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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1793 of 2007
Date of Decision: 16.09.2016

Jai Pal Singh and ors. ....**Appellants**

Vs

Ram Parshad and ors ....**Respondents**

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Vikas Bahl, Sr. Advocate with
Ms. Balpreet Sidhu, Advocate
for the appellants.

Mr. Pankaj Jain, Advocate,
for the respondents.

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RAJ MOHAN SINGH, J.

[1] Defendants-vendees have filed this regular second appeal against judgment and decree dated 17.05.2007 passed by District Judge, Bhiwani vide which judgment and decree dated 23.07.1993 passed by Additional Senior Sub Judge, Charkhi-Dadri in a suit for possession by way of pre-emption was upheld and the suit for possession by way of pre-emption was decreed.

[2] Plaintiff filed a suit for possession by way of pre-emption on the ground that defendants no. 4 to 6 namely Smt. Draupadi widow of Vijay Singh, Mamraj son of Vijay Singh and Smt. Indira daughter of Vijay Singh were owners in joint possession of the suit

land. They sold the land to the extent of 13/36 share in favour of defendants/appellants for a total sale consideration of ₹1,99,000/- vide registered sale deed dated 02.11.1989. The defendants bought this specific khasra incorporated in the sale deed so as to avoid the pre-emption. They also alleged mutual partition. Plaintiffs claimed that the recital in the sale deed was incorrect as the defendants No. 1 to 3 purchased only a share out of the land. In fact, land was sold for a consideration of ₹1,50,000/-. The consideration to the tune of ₹1,99,000/- was the result of exaggeration. No notice was served upon the plaintiff. With this background, suit in question came to be filed.

[3] Suit was contested by the defendants on the ground that the khewat was not joint of plaintiffs and defendants No. 4 to 6. Defendants No. 4 to 6 were exclusive owners of the suit land. Defendants had purchased specific khasra numbers on account of mutual partition between original owners. The land was rightly sold for a consideration of ₹1,99,000/- which was fixed in good faith. The defendants were entitled to stamps and registration charges and also an amount towards development of the land.

[4] After completion of pleadings, additional Issue No. 5(A) was framed on 14.06.1993 by the trial Court in the following manner:

> "Whether the plaintiff is estopped by his own act and conduct from filling the present suit ? OPD"

[5] Both the parties led evidence. Trial Court decreed the suit vide judgment and decree dated 23.07.1993 for possession by way

of pre-emption subject to depositing ₹2,24,317.50/- including the amount of zarepunzem already deposited by the plaintiff. Plaintiff was directed to deposit the balance consideration on or before 20.10.1993 failing which the suit was ordered to be dismissed.

[6] Feeling aggrieved against the judgment and decree passed by the trial Court, vendees/appellants filed a Civil Appeal No. 116 of 1993 before the District Judge, Bhiwani. District Judge, Bhiwani accepted the appeal by reversing the findings recorded by the trial Court under issue no. 1 and issue No. 5-A. In a passing reference, it was also ordered that a right of pre-emption was already taken away even in the cases where litigation was pending. However, that was subject to publication of the Amending Act. The lower Appellate Court accepted the appeal vide judgment and decree dated 17.04.1995.

[7] The judgment of the lower Appellate Court was assailed in RSA No. 1838 of 1995 by the pre-emptor/plaintiff before the High Court. The appeal was accepted on a short premise that in view of ratio laid down in **Shyam Sunder and others Vs. Ram Kumar and another, AIR 2001 SC 2472,** the rights of persons whose appeals were pending were not to be affected by Section 15 of the Amending Act. The case was remanded back to the lower Appellate Court for fresh decision keeping the law laid down by the Hon'ble Apex Court in Shyam Sunder's Case(supra).

[8] After the aforesaid remand, the lower Appellate Court dismissed the appeal vide judgment and decree dated 17.05.2007.

Against the judgment and decree of the courts below, appellants ventured to file RSA No. 1793 of 2007 which was ordered to be dismissed vide judgment dated 25.01.2010.

[9] Against the judgment dated 25.01.2010, the appellants preferred SLP(C) No. 11033 of 2010 which was converted into Civil Appeal No. 5521 of 2014. The Hon'ble Apex Court primarily took cognizance on three issues :

> *(a) The appellants had purchased the property from three persons namely Mam Raj, Smt. Indira and Smt. Dropadi vide sale deed dated 02.11.1989. Respondent Ram Prasad and his two brothers namely Hardwari and Sishpal had purchased the property from Bhagirath. The Courts below have not dealt with the issue appropriately as to how the plaintiff/respondent had any link with Bhagirath to establish his status as that of co-sharer so as to pre-empt the sale in question.*
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> *(b) The Courts have not adverted to Section 30 of the Punjab Pre-emption Act to give any finding regarding limitation as it was obligatory on the court to take up the issue of limitation.*
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> *(c) The Courts were also obligated to advert to the applicability of* ***Shyam Sunder and others Vs. Ram Kumar and another, AIR 2001 SC 2472.***

[10] In pith and substance, the emphasis laid by the Hon'ble

Apex Court was to cule out from the evidence as to whether Bhagirath was a co-sharer in the suit land or not. Secondly, even if the issue of limitation was not claimed by the defendants, the Court was obligated under Section 3 of Limitation Act to see whether suit was filed within the limitation prescribed under Section 30 of Punjab Pre-emption Act or not. The case was remanded back to the High Court for early disposal of the appeal preferably within a period of 6 months. After the remand by the Hon'ble Apex Court, the appeal was again processed. Due to contingency as recorded in various interlocutory orders, the appeal could not be taken up for final disposal.

[11] I have heard learned counsel for both the parties and have also perused the relevant material on record. At the time of disposal of the appeal by this Court on 25.01.2010, following substantial questions of law was considered.

> "Whether the land which has already mutually partitioned cannot be pre-empted by filing a suit, a person who had also purchased specific number with possession".

[12] In view of remand ordered by the Hon'ble Apex Court, this Court deems it appropriate to frame following substantial questions of law in all fairness to both the parties :-

(i) Whether private partition even if not affirmed by Revenue Authority in terms of Section 123 of the Punjab Land Revenue Act but otherwise proved on record by way of all valid evidence is binding between the parties so as to oust the plaintiff to claim pre-emption on the basis of co-sharers?

(ii) Whether non-affirmation by Revenue Officer by itself was sufficient to render a private partition redundant as the affirmation was only to determine the rights of the owner in respect of obligation to pay land revenue to the State in terms of provisions of the Land Revenue Act ?

(iii) Whether the Courts below have misread the evidence of private partition thereby rendering the judgments and decrees of the courts below as perverse ?

(iv) Whether the trial Court was obligated in terms of Section 3 of Limitation Act to see whether suit was filed within limitation in terms of Section 30 of Punjab Pre-emption Act ?

[13] Apparently, vendors did not contest the suit. Vendees/apellants contested the suit and alleged that their vendors were owners of 71 Kanal 5 Marla of land comprised in Killa Nos. 88 and 105. Khewat of these khasra number was not joint of the parties. The separate numbers were entered and possessed by different persons. Status of plaintiff being that of co-sharer was denied. It was claimed that the plaintiff and his brothers namely Hardwari and Sish Pal had purchased 39 Kanal 12 Marlas of land comprised in Killa No. 13 and 36 from one Bhagirath and therefore, they were not co-

sharers in the Khewat from where the vendees/appellants had purchased the land in question.

[14] The appellants further emphasized that three vendors were in exclusive possession of the land in question on account of mutual partition and they had right to alienate the land. The plaintiff had also purchased specific khasra number from Bhagirath which Bhagirath had owned and possessed on account of mutual partition as well. The appellants also alleged that the sale consideration was fixed correctly and they had incurred substantial amount towards leveling as well. Plaintiff/respondent while appearing as PW-1 reiterated the stand taken in the plaint and stated that the land was being cultivated by him and he had also taken a loan from bank for purchase of the suit land. He pleaded ignorance as to whether he had purchased a share of specific portion of the land from Bhagirath. He also denied the suggestion that he had purchased specific khasra number of the land from Bhagirath. His brother Hardwari also asserted that plaintiff was a co-sharer.

[15] On the other hand, vendees/defendants asserted that they had purchased the specific portion of land for lawful consideration and the suit land had already been partitioned by way of family settlement. Rajender while appearing as DW-1 admitted that he also purchased the land by specific number out of the suit land as per sale deed Ex. D-1. Similarly, another witness Zile Singh also admitted while appearing as DW-2 that he also purchased the land by specific khasra number from vendor, Vijay Singh vide sale

deed Ex. D-2. The witness admitted that the suit land had already been partitioned by way of family partition. Amar Singh, Patwari, while appearing as DW3 stated that Rapat Roznamcha Ex. D3 scribed by Tej Ram DW-4, specific land was purchased vide sale deed Ex. D4 and the possession was duly delivered. Prem Narain, Registration Clerk appeared as DW-5 and stated that sale deeds Ex. D4 and Ex. D5 were duly brought from the office of Tehsildar. Sri Narain, Deed Writer also proved the sale deed dated 14.10.1985 while appearing as DW-6 which was in favour of other persons. Udey Singh proved the sale deed Ex. D4 dated 25.05.1983 while appearing as DW-7. Similarly, others sale deeds Ex.D9 and D10 were also proved on record. On the strength of the aforesaid sale instances, it was contended by the learned counsel for the defendants-vendees that various parcels of land were sold to various persons specifically with possession. The recitals of the sale deed duly recorded the factum of "*Bahami Batwara*" i.e. private partition. Daily Diary Reports were executed in respect of delivery of possession of specific portions of land so subjected to sale deeds in the past.

[16] Bhagirath was one of the co-sharers. His specific khasra numbers were purchased by the plaintiff-respondent. In the written statement, it was specifically pleaded that Bhagirath had sold his entire portion to the plaintiff and therefore, plaintiff could not become a co-sharer. Ex. D5 was the sale deed of Bhagirath. The sale deed was executed on 21.10.1985. Bhagirath had admitted in the

aforesaid sale deed Ex. D5 that he had delivered possession of specific land to the plaintiff Ram Prasad and his brothers namely Sish Pal and Hardwari. The recital of the sale deed was in respect of delivering possession of specific portion of the land. As per *Jamabandi* for the years 1988-89 Ex. P-4 even the land with specific killa number were mortgaged with the bank for obtaining loan. Perusal of *Jamabandi* for the years 1983-84 and 1988-89 reveal that Ram Prasad and his brothers had purchased specific portion of land viz. Killa No. 206/231. Separate parcels of land were subjected to different sale from time to time.

[17] For ready reference sale deed Ex. D-1 executed by Shanti, it is relevant to point out that Ram Ji Lal had two sons namely Vijay Singh and Hari Singh and one daughter namely Shanti. Vijay Singh had Dropadi as wife, Bhagirath and Mam Raj as sons and Indira as daughter. Perusal of sale deed Ex. D-1 revealed that Shanti daughter of Ram Ji Lal sold specific khasra number on 04.07.1979 by referring to private partition. Vijay Singh, husband of Dropadi also admitted private partition while selling the land by way of specific killa numbers on 30.08.1979 vide sale deed Ex. D2. Hari Singh also sold specific killa numbers on 25.04.1983 vide Ex. D4. Specific khasra numbers of Hari Singh were auctioned and purchased after partition as per daily diary report Ex. P-3. Likewise, Bhagirath sold specific portion of land vide Ex. D5. Hari Singh sold specific killa number vide sale deed Ex. D10 and D11. Bhagirath had purchased 39 kanals 12 marlas of land from Dropadi vide sale deed dated 30.01.1980 Ex. P2.

Bhagirath sold this land to the plaintiff Ram Prashad.

[18] The aforesaid evidence laid on record was suggestive of the fact that different persons sold specific portions of land to different persons in the past i.e. from 1972 onwards. In some of the sale deeds, specific recital was incorporated that there was "*Bahami Batwara"* between the co-sharers. The case set up by the plaintiff was to the effect that he along with his brothers was co-sharer on account of land purchased by them from Bhagirath. Bhagirath had sold specific portion of land to them with possession in the year 1985. One thing was apparent that possession of specific portion of land were given without their resorting to any private partition by different persons in favour of different vendees. This process started from 1972 onwards. Different sale instances were brought on record to show that parties were in possession of specific portions of parcels of land on account of mutual understanding and they sold the said portion with impunity. The sales of specific portions of land were not more than the sales of the vendors.

[19] Learned counsel for the appellants vehemently submitted that the parties were in separate possession of specific parcels of land on account of private partition and they sold specific portions to different vendees from time to time. A perusal of the plaint filed by the plaintiff did not show as to how he became a co-sharer. It was obligatory on the part of the plaintiff to state the basic facts in the plaint to show as to how and in what manner he became co-sharer in the suit land. The plaintiff even did not mention that he had

purchased the property from Bhagirath alongwith his brothers and therefore he became co-sharer in the suit land. The sale deed executed by Bhagirath evidenced that he had delivered possession of specific killa numbers to the vendees (Ram Prashad and his brothers). These facts were not incorporated in the plaint.

[20] Learned counsel emphasized that having purchased specific land from Bhagirath, the plaintiff was in possession of specific killa numbers which was separate in identity from other co-sharers, therefore, Bhagirath could not have given him better title than the one he had possessed. Learned counsel again emphasized that the pre-emptor was to establish his right to pre-empt the land on three crucial dates i.e. date of sale, date of filing of the suit and date of passing of the decree. In case of private partition which has been established on record by way of numerous serious instances of the past, non-affirmation of private partition by the Revenue Authority would not negate the factum of partition thereby dis-entitling the plaintiff from pre-empting the suit land.

[21] Revenue record itself neither create nor extinguish the title of the party. If the private partition was effected between the co-sharers and the same has been proved on record by way of other evidence. Mere non-affirmation of the said private partition would not relegate the parties to the status of pre-partition nor the same would negate the factum of private partition in terms of Section 123 of Punjab Land Revenue Act (for short 'the Act'). The duties of the Revenue Officer in terms of Section 123 of the Act is to verify the

factum of partition only. The enquiry under the said provision is having restrictive mechanism to point out that, in fact, partition has been effected. In this way non-affirmation of partition if done by the Revenue Officer would not render the partition itself as a redundant.

[22] Apparently, the affirmation of partition was intended thereby facilitating the owners in terms of their obligation to pay land revenue to the State and also to set the record of right straight. This phenomenon has nothing to do with the factum of private partition if brought on record by way of other admissible substantive evidence. Learned counsel also pointed out that the main emphasis recorded by the courts below was to the effect that the factum of private partition was not given effect in the revenue record, therefore, partition was not proved and the plaintiff was held to be co-sharer without ascertaining the facts as to how plaintiff became co-sharer for want of necessary pleadings in the plaint. The affirmation of partition by the Revenue Officer is a directory process. Even in the absence of giving effect to the private partition in the revenue record, parties were always at liberty to prove private partition de-hors non-affirmation of partition by the Revenue Officer in terms of Section 123 of the Act.

[23] Family partition and nature of possession can be proved by oral and documentary evidence of the parties. Oral partition is not required to be compulsorily registered. In a memorandum passed, oral partition is not required to be registered. Even an unregistered document of partition is admissible for collateral purposes like

proving the factum of partition and nature of possession. The parties if entered into possession of the respective portions of land in accordance with private partition and continued to be so, for a long time, that created estoppel for the other side by this act and conduct from claiming partition at a belated stage. The sale made by Bhagirath in favour of plaintiff and his brothers was of dated 21.10.1985. Since then, the plaintiff who alleged himself to be co-sharer, never thought it appropriate to seek partition at any point of time except to file suit for pre-emption on the basis of his alleged co-sharership.

[24] Learned counsel for the appellant laid emphasis on the ratio of **Ajmer Singh Vs. Dharam Singh 2006(2) RCR (Civil) 541** which according to him was subsequently upheld by the Hon'ble Apex Court.

[25] Learned counsel further submitted that the Appellate Court was required to give findings under all the issues in terms of Section 96 and Order 41 Rule 23 A of CPC. Reference was made to **Vijaya Srivastava Vs. Mirahul Enterprises, 2006(3) RCR (Civil) 740** and **Smt. Harjit Grewal and others Vs. Dr. Vinod Kumar Batra and others, 2010(5) RCR (Civil) 340** to contend that the lower Appellate Court was obligated to give the findings on all the issues. At last, learned counsel submitted that in view of remand ordered by the High Court, the lower Appellate Court did not advert to the applicability of Shyam Sunder Case(supra).

[26] Learned counsel for the appellant also emphasized that in terms of Section 30 of the Punjab Pre-emption Act, period of limitation for filing suit of pre-emption to pre-empt the property under the Act was one year notwithstanding anything contained in Article 120 of the Limitation Act.

[27] On the other hand, learned counsel for the respondent vehemently submitted that the alleged factum of partition was never recorded in the revenue record nor the same could be brought on record by way of cogent evidence. Learned counsel emphasized that the sale of specific khasra out of the suit land for various sale deeds was not in itself a proof of any mutual partition of the suit land. Such evidence even if brought on record would not give any legal sanctity to any such sales on account of private partition. No partition order was ever passed by the competent authority.

[28] Learned counsel by relying upon **Bhartu Vs. Ram Sarup, 1981 PLJ 204 (Full Bench)**, contended that sale of specific khasra number out of joint land would be a sale of share till the land is partitioned by metes and bounds. The aforesaid view was reiterated in **Ram Chander Vs. Bhim Singh and others, 2008(3) RCR (CIVIL) 685(Full Bench).** In case of joint properties rights and liabilities of joint owners were defined in character. Each of the co-sharer would be deemed to be in possession of every inch of land till the land is partitioned between the parties. Possession of one of the co-sharer would be deemed to be possession on behalf of all the co-sharers. Even if one of the co-sharer is in possession of excess share, the

same is always subject to partition. The view expressed in **Bhartu vs. Ram Sarup** (supra) and **Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram, AIR 1961 Punjab 528** were upheld by **Ram Chander's Case (supra).**

[29] Learned counsel also submitted that the Haryana Amendment Act, 10 of 1985 has not adversely affected the rights of pre-emptors whose decree were prior to the cut off date. In the instant case, decree passed by the trial Court was on 23.07.1993, therefore, the decree passed by the trial Court was prior to the cut off date given in **Shyam Sunder's case (supra)**. Even if, the lower Appellate Court has not adverted to the said fact in the judgment, still this Court feels that the plea being a legal plea can be appreciated at this stage as well. In any case, it is laid down in **Shyam Sunder's case** that it has nothing to do with the controversy of the present nature in which decree of the trial Court was prior to the cut off date fixed in the case.

[30] Learned counsel submitted that the sale which was sought to be pre-empted was executed on 02.11.1989 for which suit for possession by way of pre-emption came to be filed on 31.10.1990, therefore, the suit was instituted within the period of one year and hence the same cannot be treated to be barred by any limitation. Though the trial Court was obligated under Section 3 of the Limitation Act to see whether suit was filed within the limitation or not, since no such proposition was involved, therefore, the plea of the appellant in respect of limitation cannot be entertained more

particularly when the courts below were sanguine of the fact that no such limitation was involved in the suit and precisely for that purpose no issue to that effect was struck between the parties. The issue as framed by this Court on earlier occasion if read in conjunction with issues No. 1 and 2 framed by this Court as mentioned in preceding part of the judgment would rest upon the factum of non-affirmation of partition by the Revenue Officer in terms of Section 123 of the Punjab Land Revenue Act.

[31] First of all, the evidence has to be scrutinized whether in fact there was a family partition which was recognized by the parties/co-sharers for some time in the past. If there was a private partition and evidence to that effect was led on record then non-affirmation of such private partition in the revenue record would be of no consequence to admit severance of joint status between the parties by their mutual settlement. Perusal of the record revealed that there were numerous instances of partition between number of co-sharers who subjected their specific portions of land to sell in the past. Ex. D1 was the sale deed executed on 04.07.1979 by Shanti daughter of Ram Ji Lal. Ex. D2 was the sale deed dated 30.08.1979 executed by Vijay son of Ram Ji Lal. Rapat Roznamcha of 1988-89 was entered in respect of sale deed which was brought on record vide Ex. D3. Hence the sale deed dated 24.05.1983 executed by Hari Singh son of Ramji Lal was proved by way of Ex. D4. Similarly, sale deed executed by Hari Singh son of Ram Ji Lal was executed on 24.04.1992 vide Ex. D10. Sale deed executed by Hari Singh son of

Ram Ji Lal on 20.04.1992 was brought on record as Ex. D11. Bhagirath purchased the land from Dropadi on 30.01.1980 vide Ex. P-2 and he sold the land to the plaintiff and his brothers vide registered sale deed dated 21.10.1985 Ex. D5. Perusal of this evidence on record showed that in number of sale deeds private partition i.e. "*Bahami Batwara"* was recorded. A person i.e. Hari Singh executed a sale deed on 20.04.1972 also admitted such "*Bahami Batwara"*. Bhagirath, Dropadi, Mam Raj and Indira were the successor in interest of Vijay Singh son of Ram Ji Lal. Ram Ji Lal had two sons namely Vijay Singh and Hari Singh and one daughter Shanti. All the aforesaid sale deeds were executed by heirs of successor in interest of Ram Ji Lal from time to time. One factor is established that all the co-sharers subjected the land by sale by way of specific defined portions. Above all, the plaintiff did not mention anything about his status as that of co-sharer. He did not mention in the plaint as to how he became co-sharer nor particulars were elaborated. Plaintiff even obtained loan from the bank by mortgaging specific killa numbers. Bhagirath purchased 39 kanals 12 marlas of land from Dropadi vide sale deed dated 30.01.1980 and he sold the land to his brothers on 21.01.1985. Possession of specific khasra number were delivered to the plaintiff.

[32] The conduct of the co-owners/co-sharers while subjecting the land to different vendees from time to time by way of specific khasra numbers gave only irresistible acquisition that there was a family settlement/family partition. The private partition was duly

pleaded by the defendants/appellants in the written statement and instances viz. Ex. D1 to D-11 were brought on record. In this way, substantial questions as framed by this Court on previous occasions and the questions No. 1 and 2 framed by this Court as mentioned above are to be answered that even if non-affirmation of private partition in the revenue record was done by the Revenue Officer in terms of Section 123 of Punjab Revenue Act, still private partition can be proved on the basis of material on record i.e Ex. D-1 to D-11. Affirmation of partition was required only to determine the rights of owners in respect of their obligation to pay land revenue to the State, otherwise it does not create or extinguish title in favour or against either of the party. Even if, the private partition is not given effect in the revenue record or has not been formally affirmed, that does not relegate the parties to status of pre-partition nor can negate the factum of private partition if otherwise proved on record by substantive evidence.

[33] In the instant case, this Court is of considered opinion that the evidence has comeforth on record to show that there was a private partition for which different co-sharers subjected their separate parcels of land to sale in favour of different vendees from time to time. If such type of private partition was not given effect in the revenue record ,the same would not change the legal position. In view of aforesaid, I hold that there was family partition between the co-sharers, according to which the co-sharers kept on selling specified portions of their land by way of specific killa numbers in

favour of different vendees from time to time. The recital in many of the sale deeds was made to show that there was a "*Bahami Batwara"* between the co-sharers. In view of aforesaid original issue as framed by this Court as additional issues No. 1 and 2 are to be answered accordingly in favour of the appellants. Substantial question no. 3 has to be answered that there was a misreading of evidence by both the courts below. Factum of private partition as brought on record vide voluminous documents i.e. Ex. D1 to D-11 has been misread by the courts below. The findings recorded on the issue of non-affirmation of private partition in the revenue record are certainly perverse on the strength of ratio laid down by this Court in **Ajmer Singh's Case(supra)**. The judgment and decrees by the courts below are found to have suffered with perversity as there was total misreading of evidence. Status of the plaintiff respondent was treated to be that of co-sharer without there being any necessary pleading in the plaint as to in what manner he became co-sharer of the land in question. Simply because factum of private partition was not given effect in the revenue record, the courts below proceeded to hold that such a private partition cannot be entertained.

[34] In my considered opinion, the approach adopted by the courts below are perverse. Non-affirmation of private partition in the revenue record as discussed earlier would not revert back to pre-empt era nor the same would negate the factum of private partition as affirmation of such partition in the revenue record is only with a view to make the owner liable to pay land revenue to the State

Government and also to make the revenue record straight. Otherwise such incorporation or affirmation in the revenue record would not give title in favour of any of the part. Fourthly, question of limitation has to be negated. It is true that the Court was obligated under Section 3 of the Limitation Act to see whether suit was with limitation under Section 30 of the Punjab Pre-emptiion Act or not. In view of aforesaid provision i.e. Section 30 of Punjab Pre-emption Act, limitation of one year was pre-empted for filing the suit for pre-emption from the date of sale. Apparently, the sale was made on 02.11.1989 and the suit came to be filed on 31.10.1990. In this way, the suit was well within the limitation and no issue was framed to that effect by the trial Court nor any evidence was led by any of the parties. In view of aforesaid question No. 4 has to be negated and the suit was within limitation. Even otherwise right of pre-emption being a piratical right, can be defeated by way of lawful means. In the instant case, lawful appreciation of defendant evidence viz. Ex. D-1 to D-11 would sponsor a private partition which even if was not given effect in the revenue record would not tilt the actual status of the parties who were making different sale deeds on the basis of "*Bahami Batwara"* since 20.04.1972 onwards. Sale of specific khasra number in given situation without any iota in courts of law by any of the previous vendors was suggestive of the fact that all the co-sharers by virtue of their private partition were satisfied with the defined shares and they subjected their shares to subsequent sale deeds by way of earmarking defined portions.

[35] In view of aforesaid, I do not subscribe the view taken by the courts below. Right of partition being a piratical right can be defeated by way of lawful means. In the instant case, interruption of private partition which was duly supplemented by material on record would negate the plea of co-sharer in favour of the plaintiff and therefore, the findings recorded by the Courts below under issue No. 1 are hereby reversed. The findings under issue No. 5-A are also reversed that the plaintiff by virtue of his own conduct in the plaint by not depicting the manner in which he became the co-sharer would estop him for filing the suit. The statement of DW-10 Satpal was also sufficient to estop the plaintiff from filing the suit as the witness had specifically deposed that before the purchase, the plaintiff told him that the land had already been partitioned. Though the said statement was discarded by the trial Court but in view of findings recorded under issue No. 1, the plaintiff was estopped by his own act and conduct for filing the suit in question.

[36] In view of above, this Court has no hesitation in accepting the appeal, thereby setting aside the impugned judgment and decrees passed by the courts below. The appeal is accepted. Parties are left to bear their own costs.

16.09.2016 **(RAJ MOHAN SINGH)**
sumit **JUDGE**

Whether Reasoned/Speaking *Yes/No*
Whether Reportable *Yes/No*