

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

**RSA No.2023 of 1992 (O&M).**  
**Date of Decision: February 25, 2015.**

Om Parkash and others

....Appellants.

VERSUS

Badri Nath and others

....Respondents.

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**CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.**

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

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**Present:** Mr. Arun Jain, Sr. Advocate with  
Mr. C.B. Goel, Advocate for the appellants.

Mr. M.L. Sarin, Sr. Advocate with  
Mr. Nitin Sarin, Advocate for the respondents.

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**SNEH PRASHAR, J.**

1. This was an appeal preferred by Om Parkash and others, appellants-defendants (hereinafter referred to as the “defendants”) impugning the judgment and decree dated 01.06.1992 passed by learned Additional District Judge, Yamuna Nagar at Jagadhri, dismissing the appeal preferred by the defendants-appellants against the judgment and decree dated 27.05.1989 of Additional Senior Sub Judge, Jagadhri, vide which suit

of respondents-plaintiffs Badri Nath Kohli (hereinafter referred to as the “plaintiffs”) for possession by way of pre-emption was decreed leaving the parties to bear their own costs.

2. The facts from which this appeal emerged are as under:-

Badri Nath Kohli and others (plaintiffs) filed a suit for possession by way of pre-emption qua the plot measuring 719 square yards (bounded as described in the head note of the plaint), situated within the municipal area of Jagadhri Town (hereinafter referred to as the “suit property”) sold by Anarkali and nine others in favour of defendants Om Parkash and others for a sum of ₹43,000/- vide registered sale deed dated 25.01.1983. The plaintiffs averred that they are in possession of the suit property as tenants and that it is part and parcel of urban immovable property, as such the sale is pre-emptable as per custom prevalent in the locality at the relevant time of commencement of the Punjab Pre-emption Act, 1913 (Punjab Act 1 of 1913) (hereinafter referred to as “the Act of 1913”).

It was alleged by the plaintiffs that they had raised construction over the suit property and are running a metal rolling mill in the same in the name & style of M/s Gandhiji Metal Rolling & General Mills (plaintiff no.6) since the year 1950 being partners of the said firm. Earlier the suit property fell in the area of village Garhi Mundan but it has now been located within the municipal limits of Jagadhri Town because of which it has become urban immovable property as recognized by the Act of 1913.

There was a custom of pre-emption prevalent in the locality at the time of commencement of the Act of 1913 and therefore, the sale in question is pre-emptable under Sections 7 and 16 of the Punjab Pre-Emption (Amendment) Act, 1960 (for short “the Act of 1960”).

3. The suit was contested by the defendants. In the written statement filed by them, preliminary objection with regard to maintainability of the suit and locus standi of the plaintiffs was raised. It was inter-alia pleaded that the suit property is situated on the Railway Road, Jagadhri and there being no custom of pre-emption prevalent in that area the plaintiffs have no right to pre-empt the sale in question. They also alleged that the plaintiffs had taken active part in bargain and had knowledge of the transaction and therefore, were estopped from filing the present suit by their own act and conduct.

In the alternative, it was pleaded that in case the suit of the plaintiffs is decreed, they (defendants) are entitled to recover the stamp charges, registration fee and other charges in addition to the sale price of ₹43,000/-. It was not disputed that the plaintiffs are in possession of the suit property as tenants and that initially the said property fell in the area of Garhi Mundan but has since been included in the municipal limits of Jagadhri and that it is an urban immovable property. Alleging that the plaintiffs had waived their right of pre-emption, a prayer for dismissal of the suit was made.

4. Plaintiffs filed replication controverting the objections raised

by the defendants and reiterated that the custody of pre-emption prevails in the locality in which the disputed property is situated. They referred to a case titled Gurbax Singh vs. Jagtar Singh which was decreed on 04.01.1967 and in which it was held that the urban land within the municipal limits of Jagadhri which formed the part of village Garhi Mundan is pre-emptable under the custom of pre-emption. It was also held that the custom of pre-emption exists in city Jagadhri generally or Mohalla Baniwala which would be treated as an extended boundary of the city where the custom of pre-emption prevails.

On the rival contentions of the parties, following issues were framed:-

- (1) Whether the plaintiffs have a superior right of pre-emption? OPP.
- (2) Whether there is any custom of pre-emption in the locality where the land in dispute is situated? if so, to what effect? OPP.
- (3) Whether the plaintiffs are estopped to file the present suit by their own act and conduct? OPD.
- (4) Whether the plaintiffs have no locus standi to file the present suit? OPD.
- (5) Whether the suit is time barred? OPD.
- (6) Relief.

5. Both the parties led oral and documentary evidence to substantiate their rival pleadings.

Plaintiff Badri Nath appeared as PW1 and reiterated his claim.

He also tendered certified copies of ejectment petition Ex.P1, judgment and decree in case titled 'Gurbax Singh vs. Jagat Singh' Ex.P2 and Ex.P3, order Ex.P4, decree Ex.P5 and judgment Ex.P6.

On the other hand, Om Parkash (defendant no.1) appeared as DW2 and also examined Sat Parkash, DW1 who reiterated the defence set up by them. The defendants also tendered sale deed Ex.D1, certified copy of order Ex.D2 and Ex.D3.

6. Considering the evidence adduced by the parties and the submissions made on their behalf, learned trial Court decreed the suit of the plaintiff and passed a decree for possession by way of pre-emption qua the disputed plot on payment of ₹50,238/- including ₹6235/- as stamp charges, ₹503/- as registration fee, ₹500/- as miscellaneous expenses after deducting 1/5th pre-emption amount which was already deposited by them in the court on or before 25.07.1989, failing which the suit was to be deemed to be dismissed.

7. Feeling aggrieved by the judgment and decree dated 25.07.1989 passed by learned trial Court, defendants Om Parkash and others preferred an appeal which was dismissed by learned Additional District Judge, Yamuna Nagar at Jagadhri, vide impugned judgment and decree dated 01.06.1992.

8. Feeling unsatisfied, defendants Om Parkash and others preferred the instant appeal.

9. The submissions made by Mr. Arun Jain, learned senior

counsel representing the appellants and Mr. M.L. Sarin, learned senior counsel representing the respondents have been considered and record has been perused.

10. It was not a contentious issue that the disputed property was initially situated in the revenue estate of village Garhi Mundan but since the year 1962-63 it fell within the municipal limits of Jagadhari. Sale of the suit property by the original owners Anarkali and others in favour of the defendants for ₹43,000/- was also an admitted fact. The plaintiffs claimed to be in possession of the suit property in the capacity of tenants since the year 1949. They alleged that having taken the plot on rent they had raised construction in the same year i.e. in 1949 and were running a metal rolling mill in the name & style of M/s Gandhiji Metal Rolling General Mills since 1950. The status of the plaintiffs being tenants on the suit property was not denied by the defendants.

Otherwise also, the plaintiffs tendered in evidence copy of the eviction petition Ex.P1 filed against them by the defendants under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short “the Rent Act”) for ejectment of the plaintiffs and for removal of the superstructure from the rented land which also proved that the defendants admitted the plaintiffs to be tenants in the disputed property.

11. The plaintiffs alleged that the disputed property is 'urban immovable property' as defined under Section 3 of the Act of 1960 and there being a custom of pre-emption prevalent in the locality at the time of

commencement of the Act of 1960, where the disputed property is situated, the sale in question is pre-emptable under Sections 7 and 16 of the said Act of 1960. The defendants though admitted that the suit property is 'urban immovable property' but denied the right of the plaintiffs to pre-empt the same on the ground that there was no custom of pre-emption prevalent in the area where the disputed property is situated.

12. To begin with, learned senior counsel for the appellants referred to the Haryana Government Notification dated 08.10.1985 and submitted that by virtue of said notification the Governor of Haryana declared that no right of pre-emption shall exist in respect of sales of land falling in the areas of any municipality in Haryana. Learned senior counsel asserted that the disputed property is admittedly a land falling in the area of Municipal Committee, Jagadhri in Haryana. By virtue of the notification dated 08.10.1985, the right of pre-emption in respect of the sale of land falling in the area of municipality has ceased to exist. The sale in question as per the sale deed Ex.D1 may have taken place on 25.01.1983 i.e. prior to the issuance of the notification but it came into existence much before the suit of the plaintiffs for pre-emption could be decided i.e. on 27.05.1989. It was held by Hon'ble Apex Court in **Shyam Sunder and another vs. Ram Kumar and another, 2001(3) R.C.R. (Civil) 754**, that *a pre-emptor has to prove continuation of subsistence of his right till the passing of decree by the court of first instance.*

Learned Senior counsel urged that in the case in hand, the

plaintiffs had lost their right of pre-emption in respect of the sale in question by virtue of the notification dated 08.10.1985 much before the decree dated 27.05.1989 was passed by the Additional Senior Sub Judge, Jagadhri.

13. The set of facts explained by learned Senior counsel cannot be disputed, however, in my considered opinion, the question which crops up for determination is whether the disputed property was a land as described in notification dated 08.10.1985. The definition of land given under Section 2(3) of the Punjab Alienation of Land Act, 1900 (hereinafter referred to as “the Act of 1900”) is as under:-

*“The expression “land” means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture and includes-*

- (a) the sites of buildings or other structures on such land;*
- (b) a share in the profits of an estate or holding;*
- (c) any dues or any fixed percentage of the land revenue payable by an inferior landowner to a superior landowner;*
- (d) a right to receive rent;*
- (e) any right to water enjoyed by the owner or occupier of land as such;*
- (f) any right of occupancy; and*

(g) *all trees standing on such land”*

14. The disputed property does not fall within the ambit of the definition of land given in Section 2(3) of the Act of 1900 because as per the definition the land which was occupied as the site of any building in a town or village was not to be treated as land. In the instant case, admittedly, there is construction in existence over the suit property since 1949 in which a metal rolling mill is being run since 1950. The definition says that the “land” which is occupied/let out for agriculture purposes or for purposes subservient thereto or for pasture is only to be treated as “land”. The disputed property was neither let out for agricultural purposes or for any purpose subservient thereto or for pasture nor was being occupied for any such purpose. Therefore, by no stretch of imagination, the disputed property could be held as “land” as mentioned in the notification dated 08.10.1985 and therefore, the notification was certainly not applicable in the present case.

14. Besides the above, it shall be relevant to refer to Section 3 of the Act of 1960 which for ready reference is reproduced here under:-

***“3. Definitions.- In this Act, unless a different intention appears from the subject or context,-***

***(1) “agricultural land” shall mean land as defined in the Punjab Alienation of Land Act, 1900 (XIII of 1900) (as amended by Act, 1 of 1907), but shall not include the rights of a mortgagee, whether usufructuary or not in such land;***

(2) *'village immoveable property' shall mean immoveable property within the limits of a village, other than agricultural land;*

(3) *'urban immovable property' shall mean immoveable property within the limits of a town, other than agricultural land. For the purposes of this Act a specified place shall be deemed to be a town (a) if so declared by the [State] Government by notification in the Official Gazette, or (b) if so found by the Court;*

(4) *'member of an agricultural tribe' 'and group of agricultural tribes' shall have the meanings assigned to them, respectively, under the Punjab Alienation of Land Act, 1900 [XII of 1900];*

*NOTE:-The repeal of the Punjab Alienation of Land Act, 1900 has rendered sub-section (4) nugatory and it is to be deemed as non-existent vide 55 P.L.R. 500 F.B.*

(5) *sale shall not include-*

(a) *a sale in execution of a decree for money or of an order of a Civil, Criminal or Revenue Court or of a Revenue Officer;*

(b) *the creation of an occupancy tenancy by a landlord, whether for consideration or otherwise;*

(6) *any expression which is defined by section 3 of the Punjab Land Revenue Act, 1887 (XVII of 1887), shall subject*

*to the provisions of this Act, have the meaning assigned to it in the said section.”*

As per the above definition, 'immovable property' falling within the limits of a town, other than agricultural land, is called 'urban immovable property'. Since the disputed property was admittedly not 'agricultural land' falling within the municipal limits of Jagadhri, it was 'urban immovable property' as defined in Section 3 of the Act of 1960. It is further important to mention here that in their written statement the defendants also admitted without any reservation that the disputed property is “immovable property”. Their admission to the said effect estopped them from asserting that the disputed property was “land” as mentioned in the notification dated 08.10.1985 and for that reason also the notification is not applicable to the present case.

15. Having held that the disputed property is 'urban immovable property', the next question which needs to be probed is whether the provisions of Section 7 of the Act of 1960 are applicable to the disputed property. Section 7 of the Act of 1960 reads as under:-

***“7.Exists under certain conditions in urban immovable property.—Subject to the provisions of section 5 a right of pre-emption shall exist in respect of urban immoveable property in any town or sub-division of a town when a custom of pre-emption is proved to have been in existence in such town or sub-division at the time of the commencement of this Act, and***

*not otherwise.”*

In the light of above provision, for claiming a right of pre-emption in respect of the sale in question, it was incumbent upon the plaintiffs to prove that custom of pre-emption existed at the time of commencement of the Act of 1960 in the area in which the disputed property is situated. Learned senior counsel for the defendants argued that admittedly the disputed property fell in the revenue estate of village Garhi Mundan and it was in the year 1962-63 that by notification it was included alongwith other areas within the municipal area of Jagadhri town. Even if it was accepted for the sake of arguments that there was custom of pre-emption prevalent in Jagadhri town, the same cannot be presumed to be prevalent in the extended area of Municipal Committee, Jagadhri also.

To support his argument, learned senior counsel relied upon **Imperial Oil, Soap and General Mills Co. vs. Misbah-ud-Din and others, A.I.R. 1921 Lahore 69** wherein it was laid down as under:-

*“Now, it is true that the custom of pre-emption has been held to prevail generally throughout the City of Delhi, but that applies only to the City proper as circumscribed by the City walls constructed during the Moghul period, and has no application to a suburb which has grown up since the British Rule. We, therefore, are of opinion that it is for the plaintiff to adduce satisfactory evidence to show that the custom of pre-emption prevails in this particular sub-division, which, as*

*pointed out above, is situated outside the city wall and cannot be treated as a part of the city proper for the purpose of the custom of pre-emption.”*

Learned senior counsel also relied upon **Gopal Singh and another vs. Mool Raj and others, A.I.R. 1924 Lahore 557** wherein it was held as under:-

*“The next question is whether the custom of pre-emption has been proved to exist in the locality in which the land is situate. The land is in a business quarter of recent growth which lies outside the walls of the town of Gujranwala. No instance has been given of the existence of a custom of pre-emption in that quarter and evidence of its existence in certain parts of the old town is not sufficient to show that the custom exists also in the particular quarter in which the land in dispute is situate. It cannot be said that the custom exists throughout the town because in a judgment given on page 18 of the printed paper-book it was held by the Chief Court that the custom alleged to exist in regard to certain non-agricultural land at Gujranwala was not proved. But even if the custom does not exist generally in the old town it cannot be on that account be presumed to exist in an outgrowth or extension of the town, and in this connection Kishan Dial v. Ali Bakhsh (1), Umar Bakhsh v. Abdul Karim (2) and Allah Ditta*

*vs. Muhammad Nazir (3), are cases in point.”*

Reliance was further placed on **Ram Lal v. Municipal Committee, Bhera, A.I.R. (34) 1947 Lahore 386** wherein the proposition of law laid down is as under:-

*“Although a custom of pre-emption prevails generally in the old town of Bhera, that custom cannot be extended for the purpose of pre-empting a sale of a property consisting of a building situate outside the old abadi, which was constructed at some time after 1900 on land which till then was agricultural land.”*

16. The arguments of learned senior counsel for the defendants were controverted by learned senior counsel for the plaintiffs. He submitted that a custom of pre-emption prevailing in a particular town would be enforceable in the extended boundary of that town also. To find support, he relied upon **Miran Baksh v. Mohammad Akram Khan, A.I.R. 1937 Lahore 167** and **Bashesar Nath and others v. Alla Diya and others A.I.R. (38) 1951 Punjab 90(2)**.

17. Having considered the submissions made by learned senior counsel for the parties, I find that the facts of the instant case are distinguishable from the case of **Imperial Oil, Soap and General Mills's** case (supra), **Gopal Singh and another's** case (supra) and **Ram Lal's** case (supra).

It is an admitted case of both the parties that earlier the

disputed property fell in the revenue estate of village Garhi Mundan and in the year 1962-63 it was included in the Municipal Committee limits of Jagadhri town. Plaintiff Badri Nath appeared as PW1. He testified that he and plaintiffs no.2 to 8 had taken the disputed property on rent in the year 1949 and in the same year they raised construction over the plot and in the year 1950 they started running a metal rolling mill in the name & style of M/s Gandhiji Metal Rolling and General Mills (defendant no.9). He also stated that Baniwala Mohalla of the Jagadhri town is at a distance of 1¼ frolong from the disputed property. Giving reference of a 'land' situated in front of the disputed property, he stated that Gurbax Singh had filed a suit for pre-emption against Jagat Singh on sale of the land to Jagat Singh. The 'land' which was subject matter of the said sale was also initially part of revenue estate of village Garhi Mundan and was later included in the Municipal Committee limits of Jagadhri. He categorically stated that there had been custom of pre-emption in the revenue estate of village Garhi Mundan since 100 years and that there is also custom of pre-emption in Jagadhri town generally and Baniwala Mohalla in particular. To support his version, he tendered in evidence judgment Ex.P2 and decree sheet Ex.P3 passed in case titled '*Gurbax Singh vs. Jagat Singh and others*' rendered in the year 1967 by Sub Judge Ist Class, Jagadhri. The plot in dispute in that case in respect of which right of pre-emption was claimed formed a part of Mohalla Baniwala which was also known as Mohalla Babna. From the said judgment, it stands established that even in the year 1967 there existed a

custom of pre-emption in Jagadhri town generally and Mohalla Baniwala in particular.

It is further worthwhile to note that DW1 Sat Parkash as well as DW2 Om Parkash (defendant no.1) both admitted that Baniwala Mohalla is at a distance of hardly 1/2 fronlong from the disputed property. It was not the deposition of DW2 Om Parkash that there was no custom of pre-emption of a sale or an 'urban immovable property' in Jagadhri town and the adjoining areas. His version was that he had never heard of and he was ignorant if any case of pre-emption of a sale had been filed. He admitted that the distance between the house of Jagat Singh and the disputed property was 400 yards, but stated that it was not in his knowledge that a suit for pre-emption regarding the land adjoining to the house of Jagat Singh was filed. Expression of ignorance amounted to admission because that was only a way to avoid admission of the actual facts. Thus, not only from the judgment and decree Ex.P2 and Ex.P3 tendered in evidence by the plaintiffs it stands established, but it is also proved from the statement of DW2 Om Parkash that there was custom of pre-emption prevalent in the area in which the disputed property is situated. As such, it can be said that the custom of pre-emption existed in the area in question on the date of commencement of the Act of 1960. It may be added here that the deposition of PW1 Badri Nath that right of pre-emption existed for the last 100 years in the revenue estate of village Garhi Mundan in which previously the disputed property was situated was not challenged by the defendants in his

cross-examination. He was not even suggested that no such custom existed as stated by him. In that manner, it is established that the custom of pre-emption was prevalent in village Garhi Mundan in which initially the disputed property was situated and was also prevalent in Baniwala Mohalla of Jagadhri town in which it is presently situated.

18. Moreso, the disputed plot is not situated in a suburb which has grown up subsequently on extension of Jagadhri city. There is also nothing on record to prove that there are any sub-divisions in Jagadhri city. Rather, admittedly the suit property was earlier situated in the revenue estate of village Garhi Mundan where, as stated by PW1 Badri Nath, the custom of pre-emption was prevalent since 100 years and in the year 1962-63 the disputed property was included in the municipal area of Jagadhri town where also the custom of pre-emption in general and in Mohalla Baniwala in particular was enforceable as is proved from the instances quoted by the plaintiffs. A custom prevalent in a particular area can best be proved by citing instances where it had been followed.

Thus, there being no merit in the appeal, it is hereby dismissed.

**(SNEH PRASHAR)**  
**JUDGE**

**February 25, 2015**  
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