agree to the value, then the same be referred to and settled by arbitration;
- (4) if the non-alienating party does not exercise their option within two months from the service of notice on them, then the non-alienating parties would



forfeit their claim to the right of preemption
mentioned above.

(emphasis supplied)

15. Under EX.P.3, defendant No.1 issued notice calling upon the plaintiff to exercise his right of preemption within two months from the date of receipt of notice. The relevant portion of EX.P3 is extracted below:

"2. One of the properties allotted to my client in the said partition is a building called 'Laxmi Building' described in the schedule below. In order to meet certain commitments of his my client wants to sell this property and you are hereby invited to exercise your first option of purchasing the property in the manner provided in para 18 of the partition deed D.28-3-75. If you do not exercise your option of first purchase two months from the date of receipt of notice, you ----- your right of pre-emption. If you are willing to purchase you may immediately inform your intention in writing ----- client may secure the necessary Tax clearance certificate, because at the prevailing market value, the value of the ----- would exceed Rs.60,00,000/- (sixty lakhs rupees)."

(emphasis supplied)



16. The learned counsel for the appellant contended that EX.P.3, the notice issued by defendant No.1 invoking clause 18 of the deed, was vague and did not disclose the specific market value of the suit property, thereby frustrating the plaintiff's right of preemption. On perusal of EX.P3, it clearly indicates that the plaintiff offered a genuine and bonafide intention to exercise the right of preemption as per clause 18 of the deed dated 28.03.1975. In response to the notice, plaintiff No.1 replied on 20.02.1996 under EX.D1 instead of expressing a willingness to purchase the schedule property raised irrelevant and extraneous disputes including one monetary claim wholly unconnected with the proposed sale as could be seen from paragraph No.8 and last three paragraphs of the notice which reads as under:

"8. My client states that your client is guilty of several acts of unfairness, high-handedness, dishonest dealings and misappropriation of the funds and properties of my client and firm M/s. Ganesha & Co. Your client is guilty of the following acts of omission and commission apart from several others, of which your client is personally aware:



- a) *Even in the partial partition effected in the year 1975 and 1981, your client has given fictitious and non-existent properties to the share of my client.*
- b) *The sale-proceeds from the sale of Karekurahal Estate was utilised by your client without properly accounting for the same.*
- c) *your client has dishonestly appropriated the proceeds from the so called partition belonging to my client towards the capital contribution of your client' and my client's mother.*
- d) *Your client has utilised income from the personal estate of my client towards the maintenance and up-keep of the firm M/s. Ganesha & Co., owning Lalitha Bhandara Estate, which again was mismanaged by your client by not recording the actual production and income from the said estate and also by diverting the coffee production and minor crop proceeds to the credit of your client's personal estate.*
- e) *Your client has also raised loans on the personal estate of my client and utilised the loan amount for the personal purposes of your client. Your client has also encashed*



timber reserves in my client's personal estate during his management and made clandestine dealings.

- f) Your client has also saddled my client with the repayment liability of alleged loans which were utilized by your client for his personal purposes and in non-productive ways in the firm, by manipulating non genuine accounts repeated recirculation of same amount with pool agents and other personal accounts cited in the books of accounts.*
- g) Your client has also deliberately and dishonestly with-held from my client the payment of profits of the firm since its inception, in addition to utilisation of entire partition proceeds as well as income from personal estate of my client.*
- h) Your client has made wrong entries in the personal current account of my client without the concurrence and knowledge of my client and made it falsely appear that the said entries were made at the instance of my client while opposition is clear on records.*
- i) Your client has also fraudulently mis-used several form No.8 meant for enclosing agricultural income tax returns and thereby*



made it falsely appear that my client approved the so-called accounts fabricated by your clients, even though my client had not approved the same.

- j) After having failed to impose my client to give voluntary retirement letter from firm successively on 13.6.84, 12.7.84. Your client has also fraudulently devised concocted resolutions said to have been passed in the firm without consulting and without the knowledge of my client, awaiting evidence in the company petition 47/88.*
- k) Your client has also deliberately filed several statutory returns without the knowledge and consult of my client.*
- l) Your client has also been recording very low production of coffee and other minor crops and has also been showing inflated expenditures pertaining to the affairs of the firm.*
- m) Your client has also purchased immovable properties in Bangalore, Mysore & Madras by manipulating the accounts of the firm and siphoning off the funds of the firm.*
- n) Your client has also suppressed the extent of actual cultivated area and falsely shown low*



production in the firm's estate and diverted the major portion of the actual production to his personal estate.

- o) Your client has also withheld huge sums of rents from my client's property and is refusing to give the rents to my client and thereby made my client starve for funds, even though my client was facing arrears of recovery proceedings from tax authorities, in respect of income utilised by your client during the time of your client's mis-management of my client's personal estate.*
- p) Your client has also sold coffee of the firm's estate privately without accounting for the entire sale proceeds received by him.*
- q) Your client has also obtained loans in the name of the firm and utilised the same for his personal estate and other personal purposes instead of improving the firms estate. If your client had utilised the entire loan amount for the firm's estate, the production from the firm's estate would have been 10 times more than is now recorded erroneously in the books of account.*



- r) *Your client has also punished my client in several ways by preventing my client from progressing and coming up in his life.*
- s) *Your client has harassed my client and his wife by throwing my client, his wife and his two year old daughter in the dead of the night in pouring rains for the only reasons that my client resisted your client's insistence that my client should divorce his wife, as she had not brought dowry keeping up with the so-called status of your client which proof is readily available shall be produced at the right time. My client had not so far made this allegation against your client even though the same is true, as my client did not want to bring ignominy to your client in the eyes of the society. However, as your client is repeatedly hitting my client where it hurts him most, my client has no choice but to disclose every act of cruelty that your client has perpetrated upon my client and his wife for the sake of money.*
- t) *Your clients brothers families are striking examples of encouragement by fathers to their sons to come up achieve prosper in life adding credential to standing names. Your client imposed on my client by snatching*



away irreversible youthful energy to idle on the corridors of the court facing uphill in defending offence by your client.

- u) Your client has made my client run from litigation to litigation and thereby prevented my client from enjoying his youthful days and a happy family life and from coming-up in his business.*
- v) My client stood by you as dutiful obedient son even accepting the very alliance your client chose even forfeiting several personal matters out of reverend esteem regard as parents but instead of giving love and affection and compassion and under standing as any other father would give to his son, your client has nipped in the bud the potential of my client to grow into a successful business man.*

Your client has ensured that my client cannot purchase the property in the near future by depriving my client of earning enough money to purchase the said property. After freezing partition proceeds, personal estate Income, saddled with idle loan, withholding profits due from firm, also impressing the common banker to raise a money suit, cornering him financially, imposing tax authority harassment by utilising personal reserves,



having ensured that my client cannot immediately raise funds for purchase of the property, your client has deliberately chosen the present time to make the so called offer. Your client's conduct is totally unfair.

Your client has deliberately inflated the market value of the property at Rs.60 lacs which is not at all the correct market value. Your client is called upon to release immediately all the funds claimed by my client which have been generated from his personal estate running into more than 55 lakhs, Your client is also called upon to follow the proper procedure regarding the fixation of the market value of the said property

TAKE NOTICE that your client has no right to sell the property in question. Despite this reply notice, if your client chooses to sell the said property, my client will initiate appropriate legal proceedings against your client for appropriate reliefs at the sole risk, responsibility and cost of your client."

(emphasis supplied)

17. EX.P.3 clearly indicates the intention of the defendant No.1 to sell the property and invited the plaintiff to exercise the right of first purchase under clause 18 within



two months, indicating the prevailing market value exceeded Rs.60 lakhs, thereby giving a reasonable estimate. The plaintiff could have stated his own valuation or invoked the arbitration clause under the deed to settle the price. Clause 18 provided for arbitration in case of disagreement on market value. The plaintiff did not make any effort to refer the matter to arbitration. This inaction indicates a lack of bonafide intent to purchase the schedule property, and failure to act constructively under the clause invoked.

18. Despite being granted an opportunity as provided in clause 18 of the deed dated 28.03.1975 the plaintiff failed to act within the stipulated time, nor did he initiate any meaningful steps to settle the market value or enter into negotiation. The schedule property was sold on 14.10.1996, nearly after waiting for 12 months. On perusal of the material on record, more particularly, EX.D.1, the conduct of plaintiff reflects a clear intention not to purchase the property but rather to obstruct the legitimate rights of defendant No.1 through protracted and unnecessary



litigation and the plaintiff did not show any readiness and willingness to purchase the property.

19. The Apex Court in the case of **Bishan Singh**, stated *supra*, has held at paragraph Nos.10 and 11 as under:

"10. The general law of pre-emption does not recognize any right to claim a share in the property sold when there are rival claimants. It is well established that the right of pre-emption is a right to acquire the whole of the property sold in preference to other persons [see ILR 11 Lahore (F.B.) 258, at 273].

11. The plaintiff is bound to show not only that his right is as good as that of the vendee but that it is superior to that of the vendee. Decided cases have recognized that this superior right must subsist at the time the pre-emptor exercises his right and that that right is lost if by that time another person with equal or superior right has been substituted in place of the original vendee courts have not looked upon this right with great favour, presumably, for the reason that it operates as a clog on the right of the owner to alienate his property. The vendor and the vendee are, therefore, permitted to avoid accrual of the right of pre-emption by all lawful means. The vendee may



defeat the right by selling the property to a rival pre-emptor with preferential or equal right. To summarize : (1) The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase i.e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place.”

20. Therefore, the right of preemption is not a right to prevent a sale, but a right to acquire the property in substitution of the buyer. The right of preemption must be exercised with promptitude and it is a feeble right not to be favoured unless clearly and strictly proved. The delay or



failure to express willingness leads to the forfeiture of the right.

21. The right of preemption being a weak right, cannot be used by the plaintiff to declare the sale void, especially when he has failed to act in accordance with clause 18 of the deed and did not respond with willingness to purchase the schedule property upon receiving the notice.

22. The Trial Court has conclusively held that the plaintiff's contention that the sale deed executed by defendant No.1 in favour of defendant Nos.2 and 3 is null and void is unsustainable. The Trial Court rightly rejected this argument, noting that clause 18 of the deed dated 28.03.1975 provides a right of preemption and not a right to invalidate the sale altogether. The plaintiff was given an opportunity to exercise his right, but he failed to do so in a timely and unequivocal manner. The right of preemption under clause 18 does not grant the plaintiff the power to challenge the sale itself if he does not choose to exercise that right. Preemption only allows the plaintiff to step into



the shoes of the purchaser upon the failure of the seller to offer the property to the co-sharer at the market value. Therefore, the Trial Court was correct in rejecting the plaintiff's plea regarding invalidity of the sale deed. In light of this, the amendment application-I.A.No.1/2025 filed by the plaintiff to introduce a plea that the sale deed is not binding and I.A. No.2/2025 seeking to produce the said sale deeds as additional evidence must be rejected. The amendment and the additional evidence are not relevant to the present appeal as it seeks to introduce a ground that is fundamentally inconsistent with the main claim of preemption and contrary to the Trial Court's well reasoned judgment. The production of these sale deeds under Order XLI Rule 27 of C.P.C. is not essential for the just decision of the present appeal. Thus, the amendment and the additional evidence sought by the plaintiffs are legally unsustainable and therefore, both the applications are rejected.

23. For the reasons stated supra, the contention of the plaintiff lacks merit both factually and in law. The suit is therefore vexatious, without merit and aimed solely at



harassing the defendants. Therefore, the point framed for consideration is answered holding that the Trial Court is justified in dismissing the suit. As stated, the plaintiff's suit is with an intention to harass the defendants and the suit deserves to be dismissed with costs and to discourage the abuse of legal process and we pass the following:

ORDER

- (i) The Regular First Appeal is hereby ***dismissed*** with cost throughout to the contesting respondents.
- (ii) The judgment of the Trial Court stands ***confirmed.***

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(K.S. HEMALEKHA)
JUDGE**