

RSA Nos.2430 & 2392 of 1988 (O&M)

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

Date of decision : 08.04.2019

1. RSA-2430-1988 (O&M)

Kaptan Singh

... Appellant

Versus

Ram Singh and others

... Respondents

2. RSA-2392-1988 (O&M)

Ram Singh and others

... Appellants

Versus

Kaptan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Jaswal, Advocate
for the appellant in RSA-2430-1988 and
for the respondent in RSA-2392-1988.

Mr. C.B. Goel, Advocate
for the respondent in RSA-2430-1988 and
for the appellants in RSA-2392-1988.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two regular second appeals bearing **RSA No.2430 of 1988** titled as **“Kaptan Singh V/s Ram Singh and others”**, at the instance of the plaintiff, and **RSA No.2392 of 1988** titled as **“Ram Singh and others V/s Kaptan Singh”**, at the instance of the defendants, as both the appeals were arisen out of decision of common Civil Suit No.455 of 1981.

Kaptan Singh, the plaintiff, sought the pre-emption of the sale deed dated 19.06.1980 for ₹75,000/- with all rights appurtenant thereto, on

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the premise that he was co-sharer in khewat, therefore, had a superior right of pre-emption, in view of the provisions of Section 15(2) of the Punjab Pre-emption Act, 1913 (in short 'the 1913 Act') as it was in vogue, at the relevant point of time, by filing the suit on 11.06.1981.

The defendants opposed the suit and alleged that one Ranjit Kaur, succeeded to the property through her husband and in case, the plaintiff proved to be co-sharer, he had no right to pre-empt the suit land as the suit was not within time nor deposited the requisite amount i.e. 1/5th amount. On merits, it was alleged that the sale was for a consideration of ₹75,000/- and denied the status of the plaintiff as co-sharer.

Since the parties were at variance, the following issues were framed:-

- 1. Whether the plaintiff has got superior right to the pre-empt the sale in question? OPP*
- 2. Whether the sale price was fixed and paid in good faith? OPP*
- 3. If issue No.2 is not proved then what was the market value of the suit property at the time of its sale? OPP Parties*
- 4. Whether the sale is covered under Section 15() of the Punjab Pre-emption Act as alleged and so the plaintiff has not liable to pre-empt the sale? OPD*
- 5. Whether the suit is not within time? OPD*
- 6. Whether the plaintiff is estopped to file the present suit? OPD*
- 7. Relief.*

Both the parties led extensive evidence in support of their respective cases.

The trial Court, on the basis of the evidence brought on record, dismissed the suit, on the premise that the sale was made by female Ranjit Kaur, therefore, could not be pre-empted. The lower Appellate Court, in

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appeal, partly allowed to the extent that even the property of female can also be pre-empted, in view of the *ratio decidendi* culled out in **“Mahesh Pal and others V/s Desh Raj and others” 1983 (1) LIR 67 (page 8)**, but did not grant the decree of pre-emption, on the premise that the plaintiff was not the co-sharer in a "Khewat", but only in "Rectangle". Against the said findings, two appeals have been filed before this Court.

Mr. G.S. Jaswal, learned counsel appearing on behalf of the appellant in RSA-2430-1988 and for the respondents in RSA-2392-1988, submitted that the "rectangle" is the smaller portion of land, whereas the "khewat", is bigger one, which is to be considered for the purpose of determination of co-sharership. The aforementioned controversy has already been settled down by Hon'ble the Supreme Court in **“Jai Singh and others V/s Gurmej Singh” 2009 (15) SCC 747** to contend that the sale of specific portion of land by one of the co-owners out of joint khewat, a co-owner would have a right to pre-empt the sale under Section 15(1)(b) of the 1913 Act, as well as by this Court in **“Lachhman Singh V/s Pritam Chand and another” 1970 AIR (Punjab) 304** and **“Roop Ram V/s Raj Kumar and others” 2014 (3) RCR (Civil) 215**.

Mr. C.B. Goel, learned counsel appearing on behalf of the respondents in RSA-2430-1988 and for the appellants in RSA-2392-1988, submitted that the law, at that relevant point of time, as amended, could not have applied retrospectively, therefore, the suit for pre-emption was *ex facie* not maintainable.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below, much less, judgments cited *supra* and of the view that the following 'Substantial Questions of Law' arise

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for determination:

- 1. Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity?*
- 2. Whether for the purpose of assessing the co-sharer, it is "rectangle" number or the "khewat" has to be seen?*

The legislature has caused the amendment in the 1913 Act for barring the pre-emption of the land with regard to the sharer of the lady. The same was struck down and held to be bad in law/ultra vires with retrospective effect, by Hon'ble the Supreme Court in “Nand Kishore V/s Avtar Singh” 1988 (1) RRR 574 SC and “Atam Parkash V/s State of Haryana” 1987 RRR 116 SC. Meaning thereby, during all this period, when the 1913 Act was in vogue, the right to pre-empt the land was not taken away.

Coming to the controversy in hand, it is a matter of record that the sale deed pertained to Khewat No.286/253 Rectangle No.146. The jamabandi brought on record reflects the khewat number of all the rectangle numbers as 286/253, which is bigger one.

It would apt to reproduce the para No.9 of the *ratio decidendi* culled out in Jai Singh's case (supra), para No.8 & 9 of Lachhman Singh's case (supra) and para No.3 of Roop Ram's case (supra), which reads as under:-

" Para No.9 of Jai Singh's case (supra)

9. Sale of subsequent portion of the land out of the joint holding by one of the co-owners is nothing but a sale of a share out of the joint holding and is pre-emptible under Section 15(1)(b) of the Act. It is to be noted that the judgment in Bhartu's case (supra) had the seal of approval of this Court in Pokhar (dead) by Lrs. and Ors. v. Ram Singh

(Civil Appeal No. 4418 of 1986 disposed of on August 14, 2001)."

Para Nos.8 & 9 of Lachhman Singh's case (supra)

8. The plaintiffs have one-fourth share of Harindar Singh co-sharer in Khewat No 171, rectangle 6 and Khewat No, 172, rectangle 13, of the Jamabandi of 1960-61, copies Exhibits P. 7 and P. 8. The total holding of the three co-sharers, namely, Ajmer Singh, Harindar Singh, and Rajindar Singh, consists of much more area and has within it rectangle 16 of Khewats Nos. 171 and 172 of the same Jamabandi So the plaintiffs have one-fourth share of rectangles 6 and 13 of the joint land of those three co-sharers, but they have not a fractional or a proportional share in the total joint holding of those co-sharers, including rectangle 16 of Khewat Nos. 171 and 172. So the plaintiffs have a fractional share in denned and specific Killas of joint holding of those co-sharers, but not in the total area of their joint land. In [Section 15](#) (1) (b). Fourthly, of the Act a co-sharer has a preferential right of preemption 'where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly.' Here the sale to the plaintiffs was by a co-sharer, Harindar Singh, of a share out of a denned part of the joint land of the three co-sharers but not out of the whole of their joint land. The question then that has arisen in this case is, whether the plaintiffs have become co-sharers in the joint land of those three co-sharers and thus have a preferential right of pre-emption in regard to the sale made by Ajmer Singh co-sharer to Lachhman Singh defendant? One more fact may be noted here before proceeding with the consideration of this question and that is that according to the Jamabandi of 1952-53, Exhibit P. 2, the Killas in rectangles 6, 12, 13 and 16 were all in Khewat No. 132, of which there was only one Khatauni number, which was 146. So Killas of all those rectangles were in one Khewat number which had only one Khatauni number and the

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description has commonly been given as Khewat No. 132/146. However, in the Jamabandi of 1960-61, copies Exhibits P. 7 and P. 8, Under Khewat No. 171. rectangle 6 is shown in Khataunis Nos. 248 and 250, and rectangle 12 in Khatauni No. 249, and some of the Killa numbers of rectangle 16 in Khatauni No. 251, and In Khewat No, 172 Killa numbers of rectangle 13 appear under Khataunis Nos. 252, 253, 254. 258, 263 and 266 and the remaining Killa numbers of rectangle 16 appear under Khatauni No. 258. So some of the Killa numbers of rectangle 13 and some of rectangle 16 are in Khatauni No. 258 of Khewat No. 172.

9. In Matu v. Hirde, 44 Pun Re 1894, Plowden, S.J. observed that "the purchase by defendant of specific land cannot make him a sharer in the khata, and whatever right he may have to the land comprised in the deed if it falls to the share of his vendor, as it probably will, it cannot alter the land from being joint property of the co-sharers in the khata into separate property of the purchaser", and the same learned Judge in Champa Mal v. Baisakhi Mal, 87 Pun Re 1894 (FB), In which a co-sharer had sold undivided half of his half, or one-fourth of the holding, observed that the land "was joint undivided immovable property in which all the proprietors were co-sharers The land in dispute is a portion of the village which belonged, as an entirety, to the recorded proprietors, as co-owners with a joint title, the recorded shares merely representing the quantity of the interest of each group among them, in the whole village in unity."

A sale by a co-sharer of a specific piece Or plot of land out of joint land or property does not make the purchaser or the vendee a co-sharer with other co-sharers, according to the first case, but where such a purchaser or vendee takes, on sale, a fractional share of a co-sharer in the joint land or property, then he comes to hold the land along with the other co-sharers in the fractional proportion of the whole which he has

purchased, and this is the second case. The present case is neither the one nor the other. Here the plaintiffs have been purchasers of a fractional share of defined Killas of land in rectangles 6 and 13, but not a fractional share in the whole of the joint land of the three original co-sharers including rectangle 16.

It is, however, urged on the side of the plaintiffs that even in the facts of the present case the plaintiffs have become co-sharers of the joint land of the three original co-sharers in both Khewat Nos. 171 and 172, and reliance in this respect is placed by their learned counsel on Kuljas Rai v. Pala Singh, AIR 1945 Lah 15, in which the learned Judges held that "when a person sues for land jointly owned by two persons, even if specific plots are sold, in law it is treated as a Bale of a share of the joint property. No co-sharer has any right to sell specific plots out of the joint khata and, therefore, the value of an individual plot comprised in the joint khata is wholly immaterial in determining the point of court-fee."

It is apparent that the decision was given for purposes of court-fee under the [Court-fees Act](#) of 1870 and has nothing to do with a case like the present under [Punjab Act 1](#) of 1913. It is evident that Bo far as the present matter is concerned, if Kuljas Rai's case, AIR 1945 Lah 15 is to be read in the manner as the learned counsel for the plaintiffs would have it, it runs contrary to the first judgment of Plowden, S.J., but Rajindra Singh v. Umrao Singh, ILR 5 Lah 298 = (AIR 1925 Lah 223), and [Sher Singh v. Nand Lal](#), AIR 1947 Lah 184, proceed on a view exactly the same as expressed by Plowden, S.J. in the two cases already referred to. In these last-mentioned two cases the learned Judges held that the word 'co-sharers' signifies persons owning a share or shares in the whole of the pro-erty or properties of which another share or other shares were the subject of sale. So Kuljas Rai's case, AIR 1945 Lah 15 does not support the contention on the side of the plaintiffs.

For Lachhman Singh defendant reliance is placed on cases of Rajindra Singh, ILR 5 Lah 293 = (AIR 1925 Lah 223) and Sher Singh, AIR 1947 Lah 184 that the plaintiffs have not become co-sharers in the joint land of the original three co-sharers, because they have not purchased undivided share of the whole of that joint land. It may, however, be stated that khata is equivalent to Khewat, and it is apparent from the opinion of Plowden, S.J., in the cases already referred to, that, in the matter of finding out for the exercise of a preferential right of pre-emption, the status of a party as co-sharer has to be seen in a khata or thus a Khewat.

Para No.3 of Roop Ram's case (supra)

3. I have heard counsel for the parties, perused the impugned judgments and decrees and have no hesitation in holding that both the trial as well as the first appellate court have committed a serious error of law and the substantial question of law has to be answered in favour of the appellant. A perusal of the impugned judgments and decrees would reveal that the appellant has been non-suited on the ground that his vendor was sole owner of khewat no.1 but as the appellant purchased specific khasra numbers from rectangle no.90, i.e., khasra no. 11/2 he does not become a cosharer in the khewat and, therefore, the appellant cannot be allowed to preempt sale executed by respondent no.5 in favour of respondent nos. 1 to 4. The finding is based upon the Full Bench judgment recorded in Lachhman Singh's case (supra). The judgment in Lachhman Singh's case (supra) came up for consideration before a larger Bench in Ram Chander's case (supra). After considering the nature of property held in common by co-sharers reflecting commonality of ownership and possession and the division of land into khewats, rectangles and khasra numbers, a five Judges Bench in Ram Chander's case (supra) held as follows:-

“18 It is, therefore, apparent that a co-owner has an

interest in the entire property and also in every parcel of the joint land. When a co-sharer alienates his share or a part thereof in the joint holding what he brings forth for sale is what he owns i.e., a joint undivided interest in the joint property. A sale, therefore, of land from a specific khasra/killa number, forming part of a specific rectangle number, but being a part of a joint khewat, would, in view of the nature of the rights conferred upon a co-sharer, be deemed to be the sale of a share from the joint khewat and such a vendee would be deemed to be a coowner/co-sharer in the entire joint khewat, irrespective of the artificial divisions of the joint land into different rectangles, khasra and killa numbers.

19 *XX XX XX*

20 *XX XX XX*

21 *XX XX XX*

22 Revenue entries reflect the rights of the parties as opposed to conferring rights and raise rebuttable presumptions as to their correctness. They reflect an existing state of affairs, namely, an existing title or a state of possession. Entries in revenue records neither confer nor deprive a person of his title, whether joint or separate. Rectangle numbers and killa numbers are revenue measures, used by revenue authorities to identify and describe fields that constitute the ownership of a land owner. A holding may be divided into different khewats, khataunis, rectangles and killas/khasras all bearing different numbers. Where parties are joint owners or cosharers, the land would comprise of a khewat or khewats, different khataunis, rectangles and/or khasra/killal numbers. Thus, where a group of land owners holds land in joint ownership and are reflected as owners in common of the khewat, commonly known as the joint khewat, they would continue to remain owners in

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possession of the land, though described as being situated in different khataunis, rectangles and khasra/killla numbers. Division of land into different rectangles, khasra or killla numbers does not alter the nature of property held in common or the rights of co-sharers flowing therefrom. The Full Bench in Lachhman Singh's case (supra), disregarded the nature of joint property and by placing undue reliance upon artificial divisions of land meant to identify land, erred while holding that a vendee, who purchases land from a joint khewat by reference to specific rectangles and khasra numbers, does not become a co-sharer in the entire joint khewat."

The findings of the lower Appellate Court are not sustainable in the eyes of law as the right of the co-sharer has to be determined from the "khewat" and not from "rectangle". The judgment and decree of the lower Appellate Court being perverse and infirm, is modified. The suit is decreed *in toto*, subject to the condition that the plaintiff had to deposit the balance amount. The 'Substantial Questions of Law' as framed above, are answered in favour of the appellant in RSA No.2430-1988 and against the respondents in RSA No.2430-1988. Decree sheet is ordered to be prepared. Two months' time is granted to the appellant to pay the balance amount, if any.

Accordingly, **RSA No.2430 of 1988** is allowed and **RSA No.2392 of 1988** is dismissed.

08.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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