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

**RSA-3163-1987 (O&M)
Date of decision : 23.11.2016**

Ishwar Singh and others

... Appellants

Versus

Dhapo @ Dhupo and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.P. Tiwana, Advocate
for the appellants.

Mr. M.L. Sarin, Senior Advocate with
Ms. Ankita Sambyal, Advocate
for the respondent(s).

AMIT RAWAL, J. (ORAL)

The appellants-defendant Nos.1 to 3 are in regular second appeal against the judgment and decree of the lower Appellate Court, whereby the suit for possession by way of pre-emption has been decreed, in essence, the judgment and decree of the trial Court has been set aside.

Mr. C.P. Tiwana, learned counsel appearing on behalf of appellants-defendant Nos.1 to 3 submits that respondent No.1/plaintiff has failed to prove that she is a co-owner or co-sharer of the suit property and as well as her identity whether she was Dhupo wife of Prem or someone else. In fact, there was an impersonation, the actual owner has not come forward seeking pre-emption, it was a ploy on behalf of the vendors-defendant Nos.1 to 3, who are in collusion with defendant Nos.4 to 6. The lower Appellate Court overlooked the revenue record, thus, the judgment and

decree of the lower Appellate Court is not sustainable in the eyes of law and urges this Court for setting aside the same.

Per contra, Mr. M.L. Sarin, learned Senior Counsel assisted by Ms. Ankita Sambyal, learned counsel appearing on behalf of respondent(s)-plaintiff(s) submits that the revenue record irresistibly proved the nature and character of the property of respondent No.1-plaintiff as co-sharers. The law of pre-emption at the relevant point of time, when the defendant Nos.4 to 6 had sold to defendant Nos.1 to 3-appellant was in vogue. Though, the trial Court dismissed the suit, but the lower Appellate Court being the last Court of fact and law after appreciating the oral and documentary evidence, decreed the suit. There are two pieces of land one measuring 35 kanals and the other 7 kanals 18 marals, whereas the pre-emption was sought only for 7 kanals 18 marlas for a total sale consideration of ₹ 48,000/-. This Court had issued the notice of motion on 23.11.1987 by relying upon the *ratio decidendi* culled out by this Court in “Karam Singh and another V/s Harnam Singh and others”, 1987 PLJ 225, wherein this Court while relying upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in “Jagdish and others V/s Nathi Mal Kejriwal and others” 1987 PLJ 14 SC found that though a co-sharer, being the brother of the vendor, was not entitled to pre-empt the sale.

He further submits that the aforementioned findings have been overruled by Hon'ble Supreme Court in “Bhikha Ram V/s Ram Sarup and others” JT 1991 (4) S.C. 199 and held that the co-sharer/co-owner i.e. relative would have equal right to seek the pre-emption and the *ratio decidendi* culled out by the Hon'ble Supreme Court in “Jagdish's case (supra) was specifically overruled.

I have heard the leaned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. C.P. Tiwana, for, one of the grounds in challenging the judgment and decree of the lower Appellate Court was that the plaintiff was a relative and as well as the co-sharer/co-owner with defendant Nos.4 to 6 and the view expressed by this Court declining the relief for pre-emption to the co-owner/relative has been set aside as noticed above, therefore, one of the grounds to challenge has been taken away. As far as the other grounds are concerned, I am of the view that no cogent and direct evidence has been led by the defendants to belie the claim of the respondent No.1-plaintiff, in essence, non-suiting, in establishing her identity. A person who asserts something has to prove the same by leading direct, cogent and corroborative evidence. In the absence of the same, I am of the view that once the respondent No.1-plaintiff has been able to prove her status as co-sharer, the lower Appellate Court has rightly decreed the suit as law of pre-emption was recognized at the relevant point of time.

For the foregoing reasons, I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court below as the same is based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

23.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

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Whether Reportable Yes/ No