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

**RSA No. 2332 of 1989 (O&M)
Decided on: 19.03.2018**

Roor Singh (Deceased) through LRs**.....Appellants****versus****Sukhdev Singh and others****.....Respondents****Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present: Mr. G.S.Punia, Senior Advocate with
Ms. Jagriti Kalia, Advocate
for the appellants.

Mr. Arun Bansal, Advocate
for the respondents.

Rajbir Sehrawat, J.(Oral)

1. This is second appeal filed by the plaintiff in the pre-emption suit; against the concurrent judgments and decrees passed by both the Courts below.
2. The brief facts of the case are that the appellants herein had filed a suit claiming that the suit land had been sold by Dal Singh and Nar Singh sons of Kaku Singh to the respondents Sukhdev Singh and Bikar Singh; vide sale deed dated 07.03.1986; for a sum of Rs. 2,10,000/-. It was claimed that the appellants being a co-sharers in the land in question, had a better right to purchase the land. The sale was claimed to be without notice. Hence, the right of pre-emption was asserted and the suit was filed.
2. The learned Trial Court, however, dismissed the suit filed by the plaintiff. While doing so, the Trial Court held the appellant to be not a co-sharer. Rather the Trial Court held that the appellants were from the relations of the vendor. Therefore, they cannot claim the status of co-sharer. Accordingly, the suit was dismissed.
3. Feeling aggrieved against the judgment and decree passed by the Trial Court, the appellants herein had preferred an appeal before the lower Appellate Court. However, the lower Appellate Court also upheld the judgment and decree passed by the learned Trial Court. The lower Appellate Court also held that since the appellants are the relatives of

the vendor, therefore, they cannot claim the benefit of status of co-sharer as per the judgment rendered by the Hon'ble Supreme Court in the case of ***AIR 1987 SC 68*** titled as ***Jagdish and others Versus Nathi Mal Kejriwal and others***. Aggrieved against the judgment and decree passed by the lower Appellate Court, the present appeal has been preferred by the appellants.

4. One more fact which is relevant to the decision of the present case is that in the State of Haryana, the amendment was introduced to the Punjab Pre-emption Act whereby the right of co-sharer to pre-empt the sale was abolished. While considering the effect of the amendment and its retrospectivity, in the judgment rendered in the case, ***2001(3)RCR (Civil) 754*** titled as ***Shyam Sunder and another Versus Ram Kumar and another***, the larger Bench of Hon'ble Supreme Court comprising five Judges; have held that the right to pre-empt must exist upto the date of decree of first Court only and not that of the Appellate Court. Therefore, the right of the co-sharer was retained only in the cases where the decree was passed in his favour before the date of Amendment. However, in the present case, not only the suit was dismissed even the appeal stands dismissed, therefore, the right to pre-empt which was claimed by the plaintiff stands conclusively abolished.

5. In view of the above, finding no fault in the judgments and decrees passed by the Courts below, being covered by the judgment of the Hon'ble Supreme Court in the case of ***Shyam Sunders' case (supra)***, the appeal is, accordingly, disposed of.

19th March, 2018

shabha

[RAJBIR SEHRAWAT]
JUDGE

<i>Whether speaking/reasoned</i>	-	<i>Yes</i>
<i>Whether reportable</i>	-	<i>No</i>