



RSA-2521-1993 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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RSA-2521-1993 (O&M)
Reserved on:-03.12.2025
Pronounced on:- 11.12.2025
Uploaded on:-11.12.2025

*Whether only operative part of the judgment is
Pronounced or the full judgment is pronounced:*

operative part/full judgment

Balkar Singh and Another

....Appellants

VERSUS

The Mujhel Joint Farming
Co-operative Society Ltd. Tikri

....Respondent

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Ranjit Saini, Advocate for the appellants.

Respondent proceeded against *ex parte*
vide order dated 26.08.2025.

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MANDEEP PANNU, J.

1. The present Regular Second Appeal has been filed by the appellants/defendants against the concurrent findings of the Courts below, whereby the learned Trial Court, vide judgment and decree dated 11.09.1991, decreed the suit of the plaintiff and passed a decree for possession by way of pre-emption in favour of the plaintiff and against the defendants, and the learned Lower Appellate Court affirmed the said judgment and decree by its judgment and decree dated 11.10.1993.

Brief Facts

2. Briefly stated, the facts of the case are that the plaintiff-Cooperative Society, through its member and cashier Shri Ajit Singh, filed a suit for pre-emption in respect of agricultural land measuring 23 kanals 2 marlas situated in

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village Bhat Majra, Tehsil Guhla. According to the plaintiff, Smt. Lilawati, widow of Ganesh Dass, was the recorded co-sharer in Khewat No.3 of the land in question and she sold this share of land for a sum of ₹21,000/- on 15.11.1972 through a registered sale deed. The sale was described as pertaining to a share in the entire Khewat and the relevant field numbers were recorded as Rectangle No. 26, Killa Nos. 1, 2 and 10. It was further pleaded that the sale consideration mentioned in the sale deed was neither fixed in good faith nor actually paid, and that the real market value of the suit land at the time of sale was only ₹11,000/-. The plaintiff claimed a superior right of pre-emption on the ground that it was a co-sharer in the same Khewat from which the land had been alienated, and therefore, by virtue of its status as co-Khewatdar, it possessed a superior right of pre-emption. On these averments, the suit for possession by way of pre-emption was filed.

3. The defendants appeared and filed their written statement controverting the entire claim of the plaintiff. They denied that the plaintiff had any superior right of pre-emption and asserted that the suit was barred by limitation. The defendants further raised the plea of partial pre-emption, contending that the plaintiff could not pre-empt the sale as alleged. It was further pleaded that specific Khasra numbers had been sold by the vendor in favour of the vendees and not an undefined share in the Khewat, and that the sale consideration of ₹21,000/- was genuine, fixed in good faith, and actually paid by the vendees to the vendor. According to the defendants, the value of the suit land was correctly stated as ₹21,000/- and not ₹11,000/- as alleged by the plaintiff.

4. From the pleadings for the parties, the following issues were framed by the Trial Court

1. Whether the plaintiff has a superior right to pre-emption? OPD



2. Whether the plaintiff has no locus standi to file the suit? OPD
 3. Whether the 1/5th has been deposited in time? OPD
 4. Whether the suit is time-barred? OPD
 5. Whether the suit is bad for partial pre-emption? OPD
 6. Whether the sale price was fixed in good faith or was actually paid? OPD
 7. If Issue No. 6 is not proved, what was the then market value of the suit land? OPD
 8. Whether the suit is maintainable in the present form? OPD
 9. Relief
5. The Trial Court recorded that the present case had been received on remand from the Hon'ble High Court for being decided afresh after framing an additional issue. In compliance with the High Court's directions, Issue No. 1(a) was framed on 13.06.1991 and both sides were afforded full opportunity to lead evidence specifically on this newly framed issue. The additional issue framed on remand is as under:

"1(a) Whether the plaintiff ceased to be the owner of the entire land or whether the plaintiff retained the fraction of the land? OPP"

Findings of the trial Court

6. While deciding Issue No. 1 and Issue No. 1(a) together, the Trial Court held that the plaintiff-society had proved that in the earlier litigation titled *"Jai Narain & Ramesh Chand vs. The Mujhel Joint Farming Co-operative Society Ltd. Tikri"*, decided on 28.05.1973, the plaintiff-society had suffered a decree transferring 55/133 share of the land in favour of Ramesh Chand and others. It was noted that in the decree-sheet, a clerical error had occurred by recording the share

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as 55/109, but the error was subsequently corrected by the Court on 19.03.1976 on an application filed by the society. After examining Ex.P7 and Ex.P8, as well as the original record summoned, the Trial Court concluded that the correct share transferred was 55/133, and that the plaintiff-society continued to remain owner of the remaining 1/133 share in the entire land. The mutation to the extent of 56/133 sanctioned by the revenue authorities was held to be erroneous and contrary to the decree. Thus, the plaintiff-society was held to be a co-sharer in the suit Khewat on the date of sale.

7. The Trial Court rejected the defendants' objection that the suit was not filed by an authorised person. It held that Shri Ajit Singh, cashier of the society, had been duly authorised under resolution Ex.P3 to institute the present suit. The Court further observed that although proceedings regarding dissolution of the society were pending before the Deputy Registrar, until the appeal against the winding-up order was decided, the society continued to be in existence in the eyes of law and was competent to prosecute the suit.

8. Issues relating to locus standi and maintainability were decided in favour of the plaintiff, as the Court found that the plaintiff-society was a co-sharer in the suit land, thereby possessing a superior right of pre-emption. Issues No. 3, 4 and 5 were not pressed by the defendants and were accordingly decided against them. Issues No. 6 and 7, relating to whether the sale consideration was fixed in good faith and whether it was actually paid, were not pressed by the plaintiff and were decided against the plaintiff, with the finding that the sale price of ₹21,000 was genuine and had been paid.

9. Ultimately, based on its findings on Issues No.1 and 1(a), the Trial Court held that the plaintiff-society had a superior right of pre-emption and



decreed the suit, directing the plaintiff to deposit the pre-emption amount. The decree for possession by way of pre-emption was thus passed in favour of the plaintiff and against the defendants.

Findings of the Lower Appellate Court

10. Feeling aggrieved by the judgment and decree dated 11.09.1991 passed by the learned Trial Court, whereby the suit of the plaintiff-society for possession by way of pre-emption was decreed, the defendants preferred an appeal. The learned Lower Appellate Court, after appreciating the evidence and grounds of appeal, affirmed the findings of the Trial Court and dismissed the appeal vide judgment and decree dated 11.10.1993.

11. The appellate court noted at the outset that the matter had earlier been remanded by the Hon'ble High Court in RSA No. 1511 of 1978, vide order dated 18.08.1990, with a direction to the Trial Court to decide the matter afresh after framing a specific issue concerning the fraction of land retained by the plaintiff-society. Pursuant thereto, the learned Trial Court framed Issue No.1(a) on 13.06.1991 and afforded opportunity to both sides to lead their evidence. After remand proceedings, the Trial Court decreed the suit, and it was those findings that were re-examined by the Lower Appellate Court.

12. Upon reappraisal, the learned Lower Appellate Court held that the Trial Court had correctly concluded that the plaintiff-society continued to retain 1/133 share in the joint khewat and, therefore, remained a co-sharer with subsisting rights in the joint land. The appellate Court agreed with the Trial Court's conclusion that although the plaintiff-society had earlier transferred 55/133 shares by way of decree in favour of Jai Narain and Ramesh Chander, such transfer did not amount to transfer of its entire interest. The Trial Court's reliance on the



corrected decree-sheet (Ex. P5), as well as the clerical error subsequently rectified by order dated 19.03.1976, was found to be appropriate.

13. The Lower Appellate Court also concurred with the Trial Court's finding that the mutation sanctioned by revenue authorities on 09.06.1974, showing transfer of 56/133 shares, was erroneous and did not reflect the correct legal position. It further held that the society continued to remain alive in the eyes of law despite the appointment of a liquidator vide order dated 24.07.1991, since winding-up proceedings were still pending, and therefore the society retained the juristic capacity to maintain the suit.

14. The Lower Appellate Court further affirmed the findings of the Trial Court on Issue Nos.2 and 8, holding that the plaintiff had the necessary locus standi to file and maintain the suit and that the suit was maintainable in its present form. The plea of limitation was also rejected, with the court holding that the suit filed on 15.11.1973 was within one year from the date of execution and registration of the sale-deed dated 15.11.1972, even considering that the year 1972 was a leap year.

15. Since no evidence had been led by the appellants on Issue Nos. 3, 4, 5 and 7, the appellate court upheld the findings of the Trial Court on these issues as well. The appellate court concluded that the learned Trial Court had rightly decreed the suit for pre-emption and that no ground existed for interference.

16. Accordingly, the judgment and decree dated 11.09.1991 of the learned Trial Court were affirmed and the appeal was dismissed.

17. Feeling aggrieved by the concurrent findings of the Courts below, the present Regular Second Appeal has been filed by the defendants challenging the judgment and decree dated 11.09.1991 passed by the learned Trial Court whereby



the suit of the plaintiff-society for possession by way of pre-emption was decreed, as well as the judgment and decree dated 11.10.1993 passed by the learned Lower Appellate Court affirming the same.

18. Notice of the appeal was issued to the respondent-society. However, none appeared on behalf of the respondent. It is on record that Shri Ajit Singh, who earlier represented the society as its authorised person, had passed away. Despite opportunities, no legal representative of Ajit Singh could be impleaded by the appellants as none came forward. Accordingly, the respondent was proceeded against ex parte.

Submissions of learned counsel for the appellants

19. Learned counsel for the appellants argued that the Courts below gravely erred in holding that the plaintiff-society was a co-sharer in the suit land on the date of sale. It is contended that the vendor sold land measuring 56 kanals, comprised in Khewat No. 3, Khatoni No. 6, Rect. No. 25, Khasra Nos. 1, 2, 9, 10, 11 and 12 vide sale deed dated 10.05.1972, and therefore the plaintiff-society could not have any pre-emptory right in respect of land falling in Rect. No.26, from which the impugned sale deed dated 15.11.1972 emanated. It is further urged that the vendor had been in exclusive possession of certain specific numbers and had delivered exclusive possession thereof at the time of sale, thereby excluding the concept of joint ownership or co-sharership. It is further argued that the plaintiff-society had already transferred its entire share under a civil court decree and mutation, and therefore ceased to be a co-sharer. The correction of the decree-sheet on 19.03.1976 is argued to be illegal and not binding on the appellants, particularly when the decree was passed on 28.05.1973 and when the sale in dispute had already taken place on 15.11.1972. According to the appellants, such correction

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during pendency of proceedings without signatures of the parties could not confer any right upon the society.

20. It is next contended that the suit was not filed by a duly authorised person. Resolution Ex.P3 was produced only “subject to mode of proof”, yet during evidence the plaintiff failed to produce the proceedings book of the society to prove the original resolution. Thus, the objection remained uncured and the suit ought to have been dismissed on this ground alone. Learned counsel further submits that during pendency of the suit, vide order dated 24.07.1991, the Assistant Registrar, Co-operative Societies passed an order of winding up of the society and appointed a liquidator. Therefore, the society ceased to exist in law and had no juristic entity to continue the proceedings. It is argued that the finding of the Lower Appellate Court that an appeal was pending before the Deputy Registrar was erroneous, as under Section 114(1)(c) of the Haryana Co-operative Societies Act the appeal would lie only before the Government. No stay has been granted against the order of liquidation and thus the society had ceased to exist. Learned counsel emphasised that even during pendency of the present RSA, Ajit Singh, the only authorised person, also died, and no one has appeared to represent the society, which itself demonstrates that the society does not exist.

21. It is further argued that the plaintiff being a juristic person could not claim a right of pre-emption, because such a right being equitable and personal in nature is intended for natural persons, and not for statutory corporations. According to the appellants, the Courts below ought to have considered the scheme of Sections 14 and 15 of the Act, and issue Nos. 2 and 8 regarding locus standi and maintainability should have been decided in their favour. On limitation also it is



urged that the suit filed on 15.11.1973 was beyond the prescribed period of one year under Section 31 of the Act, as limitation expired on 14.11.1973.

22. Learned counsel also referred to the order dismissing the appellants' application for additional evidence. It is argued that the appellants were entitled to prove that their father was a co-sharer in the joint khewat and that on his death they had succeeded to his rights by mutation, making them co-sharers even on the date of sale to the plaintiff-society. Therefore, the plaintiff had no superior right of pre-emption. The Courts below allegedly erred in holding that a juristic person could claim pre-emption and further erred in holding that mere retention of fractional share entitled the plaintiff to claim pre-emption, even though the very object of pre-emption, prevention of fragmentation, had been defeated by the plaintiff itself when it alienated a substantial portion of land earlier.

Findings of this Court

23. I have considered the submissions of learned counsel for the appellants and have examined the entire record as well as the findings of both the Courts below.

24. It is established on record, and both Courts below have returned concurrent findings, that the plaintiff-society continued to retain 1/133 share in the joint khewat. The earlier mistake in the decree-sheet mentioning 55/109 shares instead of 55/133 shares was rectified by the civil court on 19.03.1976 after examining the original file. The correction was a clerical rectification and did not alter substantive rights of the parties. The Courts below have rightly held that despite the mutation entries, the society continued to hold 1/133 share in the joint holding. These findings are pure findings of fact based on evidence and examining



them in second appeal is impermissible unless perversity is demonstrated. None is shown.

25. Regarding limitation also, I find no infirmity in the conclusion of the Courts below that the date of execution and registration being 15.11.1972, the filing on 15.11.1973 was within limitation, especially since 1972 was a leap year and the last day could validly include the anniversary date.

26. The substantial question that now arises in the present appeal is whether the plaintiff-society can be deemed to be in existence so as to sustain the decree for pre-emption, in view of the death of its authorised representative Ajit Singh during pendency of the RSA and the fact that no one has come forward to represent the society thereafter. The record reveals that Ajit Singh was the only person authorised through Ex.P3 to represent the society. With his death, no successor has stepped in. Furthermore, the society had already been ordered to be wound up vide order dated 24.07.1991. Even though the Courts below held that the society would continue to exist till finalisation of liquidation proceedings, there is nothing on record before this Court to show that the society continued to function, that the liquidator is prosecuting this litigation, or that any person exists competent to represent it.

27. In this context, the judgment of the Punjab High Court in *Mohinder Singh and another vs. Mohinder Kaur and others 1966 (68) PLR 839*, relied upon becomes relevant. There it was held that when a pre-emptor dies during the pendency of a suit for pre-emption, his heirs can continue the suit only if they have an independent right of pre-emption. If they lack such right, the suit cannot continue and must fail. The reasoning proceeds on the basis that the right of pre-



emption is a personal, weak, and statutory right, enforceable only by one who possesses the qualifying status at the relevant time.

28. Applying this ratio to the present case, the plaintiff-society is a juristic person. Once the only authorised human agency capable of representing the juristic entity has died, and no one having independent statutory right has appeared to continue the litigation, the decree cannot be sustained. A corporation exists only through duly authorised persons. There is nothing on record to show that any such person survives or has been appointed. The right of pre-emption cannot be exercised in vacuum, it must be exercised by a living person or a subsisting juristic entity represented by a competent human agency. The death of Ajit Singh, coupled with the winding-up order and complete absence of representation despite notice, leads to the inescapable conclusion that the society does not subsist as a litigating entity so as to sustain a decree of pre-emption.

29. Even if it be assumed, as held by the Courts below, that the society retained a fractional share, the decree cannot stand because the right of pre-emption itself cannot survive when the pre-emptor is no longer in existence for all legal and practical purposes. The principle laid down in *Mohinder Singh's case (supra)* squarely applies, and the present pre-emption decree cannot be preserved.

30. Accordingly, the findings of the Courts below, though otherwise well-reasoned on the merits of co-sharership, limitation and maintainability, cannot be upheld in view of the supervening circumstance that the plaintiff-society has ceased to have any competent representative to pursue the proceedings, and the right of pre-emption cannot pass to strangers or persons not possessing independent right. The decree for pre-emption, being of a personal and precarious

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nature, cannot survive the demise of the only authorised representative when no successor is shown to exist.

Conclusion

31. In view of the above discussion, the present Regular Second Appeal is allowed. The judgments and decrees dated 11.09.1991 and 11.10.1993 passed by the Courts below are set aside and the suit of the plaintiff stands dismissed.

32. Pending application(s), if any, also stands disposed of.

December 11, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No.