



RSA-671-1991 (O&M)

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

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RSA-671-1991 (O&M)
Reserved on:-08.01.2026
Pronounced on:- 09.01.2026
Uploaded on:- 09.01.2026

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

operative part/full judgment

Sham Lal (since deceased) through LRs

....Appellant

VERSUS

Shiv Parshad (since deceased) through LR

...Respondent

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Varun Baanth, Advocate for the appellant
(through Video Conferencing)

Mr. Sahil Garg, Advocate for the respondent.

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MANDEEP PANNU, J.

1. The present Regular Second Appeal has been filed by the appellant–defendant (since deceased), through his legal representatives, against the concurrent findings of the Courts below. The learned Trial Court, vide judgment and decree dated 9.11.1987, decreed the suit filed by the plaintiff–respondent. The said judgment and decree were affirmed by the learned Lower Appellate Court vide judgment and decree dated 16.11.1990.

Brief Facts

2. Briefly stated, the plaintiff filed a suit for possession by way of pre-emption under Section 22 of the Hindu Succession Act, 1956, in respect of a share in House No. 4291/2 (old), new No. AMC-1634/III, situated at Ambala City. It was pleaded that the property originally belonged to Tula Ram, who had executed a Will dated 13.01.1955 bequeathing the disputed house in favour of his wife Purni

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Devi. Upon the death of Tula Ram, Purni Devi became the full and absolute owner of the disputed house.

3. It was further pleaded that Purni Devi died on 01.06.1979, leaving behind her legal heirs, namely the plaintiff, Gian Devi, and the branches of Lachhmi Chand and Sohan Lal, as detailed in the pedigree table. According to the plaintiff, all the heirs inherited the disputed house in equal shares, i.e. 1/4th share each. Lachhmi Chand and Sohan Lal had predeceased, and their respective legal heirs stepped into their shoes.

4. The plaintiff asserted that he was in possession of the entire disputed house. It was pleaded that the legal heirs of Sohan Lal, namely Subhash Chand, Brij Mohan, Vijay Kumari, Lakhbir Chand and Vidya Wati, sold what was described as 1/3rd share in the disputed house to the defendant vide registered sale deed dated 10.8.1981 for a consideration of Rs. 8,000/-, though in fact they were entitled only to 1/4th share. It was alleged that the sale price mentioned in the sale deed was exaggerated in order to defeat the plaintiff's right of pre-emption and that the real market value of the share sold was not more than Rs. 4,000/-.

5. The plaintiff claimed that being a co-heir, he had a preferential right of pre-emption under Section 22 of the Hindu Succession Act. It was pleaded that no notice of the intended sale was ever given to the plaintiff by the vendors. On coming to know of the impugned sale, the plaintiff requested the defendant to admit his right of pre-emption, but the defendant refused to do so, necessitating the filing of the suit.

6. Upon notice, the defendant filed a written statement admitting the factum of sale and the original ownership of Tula Ram. However, the defendant denied the plaintiff's claim of equal shares and asserted that the vendors had 1/3rd

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share in the disputed house and were competent to sell the same. It was pleaded that the vendors had acquired the share by survivorship and not by inheritance and, therefore, Section 22 of the Hindu Succession Act was not applicable.

7. The defendant further pleaded that the sale consideration of Rs.8,000/- was genuine, was fixed in good faith and was actually paid. It was also pleaded that the disputed house was urban property and no right of pre-emption was available. The defendant asserted that the plaintiff had knowledge of the sale and had consented to the same, and that the plaintiff had earlier declined to purchase the share when offered. It was also pleaded that there was no custom of pre-emption in Ambala City and that the suit was false, vexatious and filed to harass the defendant. Objections regarding locus standi, non-joinder of necessary parties and maintainability of the suit were also raised.

8. By way of amendment, the defendant further pleaded that in the event of a decree, he was entitled to reimbursement of stamp and registration charges besides the sale price, and reiterated that the plaintiff had no right to pre-empt the impugned sale.

9. The plaintiff filed a replication denying the pleas raised by the defendant and reaffirmed the averments made in the plaint.

10. On the basis of the pleadings of the parties, the learned Trial Court framed the following issues:

1. Whether the plaintiff has got a superior right to pre-empt the sale in question? OPP
2. Whether the sale price was fixed in good faith or was actually paid? OPD

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3. If Issue No. 2 is not proved, what was the market value of the suit land at the time of sale? OP
4. Whether the suit under Section 22 of the Hindu Succession Act is maintainable? OPP
5. Whether the plaintiff has locus standi to file this suit? OPP
6. Whether the plaintiff has waived his right of pre-emption? OPD
7. Whether the vendors had only 1/4th share in the suit property and were not competent to transfer 1/3rd share, if so, to what effect? OPD
8. Whether the suit is bad for non-joinder of necessary parties? OPD
9. Relief.

After framing the afore-mentioned issues, the trial further framed the following additional issue:-

1. Whether the vendee-defendant is entitled to stamp and registration charges, if so, to what amount? OPD

Findings of the trial Court

11. The learned Trial Court, after appreciating the pleadings and evidence on record, held that the relationship between the plaintiff and the vendors was not in dispute and stood duly established. It was found that Tula Ram was the original owner of the disputed house and that he had validly executed a will dated 13.01.1955 bequeathing the property in favour of his wife Purni Devi, which Will was duly proved through attesting and marginal witnesses and remained un rebutted. Upon the death of Purni Devi in the year 1979, the property devolved by inheritance upon the plaintiff, Gian Devi and the branches of Lachhmi Chand



and Sohan Lal, all falling in Class-I heirs under the Hindu Succession Act. The Court rejected the plea that the vendors had inherited the property by survivorship and held that they derived their share by succession from Purni Devi, who herself had inherited the property under the Will. It was further held that Sohan Lal had predeceased Purni Devi, and consequently the vendors inherited directly from Purni Devi and not through Sohan Lal, rendering the plaintiff a co-heir with the vendors.

12. The Trial Court further held that in view of the co-heirship, the plaintiff had a preferential right to acquire the share sold under Section 22 of the Hindu Succession Act and that such right could be enforced even after completion of the sale by way of a civil suit. The plea that notice of the intended sale had been given to the plaintiff or that the sale was effected with his consent or knowledge was rejected for want of evidence. The contention that the suit was not maintainable and that only an application could lie under Section 22 was also repelled by relying upon judicial precedents holding that enforcement of the preferential right after sale lies only through a civil suit.

13. The Trial Court further found that the plaintiff had not waived his right of pre-emption and that there was no material to show any abandonment or acquiescence on his part. It was also held that the suit was not bad for non-joinder of parties, as the vendors or other co-heirs were not necessary parties to a suit for pre-emption. On the question of consideration, the Court accepted the evidence of the defendant and the attesting witnesses and held that the entire sale consideration of Rs.8,000/- was actually paid and fixed in good faith, rendering the issue of market value redundant. The Court, however, allowed the defendant reimbursement of stamp and registration expenses incurred by him.

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14. On the cumulative appreciation of evidence and law, the learned Trial Court concluded that the plaintiff had a superior and enforceable right of pre-emption under Section 22 of the Hindu Succession Act, that the suit was maintainable, and consequently decreed the suit for possession by way of pre-emption of the share sold, subject to payment of the sale consideration along with the expenses allowed to the defendant towards stamp and registration charges, aggregating to Rs.9,300/-. It was further directed that the plaintiff shall pay or deposit the said pre-emption amount, after adjusting the sum of Rs.1,600/- already deposited, on or before 17.12.1987, failing which the suit would stand dismissed with costs.

Findings of the Lower Appellate Court

15. Feeling aggrieved, the defendant-Sham Lal filed the appeal against the judgment and decree dated 09.11.1987 filed by the learned trial Court. The learned Lower Appellate Court, after reappreciating the pleadings, evidence and the findings recorded by the Trial Court, concurred with the conclusions arrived at on the core issues relating to the plaintiff's right of pre-emption and the maintainability of the suit under Section 22 of the Hindu Succession Act. The appellate court noticed that the principal challenge raised by the defendant was founded on the judgment of the Hon'ble Supreme Court in *Atam Parkash v. State of Haryana (1986) 2 SCC 249*, contending that the right of pre-emption based on relationship had been declared ultra vires. The Lower Appellate Court held that the decision in *Atam Parkash's case (supra)* did not dilute or override the statutory preferential right conferred under Section 22 of the Act upon co-heirs. It was further observed that no other substantive argument had been advanced to dislodge the findings of the Trial Court. Consequently, the appellate court affirmed the



findings recorded on Issues No.1 and 4, upheld the decree passed by the Trial Court, and dismissed the appeal as being devoid of merit.

16. Aggrieved against the concurrent judgments and decrees, the appellant has approached this Court by way of the present Regular Second Appeal.

Submissions of learned counsel for the appellant

17. Learned counsel for the appellant–defendant assailed the concurrent judgments and decrees passed by the courts below on multiple grounds. It was contended that the courts below committed a grave error in holding that Tula Ram had executed a valid Will in favour of Smt. Purni Devi and that the property devolved upon her by testamentary succession. According to learned counsel, the said finding is erroneous and contrary to the evidence on record.

18. It was further argued that the Courts below wrongly held that the vendors were co-heirs with the plaintiff. Learned counsel submitted that the property in dispute was inherited by the vendors from their father and not from Purni Devi, and therefore the vendors were not co-heirs with the plaintiff at all. On this premise, it was contended that the plaintiff had no preferential right of pre-emption and the findings recorded on Issues No.1 and 4 were unsustainable.

19. Learned counsel for the appellant–defendant further contended that the Courts below erred in holding that no notice of the intended sale was given to the plaintiff. It was argued that prior to execution of the sale deed, the vendors had duly informed the plaintiff of their intention to sell their share in the property and had offered the same to him. According to learned counsel, the plaintiff, despite having knowledge of the proposed sale, declined to purchase the property and thereby consciously chose not to exercise his right of pre-emption. It was submitted that once the plaintiff had refused to purchase the share when offered, he



could not subsequently invoke the provisions of Section 22 of the Hindu Succession Act to challenge the sale. Learned counsel thus urged that the plaintiff had, by his conduct, waived his preferential right, and the suit for pre-emption ought to have been dismissed on this ground alone.

Submissions of learned counsel for the respondent

20. *Per contra*, learned counsel for the respondent–plaintiff submitted that the entire challenge raised by the appellant proceeds on an incorrect understanding of facts and law. It was argued that the finding regarding execution of a valid will by Tula Ram in favour of Purni Devi is based on cogent evidence and has attained finality. Upon the death of Purni Devi, the property devolved by succession upon her Class-I heirs, including the plaintiff and the vendors, thereby establishing their status as co-heirs.

21. Learned counsel further submitted that the plea of inheritance by survivorship has been rightly rejected by the Courts below, as Purni Devi was the last full owner of the property and succession opened only after her death. In such circumstances, Section 22 of the Hindu Succession Act squarely applies and confers a statutory preferential right upon the plaintiff.

22. On the issue of notice, it was submitted that no notice of the intended sale was ever given to the plaintiff. The burden to prove such notice lay entirely upon the defendant, who sought to defeat a statutory right. Except for a bald oral statement of one of the vendors, there is no evidence on record to show that the plaintiff was informed of the proposed sale or that he refused to purchase the property. It was further contended that there is not even a scintilla of evidence to establish waiver, particularly when the property admittedly remained joint and unpartitioned and the plaintiff continued to hold one-fourth share therein.

**Findings of this Court**

23. I have heard learned counsel for the parties and have gone through the judgments and decrees passed by both the courts below as well as the record placed on file.

24. The principal questions which arise for consideration are: (i) whether the vendors inherited the property by survivorship or by succession so as to attract the provisions of Section 22 of the Hindu Succession Act; (ii) whether the plaintiff, being a co-heir, had a preferential right to purchase the share sold; and (iii) whether any notice of the intended sale was given to the plaintiff so as to defeat such right.

25. The contentions raised on behalf of the appellant have been duly considered. The plea that the vendors inherited the property by survivorship is untenable in view of the concurrent finding that Purni Devi became the absolute owner of the property under a valid will executed by Tula Ram. Upon her death, the property devolved by succession upon her heirs. Once succession opened after the death of a female owner, the concept of survivorship had no application. Consequently, the vendors derived their interest by inheritance and not by survivorship, rendering Section 22 of the Hindu Succession Act fully applicable.

26. The challenge to the applicability or validity of Section 22 is equally devoid of merit. The statutory preferential right conferred upon a co-heir under Section 22 stands on a different footing from customary or relationship-based pre-emption.

27. As regards notice, the burden was squarely upon the defendant to establish that the plaintiff had been informed of the intended sale and had declined to exercise his right. Mere oral assertion of one of the vendors, unsupported by any documentary or independent evidence, is insufficient to discharge this burden.

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28. Equally untenable is the plea of waiver. Waiver of a statutory right must be clear, unequivocal and intentional. In the present case, the admitted position is that the property was joint and unpartitioned and that the plaintiff continued to hold one-fourth share therein. In the absence of proof of notice or any overt act on the part of the plaintiff evincing abandonment of his right, waiver cannot be presumed.

Conclusion

29. In view of the above discussion, the findings recorded by the learned Trial Court and affirmed by the learned Lower Appellate Court are based on proper appreciation of evidence and correct application of law.

30. The present Regular Second Appeal is accordingly dismissed, being devoid of merit. The judgments and decrees passed by the courts below are affirmed.

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

January 09, 2026
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(MANDEEP PANNU)
JUDGE

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