

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

RSA No.1097 of 1995 (O&M)

Date of decision : 10.10.2018

Hurmat Khan and others

...Appellants

Versus

Aslam and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None.

ANIL KSHETARPAL, J. (ORAL)

Although, no one has chosen to appear in spite of information to the learned counsel for the appellant and service of notice to respondent Nos.1 to 3 but taking into consideration that this appeal is pending for the last 23 years, this Court is left with no choice but to read and decide.

The defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit filed by the plaintiffs for possession by way of superior right of pre-emption. It has come in evidence that defendant No.1 who was owner of the property had sold the portion of the property in favour of the plaintiffs vide sale deed dated 24.05.1991 whereas remaining portion was sold to defendant No.1 vide sale deed dated 25.07.1991.

Both the Courts have found that on execution of the sale deed dated 24.05.1991, the plaintiffs became co-sharer in the property. The

Courts have further found that the proceedings for partition of the property are pending.

In view thereof, there can be hardly any doubt with regard to the superior right of pre-emption in favour of the plaintiffs. In the grounds of appeal, it has been pointed out that after the amendment by State of Haryana in Section 15, the right of pre-emption to the co-sharer has been abolished. The aforesaid amendment has been made vide Haryana Act No.10 of 1995. The amendment has been held to be prospective by the Constitution Bench of Hon'ble the Supreme Court in case of **Sham Sunder and others Vs. Ram Kumar and others, (2001) 8 SCC 24.**

In the present case, the judgment and decree was passed by the trial Court before the amendment was brought in.

Hence, there is no ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

10.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No