

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

RSA No.191 of 1990 (O&M)

Date of decision: 03.07.2018

Parveen Kumar and another

.....Appellants

Versus

Chetan Singh and others

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. V.K. Jain, Senior Advocate,
with Mr. Ravi Kadian, Advocate,
and Mr. J.L. Malhotra, Advocate,
for the appellants.

Mr. S.K. Jain, Advocate,
for the respondents.

Ritu Bahri, J.

Civil Misc. No.3257-C of 2016

During the pendency of this appeal, learned counsel for the appellants has filed the instant application under Order 41 Rule 27 read with Section 151 CPC seeking permission to lead additional evidence. By way of this application, he wants to produce sale deed dated 29.12.2000, whereby plaintiff-Sahab Singh had sold 05 Kanals of land to Suresh Kumar, Madan Lal, Jawahar Lal and Subhash Chand and had introduced four strangers to Khewat No.263 Min. The sale consideration was Rs.2,75,000/-. Learned counsel for the appellants contended that the plaintiff has gone against the basic principles of pre-emption. He also wants to produce on record Aks Shajra of village Rawa, Had Bast No.239 showing the location of the land, which is the subject matter of this suit, where right of pre-

emption has now been given to plaintiff-respondent No.3.

Reply to this application was filed by plaintiff-respondent No.3 by way of affidavit dated 27.04.2016 by taking a stand that the application does not satisfy the conditions enumerated under Order 41 Rule 27 CPC and there is no explanation as to why this evidence was not led earlier. Even this application has been filed at a very belated stage in the present appeal.

Heard. In the present case, the earlier judgment and decree Ex.D7 & Ex.D8 were passed in the year 1975, whereas the plaintiff has sold 5 Kanals of land in the year 2000. Moreover, there is no bar in the Pre-emption Act that a co-sharer cannot sell his land to an outsider. Hence, the sale made by plaintiff in the year 2000 has no relevancy in deciding the present appeal.

Resultantly, the present application stands dismissed.

Civil Misc. No.3242-C of 2016

The application is for permission to amend the written statement by taking a plea that initially, the written statement was filed on 12.11.1987 and during the pendency of appeal, the Government of Haryana had amended the Act and right to pre-empt the land on the ground of co-sharer has been repealed. Learned counsel for the appellants argued that keeping in view that vide sale deed dated 29.12.2000, plaintiff-respondent No.3 had sold 5 Kanals of land from Khasra No.117 Min West for consideration of Rs.2.75 crores to Suresh Kumar, Madan Lal, Jawahar Lal and Subhash Chand and brought four strangers in the Khewat, the said amendment could not be proposed when the Additional District Judge had rendered the impugned judgment dated 11.01.1990. Copy of amended written statement has been annexed with the misc. application.

Reply to the application has been filed by plaintiff-Sahib Singh, in

the form of an affidavit dated 27.04.2016 taking a plea that this application is belated and the amendment would not have any effect on the rights of the plaintiff-respondent No.3, as he is still co-sharer in the land because he has not sold his entire share in the property. The sale has been made for a sum of Rs.2,75,000/- and not for Rs.2.75 crores, as mentioned in the application. Learned counsel for the respondent(s) has argued that the amendment, sought for, is not necessary for final adjudication of the matter.

After hearing learned counsel for the parties, this Court is of the view that this application has been filed at a belated stage. No ground is made out to amend the written statement at this stage.

Dismissed.

RSA No.191 of 1990

This appeal has been filed against the judgment dated 11.01.1990 passed by the Additional District Judge, Kurukshetra, dismissing an appeal filed by defendant-appellants (hereinafter referred to as 'the defendants') against the judgment and decree dated 30.11.1988 passed by the Sub Judge, Kurukshetra, whereby suit filed by plaintiff-respondent No.3 has been decreed.

Sahib Singh-plaintiff (respondent No.3 herein) filed a suit for possession by way of pre-emption to the effect that defendant No.4-Sampooran Singh had sold land measuring 28 Kanals comprising in Khewat No.181 min, Khatoni No. 348, Khasra No.1493 min (6-0), 1494 (8-0), 1495 (8-0), 1496 min (6-0) to defendant Nos. 1 and 2 for an ostensible consideration of Rs.1,35,000/- vide sale deed dated 11.12.1985, without knowledge and consent of the plaintiff. The said land along with some other land measuring 4 Kanals, was under mortgage for a sum of Rs.24,500/- with

defendant No.3. Due to this reason, defendant No.3 was in possession of the said land at the time of sale in question. Out of total alleged sale consideration, Rs.24,500/- were left with the vendee/defendant Nos. 1 and 2 for redemption and payment of mortgage money to defendant No.3. Rs.75,500/- were paid at the time of registration of sale deed and Rs.35,000/- at the time of execution of agreement to sell on 05.12.1985. In fact, the sale had taken place for a sum of Rs.1,05,000/- and a sum of Rs.30,000/- had been shown as fixations consideration. Plaintiff was a co-sharer in the joint land at the time of sale in question made by defendant No.4. By way of present suit, he has sought right to pre-empt the sale in question. He had requested the defendants to admit his claim, but they had failed to do so. Hence, the suit.

After issuance of notice, defendant Nos.3 and 4 were given up by counsel for the plaintiff being unnecessary. Upon notice, defendant Nos. 1 and 2 filed their written statement taking preliminary objections with regard to *locus standi*. It was submitted that plaintiff was not co-sharer in the land in question and the defendants had got redeemed the land in question from Chetan Singh. The land in question was, actually, sold for a consideration of Rs.1,35,000/-, which was actually, paid by the vendee to the vendor. Plaintiff was not a co-sharer in the suit land, therefore, he had no right to pre-empt the sale in question. Defendants had spent an amount of Rs.10,000/- for the improvement of the suit land, therefore, they were entitled to get the amount from the plaintiff. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following preliminary issues were framed by the trial Court:-

1. Whether plaintiff has superior right of pre-empt the sale in question? OPP
2. Whether sale price of Rs.1,35,000/- was fixed and actually paid in good faith? OPP
3. If issue No.2 is not proved, what was the market value of the suit land at the time of its sale? OPP
4. Whether the plaintiff has no locus-standi to file and maintain the present suit? OPD
5. Whether the suit is not maintainable in the present form? OPD
6. Whether the suit is bad for partial pre-emption? OPD
7. Whether the suit is time barred? OPD
8. Whether the suit is bad for non-joinder of parties? OPD
9. Relief.

Both the Courts have given a concurrent finding of fact on issue No.1 in favour of the plaintiff. It was held that the land in dispute pertains to Khewat No.158. Earlier this land was sold to Joginder Singh etc. by Ranjit Singh etc. vide sale deed dated 21.12.1973 Ex.P12. Plaintiff, by way of civil suit No.598 of 1987, titled as 'Sahab Singh vs. Joginder Singh' had pre-empted the land sold by Ranjit Singh etc. vide judgment and decree Ex.D7 and Ex.D8. After passing of the said decree, he stepped into the shoes of Joginder Singh etc. and became co-sharer in Khewat No.158. Latest number of Khewat No.158 is Khewat No.181. The suit land, which forms part of Khewat No.181, was sold vide Ex.P1. After becoming co-sharer in Khewat No.181, plaintiff filed the present suit for pre-emption of sale deed dated 11.12.1985 Ex.P1. Trial Court returned finding on issue No.1 in favour of the plaintiff that in view of civil suit decree Ex.D8 and Jamabandi for the year 1980-81 Ex.P2, plaintiff was a co-sharer in Khewat No.181 and he had a superior right to pre-empt the sale in question. In his cross-examination, plaintiff had admitted that the land in question had been purchased by

defendant Nos. 1 and 2 for a sum of Rs.1,35,000/-. Hence, issue No.2 was decided in favour of the defendants. Issue Nos.4, 5, 6, 7 and 8 were not pressed by the defendants and were, accordingly, decided in favour of the plaintiff and against the defendants. Finally, the suit filed by the plaintiff was decreed and he was held entitled to take possession of the suit land from the defendants on payment of Rs.1,52,377/- till 31.12.1988.

On appeal, the judgment passed by the trial Court has been upheld by the lower appellate Court. While dismissing the appeal, reference was made to a Full Bench judgment in **Bhartu vs. Ram Sarup**, 1981 PLJ (P&H) 204, wherein it was held that when a co-sharer is in possession, even exclusively, of some portion of the joint land, he is in possession thereof as co-sharer and is entitled to continue his possession till the partition of the joint land is effected and the sale of a specific portion of the land described by particular khasra number by a co-owner out of the joint khewat would amount to be a sale of share out of the joint land and as such, the sale is pre-emptible under Section 15 (i) (b) of the Punjab Pre-emption Act.

Ratio of the above said judgment was directly applicable to the facts of the present case, where a specific Khasra No.1117 (6-0) was sold out of joint Khata. Earlier sale was made out of Khasra No.1114 (6-0) i.e. 06 Kanals, which was described in Khewat No.158, the latest number being 181. This khasra number (i.e. Khasra No.1117 (6-0) is part of Khewat No.181. Khewat No.181, Khatoni No.348, consists of Khasra Nos. 1493, 1494, 1495 and 1496 as a whole and in these khasra numbers, Ranjit Singh, Gurnam Singh, Gurdial Singh and Jagir Singh son of Pritam Singh son of Charta have been shown as owner co-sharers of half share, while Sampuran Singh son of Chatra (their uncle) has been shown as owner of the remaining

half share. In Khewat No.181, there were Khasra Nos.1498, 1550,1551 and 1553, which belonged to the parties. There is no rectangle number and this Khewat No.181 consists of Khasra numbers only. Sampuran Singh and his brother Pritam Singh were the co-sharers in equal shares. After the death of Pritam Singh, his sons Ranjit Singh, Gurnam Singh, Gurdial Singh and Jagir Singh became co-sharers of half share along with Sampuran Singh. Khasra No.1117, which is part of Khewat No.181, was sold by Ranjit Singh etc. (four sons of Pritam Singh) in favour of Joginder Singh etc. This sale deed was pre-empted by the plaintiff vide judgment and decree Ex.D7 and Ex.D8. After pre-empting the sale, plaintiff had stepped into the shoes of Joginder Singh etc. and had become co-sharer in Khasra No.1117 to the extent of half share. Once, plaintiff had become co-sharer in this khasra number, which was part of Khewat No.181, he acquired the status of co-sharer in the entire Khewat No.181 as per the judgment passed by a Full Bench of this Court in **Bhartu's** case (supra). Therefore, the sale made by Ranjit Singh etc. was pre-emptible under Section 15 (i) (b) of the Punjab Pre-emption Act. With these observations, the lower appellate Court dismissed the appeal.

The present appeal was admitted on 25.01.1990. A perusal of the order dated 03.03.1994 shows that there was conflict between two judgments i.e. **Lachhman Singh vs. Pritam Singh**, AIR 1970 Punjab & Haryana 304 and **Bhartu vs. Ram Sarup**, 1981 PLJ 204 and the matter was referred to the Larger Bench. This question has now been decided by the Full Bench in **Ram Chander vs. Bhim Singh**, 2008 (3) RCR (Civil) 685 and thereafter, the present appeal has been listed for final disposal.

Learned counsel for the appellants has referred to the Division Bench judgment of this Court in **Punjab State vs. Inder Singh**, 1952 PLR

395 (DB), in which, the objection of Punjab Pre-emption Act, 1913 has been discussed in detail. He has further referred to the judgment passed by Full Bench of this Court in **Uttam Singh vs. Kartar Singh and others**, AIR 1954 (Punjab) 55, wherein it was held that restrictions imposed by Punjab Pre-emption Act with respect to right of alienation were not ultra vires of the Constitution of India. They were held to be reasonable and not inconsistent with Article 19 (1) (f) of the Constitution. Similar view has been taken by Hon'ble the Supreme Court in **Bhau Ram vs. Baij Nath**, AIR 1962 (SC) 1476. Learned counsel for the appellants has vehemently argued that Full Bench of this Court in **Lachhman Singh vs. Pritam Chand and another**, 1970 AIR (Punjab) 304 has laid down correct law that, a purchasers of specific killa number in specified rectangles out of joint land will not have a right beyond the share sold to them. They do not become co-sharers in the remaining joint land. Learned counsel for the appellants has further referred to the judgment passed by Hon'ble the Supreme Court in **Atam Parkash vs. State of Haryana**, 1986 PLJ 191, whereby it was held that right of pre-emption given to co-sharers and tenants was valid and constitutional. However, right of pre-emption given to kinsfolk based on consanguinity was unconstitutional. The list of kinsfolk mentioned as entitled to pre-emption is intrinsically defective and self contradictory. It was held that Section 15 (2) of the Pre-emption Act was ultra vires of the Constitution. Learned counsel has argued that by virtue of Haryana Amendment Act, 1995, right to seek pre-emption on the ground of co-sharership has now been taken away. Even amendment in the written statement is allowed, plaintiff-respondent No.3 will no longer be a co-sharer and after amendment, the present suit is liable to be dismissed.

Mr. S.K. Jain, learned counsel for the respondents has argued that the first question has been answered by Full Bench of this Court in **Ram Chander Vs. Bhim Singh & others**, 2008 (3) RCR (Civil) 685, wherein the view given in **Bhartu's** case (supra) has been upheld and it was further held that if, a person purchased land from joint khewat, he would become co-sharer in the entire khewat. Even if, he purchased land from specific killa number and rectangle number, it would not disentitle him to pre-empt the sale made out of the said rectangle number. Thereafter, learned counsel has referred to the judgment passed by Hon'ble the Supreme Court in **Shyam Sunder vs. Ram Kumar**, 2001 (2) PLJ 332 on the proposition that Section 15 of Punjab Pre-emption Act as amended by Haryana Amendment Act 10 of 1995, which takes away right of pre-emption of co-owner (co-sharer), was prospective in nature and it did not affect rights of parties to litigation on the date of adjudication of pre-emption suit. The Appellate Court was required to decide a suit on the basis of Pre-emption Act as it existed on the date of passing of the decree. It was further held that in order to pre-empt a sale, the plaintiff was required to prove his right of pre-emption on three important conditions: (1) claimant must possess right of pre-emption on date of sale, (2) claimant must possess same right on the date when suit is instituted, and (3) that right should continue to exist on the date of adjudication of suit.

Learned counsel has further argued that the present suit was instituted on 09.12.1986 and the written statement was filed on 12.11.1987. The suit was decreed on 30.11.1988. On all the three dates, his right to pre-empt the sale being a co-sharer was protected as per the Act prevalent at that time. The amendment made in 1995 cannot be applied retrospectively

against the interest of plaintiff-respondent No.3.

After hearing learned counsel for the parties and going through the judgments cited above, this appeal deserves to be dismissed. Learned counsel for the appellants has not been able to cite any judgment on the question, whether after pre-emption of sale/land vide judgment and decree Ex.D7 and Ex.D8, sale of 5 Kanals of land (in the year 2000) made by plaintiff-respondent No.3 after a gap of almost 20 years, would amount to estoppel against the plaintiff to file another suit for pre-emption being a co-sharer. There is no provision under the Punjab Pre-emption Act, which lays down any bar for a co-sharer to sell his land to an outsider. The bar is that, if he makes a sale, a co-sharer will have pre-emptive right to buy the land, in order to fulfil the object that no outsider should be able to interfere in the management of agricultural land of the village.

Accordingly, after going through the impugned judgments, this Court is of the view that suit filed by plaintiff-respondent No.3 has been rightly decreed by both the Courts below, as he has led sufficient evidence to prove that he being a co-sharer in the suit land, had a superior right to pre-empt the sale in question. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court. The evidence has been appreciated in the right perspective.

Resultantly, finding no merits, the present appeal is dismissed.

(RITU BAHRI)
JUDGE

03.07.2018
ajp