

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM no.3318-C of 1986 and
RSA No.2914 of 1986
Date of Decision: 26.08.2019

Kuria Ram

...Appellants

versus

Mani Ram

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vikas Bahl, Senior Advocate, with
Ms. Priyanka Kansal, Advocate,
for the appellant.

Mr. M.L.Saini, Advocate,
for the respondent.

Amol Rattan Singh, J.

This second appeal has been filed by the defendant in a suit instituted by the respondent herein, seeking possession of the suit property by way of a pre-emptory right, on the ground that he was a co-sharer in the suit land at the time when the sale was made by defendants no.2 and 3 in the suit, (presently not parties in the appeal), to the present appellant, on 25.07.1983; and that he (the respondent-plaintiff) continues to be such co-sharer even after the sale.

The suit having been initially dismissed by the learned Sub Judge IInd Class, Rewari, on 28.02.1986, the first appeal filed by the respondent-plaintiff was however allowed by the learned District Judge, Narnaul, on 11.09.1986, thereby decreeing the suit of the respondent-plaintiff in his favour, upon condition that he deposited the entire sale consideration of Rs.24,000/- (alongwith the stamp, registration and other charges ancillary

thereto), after deducting a “1/5th pre-emption amount”, within a period of one month from the date of the decision of the first appeal, i.e. 11.09.1986.

2. Consequently, this 2nd appeal, under Section 41 of the Punjab Courts Act, came to be instituted on 03.10.1986, with notice of motion having been issued on October 09, 1986 and operation of the impugned judgment and decree stayed till further orders.

Thereafter, the appeal came to be admitted to regular hearing on February 20, 1987, with the application of the appellant (CM-3318-C of 1986), seeking to lead additional evidence, ordered to be disposed of alongwith the appeal.

The legal representatives of the appellant, Kuria Ram, were thereafter impleaded in his place on 07.02.2011, upon his death.

3. It is to be further noticed that, earlier, judgment had been reserved in the matter by a co-ordinate Bench on 26.02.2014, but it having been noticed thereafter that no arguments had been addressed on the application seeking to lead additional evidence (CM-3318-C of 1986), the matter was put up for re-hearing, with a reply to the said application, and a rejoinder thereto, filed.

4. Subsequently, on 03.07.2014, an application (CM-7865-C of 2014), was filed by the appellant-defendant, seeking to amend the written statement filed in reply to the plaint, even at the stage of second appeal.

Notice having been issued in that application, the matter on allowing/dis-allowing the said application was eventually argued over three dates, i.e. 16.11.2018, 22.11.2018 and 29.11.2018, on the last of which the order in the said application had been reserved.

Thereafter however, the application had been put up for re-

hearing vide a detailed order passed on February 19, 2019 (by me), this court having observed that the argument raised by learned senior counsel for the appellant-applicant, to the effect that the amendment sought was in respect of an argument which was not earlier available to the appellant-defendant, was not found to be a wholly correct contention, and in fact it was a mis-conceived argument because the original written statement itself contained that very averment (to the effect that the defendant himself (present appellant) was a co-sharer in the suit land and therefore the plaintiff had no pre-emptory right over it).

Hence, with that defence already having been taken, which in fact was not pointed out by learned counsel for either side at the time when the order had been reserved in the application, but was seen during the course of dictation when the application was being decided, the application under Order 6 Rule 17 was put up for re-hearing.

5. Eventually, on 20.03.2019, a detailed order was passed by this court, dismissing the said application, on the ground that the said plea having always been available to the applicant-appellant (defendant), even at the time that the written statement to the plaint was originally filed in the year 1984, at this belated stage of second appeal he could not be allowed to amend the written statement (thereby putting the clock 30 years back).

However, it was still observed vide the said order, that obviously any statutory rights flowing in favour of the applicant-appellant in terms of Section 21-A of Punjab Pre-emption Act, 1913 (as applicable to the State of Haryana and hereinafter to be referred to as the Act), would obviously always be available to him, which this court would be bound to look into at the time of adjudication of the appeal itself.

6. Coming back to the main issue in the suit instituted by the respondent herein, a perusal of the judgment of the learned Sub Judge shows that in reply to what has already been noticed at the outset of this judgment, (as regards the case of the respondent-plaintiff), the appellant in his written statement had stated that the sale of the suit land took place for a consideration of Rs.24,000/- which was duly paid; and that the plaintiff actually had knowledge of the sale and had “actively participated” in it.

It has further been noticed by the trial court that the plaintiff (respondent herein) had denied the defendants' (appellants' herein) contention, that he was a co-sharer in the suit land and therefore had a pre-emptory right to it, the contention of the defendant being that the sale was made by one Smt. Misro, who had inherited the land from her husband Banwari, and therefore a sale made by a female is not “pre-emptable” by a co-sharer and that in fact the vendee, i.e. the appellant herein (defendant), had also become a co-sharer.

That court went on to notice at the initial stage itself, that the plaintiff had taken a contradictory stand as regards the defendant/vendee being a co-sharer in the suit land.

Another plea of the appellant-defendant was also noticed, to the effect that if the suit of the plaintiff was to be decreed “for unknown reasons”, then he (defendant vendee-present appellant) would be entitled to (a refund of) the entire sale consideration of Rs.24,000/- alongwith registration and other charges.

7. It has also been stated in the judgment of that court that Prem Sukh son of Tek Chand and Misro widow of Banwari, who had been impleaded as defendants no.2 and 3 in the suit, had been given up as such

defendants by the plaintiff (they being the vendors who had sold the land to the appellant-defendant).

8. Upon a replication having been filed by the plaintiff to the aforesaid written statement, the following issues were framed by the learned trial court:-

- “1. Whether the plaintiff has got superior right of pre-emption? OPP
2. Whether the sale consideration was actually paid and fixed in good faith? OPD
3. If, issue no.2 not proved, what was the market value of the suit land at the time of sale? OPD
4. Whether the defendant vendee is entitled to stamp and registration charges? OPD
5. Whether the sale is not pre-emptable, as alleged? OPD
6. Whether 1/5th has not been deposited in accordance with law? OPD
7. Whether the suit is not within time? OPD
8. Relief.”

9. Though the details of the evidence led by both the parties has not been specified in the judgment of the trial court, however it is seen from the judgment that, including himself, the plaintiff examined three witnesses, with all of them deposing on oath that the plaintiff was a co-sharer in the suit land at the time of sale of a part thereof to the present appellant (by the defendants who had been given up).

Jamabandis (records of rights) as also mutation entries were also led by way of evidence by the plaintiff.

The appellant-defendant had examined himself and had taken a plea that after the death of Misro, who had inherited the land sold by her to her husband, the right of pre-emption could only be claimed by the blood

relations of such husband, in terms of sub-section (2) of Section 15 of the Act, and consequently, no pre-emptory right could be claimed by a co-sharer and therefore the plaintiff had no superior right to claim such pre-emption.

10. Having considered the aforesaid evidence and arguments, the trial court came to the conclusion, as regards the primary issue (no.1), that since only the blood relations of the husband of a female vendor could claim a right to pre-emption to such land, she having inherited it from her husband, a co-sharer could not claim the same right and therefore there was no such right available to the plaintiff.

On the second issue, with regard to whether sale consideration had actually been paid for the suit land, it was found that as per the sale deed, Ex.D1, the sale took place for a sale consideration of Rs.24,000/-, with no evidence led to the contrary by the plaintiff to rebut the said documentary evidence, with no cross-examination also conducted of the defendant (present appellant), on the said issue.

Consequently, it was held that due consideration of Rs.24,000/- had been paid for the suit land by the defendant (appellant herein) to his vendor.

The remaining issues were also decided in favour of the appellant herein, with however issue no.6 having been decided against him, it not being pressed.

In any case, the main issues having been decided against the plaintiff, his suit was dismissed.

11. In the first appeal filed against that judgment, by the respondent-plaintiff, the learned District Judge, after noticing the essential facts and the evidence led by the parties, referred then to an argument raised by counsel

for the plaintiff, to the effect that he had been deprived of his right to pre-empt the sale only because the defendant had allegedly improved his position (as a co-sharer after purchasing the suit land), because otherwise there was nothing in the written statement or evidence led, to show that he was a co-sharer.

12. Thereafter, another argument raised by counsel for the plaintiff before the first appellate court, is seen to be that sub-section (2) of Section 15 of the Act had been struck down by the Supreme Court in Atam Parkash v. State of Haryana 1986 (1) PLR 329, and therefore, with that provision no longer being good law (pertaining to a right of pre-emption being available to the blood relations of the husband of a widow), the plaintiff had an 'unobstructed' right to claim pre-emption as a co-sharer in the suit property.

13. Upon considering that argument, the learned lower appellate court held that with Section 15(2) of the Act having been struck down by the Supreme Court, the right of pre-emption would be governed only by sub-section (1) of Section 15, which provides a right to a co-sharer in any land, to purchase it over and above any other vendee.

It was also noticed by that court that the defendant (present appellant) had not brought anything on record to show that he was also a co-sharer in the suit land in question, and that he could therefore defeat the pre-emptory right of the plaintiff (who undoubtedly was a co-sharer in the said land), to purchase it.

14. On the aforesaid reasoning, while noticing that Rs.24,000/- was paid as sale consideration by the defendant to his vendees, the suit of the plaintiff was decreed in his favour, subject to such sale consideration being paid by him, alongwith stamp duty etc., to the appellant herein (after

deducting 1/5th of the 'pre-emption amount').

Thus, the judgment of the learned Sub Judge was reversed by the first appellate court.

15. Before this court, Mr. Bahl, learned senior counsel appearing for the appellant, first submitted that as regards the application filed under Rule 47 of Order 21, the “main” additional evidence sought to be led, is in the form of the sale deed executed on 14.05.1984, vide which the land was purchased by the appellant from one Gopal, the appellant thereby having become a co-sharer in the land.

To show that the appellant had become such co-sharer, he referred to Ex.P1 from the record of evidence led before the trial court, to submit that as per the said document, which is a *jamabandi*/record of rights for the year 1981-82, the *khasra* nos. falling in *Rect.* no.50 of *khatauni* no.165 (min), *khewat* no.139, are the same as are the *khasra* numbers pertaining to the subject matter of the suit in the present *lis* itself.

16. Mr. Bahls' contention therefore is that with the appellant-defendant having become a co-sharer in the suit land prior to the suit having been instituted by the respondent-plaintiff, he would be entitled to the protection granted by Section 21-A of the Act, thereby defeating any right of pre-emption as may have been vesting in the plaintiff, by virtue of he being a co-sharer in the suit land.

He submitted that the aforesaid contention with regard to the appellant having become a co-sharer thereby acquiring an equal status to that the plaintiff prior to the filing of the suit of the plaintiff, was not taken earlier, because the plaintiff had actually been relying upon clause (b) of sub-section (2) of Section 15 of the Act, to the effect that the sale having been

made mainly by Smt. Misro, of land that she had succeeded to 'from her husband', she alone would have a pre-emptory right over it and not any co-sharer.

The said clause having been available as the best defence when the written statement was filed, the plea in terms of the appellant having the protection under Section 21A was not specifically taken, with it therefore being sought to be taken, after the 1st appellate court held that the plea under Section 15(2) is not available, that provision itself having been struck down in *Atam Parkashs'* case (supra).

17. Learned senior counsel therefore submitted that with the primary plea taken by the appellant having been defeated by virtue of a judgment that came about subsequently, he should not be precluded from leading additional evidence in the form of the aforesaid sale deed dated 14.05.1984, by which he had become a co-sharer in the suit land prior to institution of the suit, thereby defeating any pre-emptory right of another co-sharer (when such co-sharer (the respondent-plaintiff) filed his suit after the appellant had so improved his status to become also a co-sharer therein).

He submitted that, hence, additional evidence should be allowed to be led, in the form of the aforesaid sale deed, and other documents, even at the stage of this second appeal; and though the judgment in *Atam Parkashs'* case had been pronounced one day prior to dismissal of the suit of the plaintiff herein by the trial court, and in fact the said judgment had been noticed in the judgment of the learned District Judge, the said judgment also being less than 7 months after the judgment in *Atam Parkashs'* case, the appellant should not be penalized for lack of knowledge of such judgment and therefore for not having led such additional evidence at the stage of first

appeal.

18. Mr. Bahl also relied upon two judgments of the Supreme Court, in Bakshish Singh v. Prithi Pal Singh and others 1995 (Sup3) SCC 577 and Prithi Pal Singh and another v. Amrik Singh and others (2013) 9 SCC 576, to submit that in fact even an amendment should be allowed once the basis of the plea taken at the initial stage of pleadings is removed, by virtue of a judgment that came subsequently.

Learned senior counsel submitted that though the said judgments were actually cited by him in the context of the application under Order 6 Rule 17 of the CPC, however that application having been dismissed by this court on 20.03.2019 (as already noticed earlier), for the reasons stated in that order, yet the same plea would still apply as regards leading additional evidence to substantiate the alternate plea, of the appellant having become a co-sharer at par with the respondent-plaintiff prior to the plaintiff having instituted the suit in the instant *lis* (and therefore the appellant being entitled to protection under Section 21-A).

19. He concluded that therefore, even on the merits of the appeal itself, in view of the aforesaid protection available to the appellant, he too having become a co-sharer in the suit land, the appeal deserves to be allowed, with the judgment of the first appellate court set aside, thereby dismissing the suit of the respondent-plaintiff.

20. *Per contra*, Mr. M. L. Saini, learned counsel appearing for the respondent-plaintiff, first submitted that no application for additional evidence having been filed at the stage of first appeal, it cannot be allowed at the stage of second appeal, further submitting that in any case the sale deed now sought to be led by way of evidence (dated 14.05.1984), still needed to

be proved to be a true sale deed and consequently, at this stage, simply by taking on record the document, it did not stand proved.

21. Mr. Saini had also sought to distinguish the judgments cited by Mr. Bahl, on a new plea being admissible if the basis of the plea earlier taken is eroded due to a judgment that takes away the basis of such earlier plea. However, despite opportunities given to learned counsel to do the needful, he had not been able to produce any judgment to the contrary.

22. It also needs to be stated here, as already stated in the order of this court dated March 20, 2019, that even the reply by the respondent-plaintiff, to the application under Order 41 Rule 27, admits in paragraph 4 thereof, that the applicant-appellant had purchased the suit land from another co-sharer vide the aforesaid registered sale deed, though of course it is also stated in the said paragraph that he never became a co-sharer in the *khewat* and *killa* numbers “of the land in question”.

Hence, this court had in fact rejected that plea of Mr. Saini at that stage itself, on the aforesaid ground, i.e. once the sale deed itself was admitted to have been executed, the respondent-plaintiff could not take a plea that it still had to be proved.

23. Other than on the application seeking to lead additional evidence, Mr. Saini submitted on the merits of the appeal itself, that the respondent-plaintiff already being a co-sharer in the suit land, even if the appellant-defendant is to be eventually accepted (though otherwise denied by the respondent), to have become a co-sharer in the suit land by virtue of the purchase of the suit land on 25.07.1983 from Smt. Misro and Prem Sukh, or on the basis of the sale to him of another part of the land in which the respondent plaintiff is a co-sharer (by Gopal son of Tek Chand), vide the sale

deed dated 14.05.1984, that does not grant him the benefit of Section 21-A of the Act, which simply postulates that an improvement made in the status of a “vendee defendant”, after the institution of a suit for pre-emption, would not affect the pre-emptory rights of a pre-emptor in such suit.

Learned counsel therefore submitted that with no 'positive stipulation' in the said provision to the effect that a vendee who purchased the suit land prior to the institution of the suit would acquire an equal right as that of a previous co-sharer thereby defeating the rights of such previous co-sharer, the appellant-defendant cannot be heard to say that he had become an equal co-sharer by virtue of the aforesaid sale deed thereby defeating the pre-emptory rights available to the respondent plaintiff.

24. Having heard learned counsel for the parties, before going on to consider the main issue in the appeal, of a pre-emptory right of purchase being available to the respondent-plaintiff or not, first, the application filed by the appellant herein, seeking to lead additional evidence in terms of Order 41 Rule 27 of the CPC, i.e. CM-3318-C of 1986, needs to be considered.

A reply to that application, as already noticed earlier, was filed eventually on 13.05.2014 by the respondent (non-applicant) plaintiff.

25. By that application, the applicant-appellant seeks to exhibit the following six documents by way of additional evidence:-

1. A copy of the plaint in a suit earlier filed by the respondent-plaintiff against the present appellant and one Gopal – as Ex.P1;
2. The statement of the respondent herein, as recorded by the trial court in that case on 28.02.1986 – as Ex.P2;
3. The statement of the appellant herein, in that suit (as a defendant therein) – as Ex.P3;
4. The order recorded by the learned Sub Judge in that case

(Civil Suit no.64 dated 16.07.1986), disposing of the suit on 28.02.1986 – as Ex.P4;

5. A copy of the sale deed as had been challenged by the respondent herein (in that suit), executed between the aforesaid Gopal and the present appellant on 14.05.1984 – as Ex.P5; and
6. A copy of the mutation entry dated 04.08.1984, qua the aforesaid sale deed – as Ex.P6.

[It is to be noticed that in this application (CM-3318-C of 1986) though the prayer clause refers to only the documents listed in paragraph 7 thereof as the ones that are sought to be led by way of additional evidence, with the said paragraph not showing the sale deed, however a perusal of paragraph 5 of that application shows that Annexures P1 to P6 with the application are the documents as are sought to be exhibited.]

26. The first document, is a copy of the plaint in a suit earlier filed by the respondent-plaintiff herein, in respect of a sale made by one Gopal son of Tek Chand, with the respondent herein seeking therein also the right of purchase by way of a pre-emptory right, of the land sold by the said Gopal in favour of the present appellant (Kuria Ram), on 14.05.1984.

The said suit, as stated in the present application, was “dismissed by way of compromise”, with the appellant (Kuria Ram) therefore continuing to remain a co-sharer in the *khewat* in which the land presently in dispute is also stated to be situate.

The second & third documents, i.e. the statements made by the parties, are statements in respect of the compromise reached between them in that suit, with the said statements seen to be dated 28.02.1986.

The next document is the order dated 28.02.1986 passed by the trial court in that case (Civil Suit no.64/16.07.1985), by which the suit was

ordered to be dismissed with no order as to costs, in view of the compromise reached between the parties, (by which the plaintiff (respondent herein), did not wish to proceed with the said suit).

The last document sought to be placed on record by way of additional evidence in the present *lis*, is a mutation entry in the revenue record, showing that the said land, as had been sold by Gopal to the appellant (subject matter of the aforesaid suit), had been actually entered in the name of the appellant, with it shown to be for a sale consideration of Rs.11,000/-, the sale deed being of the date 14.05.1984.

27. In the reply filed by the respondent-plaintiff on 13.05.2014 (to the application), other than generally denying the contents of the appellants' application, it has been stated that he never become a co-sharer in the *khewat* and *killa* numbers concerned, further contending that the documents sought to be placed on record could not be allowed to be so placed at this juncture, because there were neither any pleadings to that effect, nor was any evidence earlier brought on record even at the stage of first appeal, even though the said documents were very much in the knowledge of the appellant (he being the beneficiary thereof).

28. Having considered the above, as regards the application under Order 41 Rule 27 of the CPC, what first needs to be considered is, whether it should be allowed or not at this stage, considering that even at the time of filing of the suit itself, the additional evidence now sought to be led, in the form of the aforesaid sale deed, the mutation entry in the revenue record on the basis thereof in favour of the appellant, the statements of the appellant and his other vendor in Civil Suit no.64 of 16.07.1985, and the order of trial court in that case, were all documents available to the appellant at the time

when he filed the written statement and defended his case before the trial court.

In my opinion, simply because the main plea taken by the appellant in his written statement, was based upon clause (b) of sub-section (2) of Section 15 of the Act, which was struck down as unconstitutional in *Atam Parkashs'* case (supra), that does not mean that he did not have the plea in terms of Section 21-A available to him, and towards that end he could not have led evidence that he now seeks to lead.

Hence, for the same reason as given by this court in its order dated March 20, 2019 while rejecting the application under Order 6 Rule 17, (to the same effect as given hereinabove), I find no reason to allow the application filed invoking the provisions of Order 41 Rule 27, either.

CM no.3318-C of 1986 is therefore dismissed.

Main Case (RSA no.2914 of 1986)

29. Even having held so, the question that still remains is, as to whether, in the appeal itself, the appellant can still take shelter of Section 21-A of the Act, which reads as follows:-

“21-A. When improvement of status of a vendor after institution of suit not to affect right of pre-emptor.- Any improvement, otherwise than through inheritance or succession, made, in the status of a vendee defendant after the institution of a suit for pre-emption shall not affect the right of the pre-emptor plaintiff in such suit.”

The respondent-plaintiff having claimed his right on the basis of Section 15 of the Act, that provision is also being reproduced hereinunder:-

“15. Persons in whom right of pre-emption vests in respect of sales of agricultural land and village immovable property.-

(1) The right of pre-emption in respect of agricultural land and village immovable property shall vest-

(a) where the sale is by a sole owner,-

FIRST, in the son or daughter or son's son or daughter's son of the vendor;

SECONDLY, in the brother or brother's son of the vendor;

THIRDLY, in the father's brother or father's brother's son of the vendor;

FOURTHLY, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof;

(b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly,-

FIRST, in the sons or daughters or sons' sons or daughters' sons of the vendor or vendors;

SECONDLY, in the brothers or brother's sons of the vendor or vendors;

THIRDLY, in the father's brothers or father's brother's sons of the vendor or vendors;

FOURTHLY, in the other co-sharers;

FIFTHLY, in the tenants who hold under tenancy of the vendor or vendors the land or property sold or a part thereof;

(c) where the sale is of land or property owned jointly and is made by all the co-sharers jointly:-

FIRST, in the sons or daughters or sons' sons or daughters' sons of the vendors;

SECONDLY, in the brothers or brother's sons of the vendors;

THIRDLY, in the father's brothers or father's brother's sons of the vendors;

FOURTHLY, in the tenants who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof.

(2) Notwithstanding anything contained in sub-section (1),-

(a) where the sale is by a female of land or property to which she has succeeded through her father or brother or the sale in respect

of such land or property is by the son or daughter of such female after inheritance, the right of pre-emption shall vest,-

(i) if the sale is by such female, in her brother or brother's son;

(ii) if the sale is by the son or daughter of such female, in the mother's brothers or the brother's brother's sons of the vendor or vendors;

(b) where the sale is by a female of land or property to which she has succeeded through her husband, or through her son in case the son has inherited, the land or property sold from his father, the right of pre-emption shall vest,-

FIRST, in the son or daughter of such [husband of the] female;

SECONDLY, in the husband's brother or husband's brother's son of such female.”

30. Section 21A of the Act therefore postulates that acquisition of any land after institution of a suit for pre-emption (qua that land), would not affect the right of pre-emption available to the plaintiff in that suit.

That being so, the appellant having of course acquired the suit land itself on 25.07.1983, with the suit of the respondent-plaintiff having been filed (in the instant *lis*), only on 26.07.1984, very obviously the appellant had acquired the status of a co-sharer even by the said sale deed itself, as has been challenged in the current *lis*.

31. It needs to be said that though it sounds illogical that the very sale that is challenged in a suit should be made the basis of the protection sought under Section 21-A, however, Mr. Bahl cited a judgment of a co-ordinate Bench of this court, in **Krishan Lal and another v. Himta Ram** 2006 (3) RCR (Civil) 117, in which a judgment of a Full Bench of this court, in **Garib Singh v. Harnam Singh and others** 1971 PLJ 579, has been cited and quoted, with the Full Bench holding as follows:-

“Prior to the introduction of Section 21-A by Amending Act 1 of 1944, there was an unhealthy race going on the part of vendee to defeat the right of preemption by making improvement in his position by voluntary and volitional efforts upto the date of getting decree. By introducing this new provision the scope of the race to improve his status on the part of the vendee was circumscribed upto the date of institution of the suit and not thereafter except where the improvement in the status of the vendee is not a result of his efforts or volition but because of inheritance or succession. Section 21-A was added to counter-act the view taken in ILR 1942 Lahore 15 and ILR 1942 Lahore 190 and 473.

Because of the amendment of the Punjab Pre-emption Act by introduction of Section 21-A, the authorities in which it had been ruled that a vendee by voluntary acquisition can improve his position even after the institution of the suit are no longer good law. Section 21-A specifically prohibits such voluntary improvements after the suit, and it was enacted to nullify the effect of those authorities.”

(Emphasis applied in this judgment only)

32. Thus, what has been held in the aforesaid judgment is to the effect that a vendee can improve his status as a co-sharer in land sought to be 'pre-empted' by another, uptill the date that such other filed the suit seeking pre-emptory rights, but he cannot improve his status after the suit has been filed.

The said provision (Section 21-A), was obviously introduced in 1944 as has been observed by the Full Bench; though, to repeat, I would find it otherwise illogical that a man can defeat a pre-emptory right qua the suit land bought by him only because the suit has been filed after such purchase by him. Yet, obviously the ratio of the Full Bench holds otherwise, equally

obviously for the reason that their Lordships had delivered that judgment in

the context of people trying to defeat even the suit for pre-emption, by purchasing the suit land after institution of the suit, which was a practice that was curtailed by introducing Section 21-A into the statute.

33. Mr. Bahl had in fact also argued that it had been observed in *Atam Parkashs'* case, that a pre-emptory right to defeat a bonafide purchasers' right to property, is not sound in law.

However, a perusal of the said judgment shows that their Lordships had not eventually struck down Section 15 in toto, but only certain clauses thereof, including clause (b) of sub-section (2) thereof, (qua the relatives of a womans' husband defeating the rights of a bonafide purchaser).

It thus needs to be noticed that vide the said judgment, sub-clauses first, secondly and thirdly of clause (a) of sub-section (1), as also the same three sub-clauses of clause (b) of sub-section (1) and the whole of sub-section (2), of Section 15, were held to be unconstitutional and were therefore struck down.

Thus, the right of pre-emption, as per Section 15 of the Act, now only vests in co-sharers in any piece of land, and in tenants on such land.

34. Mr. Bahls' contention of course was that even though the whole of Section 15 was not struck down, yet the spirit of what has been observed by the Supreme Court in the said judgment, is that a right to pre-emption of any person should not defeat the right of a vendee/purchaser of land, who has paid good consideration for it.

Mr. Saini, learned counsel for the respondent-plaintiff, as already stated, had vehemently argued on the line that the appellant cannot take advantage of the wordings of Section 21-A to read something extra into the statute, when the statute does not specifically protect purchase of any

land by a 3rd party as against the pre-emptory rights of a co-sharer.

He also submitted that the remaining part of Section 15 has not been struck down in *Atam Parkashs'* case, which very obviously grants a right of pre-emption to a co-sharer, and the respondent-plaintiff admittedly being a co-sharer in the land some part of which has been purchased by the appellant, he (respondent) retained a privileged right to purchase it prior to any other 3rd party. He had further submitted that simply because the appellant became a co-sharer upon purchase of the land in question in the present *lis* in 1983, with the respondent-plaintiff therefore being able to challenge such purchase by way of a civil suit only thereafter, even Section 21A cannot come to the appellants' rescue.

35. In rebuttal thereto, Mr. Bahl, learned senior counsel for the appellant had submitted that with the Full Bench having held to the effect that the status of a purchaser could be improved to that of also being a co-sharer if he purchased the land prior to the institution of the suit, the argument of Mr. Saini cannot sustain.

36. Having considered the aforesaid arguments, as also the judgments of the learned courts below, though I would otherwise agree with Mr. Saini to the effect that the plain wording of Section 21-A does not specifically confer a right on a purchaser to improve his status to that of a co-sharer thereby defeating the pre-emptory right of an existing co-sharer, yet what needs to be seen is that the wording of the said provision are to the effect that any improvement made by the vendee in his status “after the institution of the suit of pre-emption” shall not affect the right of the pre-emptor plaintiff in such suit”.

Hence, the Full Bench of this court having considered the

context in which the said provision was inserted in the year 1944, and having held that the “the race to improve his status on the part of the vendee was circumscribed upto the date of institution of the suit and not thereafter”, very obviously the right of a prospective purchaser to improve his status upto the time that the existing co-sharer instituted a suit for pre-emption, was upheld.

It may also be observed that, as already noticed, Mr. Bahl had submitted that even negotiations for purchase of the land, as were going on between the vendors of the appellant and him, were known to the respondent-plaintiff. The implication thus is that he could have nipped the problem in the bud prior to the registration of the sale deed, by instituting the suit prior to the sale, thereby converting the advantage provided in Section 21A in his own favour.

37. As already said, in my opinion, though it may not always be practicable for a person claiming a pre-emptory right, to institute a suit prior to purchase of the land in question by a 3rd party, yet, obviously I cannot lose sight of the fact that the Full Bench of this court has held, after considering the context of introduction of Section 21A into the statute, that the intention of such introduction was to curb the attempt of a prospective vendee to even improve his status after a suit for pre-emption had already been filed against him, which was proscribed by the legislature (by introduction of the said provision, i.e. Section 21A).

Hence, the intention of the legislature was that a prospective vendee, for good consideration, could improve his status upto the time that a person seeking a pre-emptory right did not actually institute a suit seeking enforcement of such right.

38. In view of the aforesaid discussion, even though the applications

seeking amendment of the suit at the stage of second appeal and seeking to lead additional evidence at this stage (filed by the appellant-respondent), have been dismissed by this court on the ground that all such pleas as were sought to be taken and all such evidence as was now sought to be led, were pleas and evidence that were very much available to him at the stage of trial itself, yet, on the touchstone of the ratio of the judgment of the Full Bench in *Garib Singhs'* case (supra), in the context of Section 21-A of the Act, the judgment of the 1st appellate court cannot be sustained.

39. Consequently, this appeal is allowed, with the judgment of the learned first appellate court set aside and the decree of the trial court, dismissing the suit of the respondent-plaintiff restored, though not for the reason given by the trial court in its judgment, but for the reasons given hereinabove.

The parties are left to bear their own costs throughout.

August 26, 2019
dinesh

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes