

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

**RSA No.2119 of 1996(O&M)
Date of decision : 31.07.2018**

Jitender Pal

..... Appellant

versus

**Smt.Jai Kaur(since deceased) through her LRs
and others**

..... Respondents

CORAM : HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.S.Virk, Advocate for the appellant.

Mr.Harsh Aggarwal, Advocate
for LRs of respondent No.1.

REKHA MITTAL, J. (ORAL)

The present appeal directs challenge against judgment and decree dated 26.02.1996 passed by the Additional District Judge, Kurukshetra whereby Civil Appeal No.108 of 1994 filed by Jai Kaur-respondent/defendant No.1 and Civil Appeal No. 110 of 1994 filed by plaintiff/appellant Jitender Pal have been disposed of vide common judgment, primarily on the ground that since a co-owner is not entitled to right of pre-emption in view of amendment of Punjab Pre-emption Act, 1913 by amending Act No. 10 of 1995 by the Haryana Government, Jatinder

Pal-appellant is not entitled to pre-empt the sale in favour of Smt.Jai Kaur effected by Abhay Ram and others-defendants No. 2 to 5 before the trial Court.

Counsel for the appellant would state that in terms of the judgment and decree passed by the trial court, the appellant has already deposited the decretal amount.

Counsel for the parties are ad idem that in view of decision of the Constitution Bench of Hon'ble the Supreme Court **Shyam Sunder and another v. Ram Kumar and another, 2002(1) SLR 1**, the amending Act would not have retrospective effect, therefore, would not cause prejudice to the rights of appellant to press his right of pre-emption, therefore, findings recorded by the Court in Appeal in this regard may be set aside and the matter be remitted to the Appellate Court for decision of the appeal afresh.

In view of the above, appeal is allowed. The judgment and decree passed by the Appellate Court are set aside and the matter is remitted to the successor court of Sh. B.P.Jindal, the then Additional District Judge, Kurukshetra for decision of the appeal afresh after hearing counsel for the parties in accordance with law. The parties through counsel are directed to appear before the Appellate Court on 29.08.2018. Since the appeal pertaining to the year 1994 has been restored on the board of Appellate Court, the same shall be decided within a period of three months from the

parties putting in appearance.

31.07.2018
ashok/sunita

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No