

**RSA-417 of 1989 (O&M) and
other connected case**

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

**RSA-417 of 1989 (O&M)
Date of decision: 15.12.2022**

Sheo Nath and others

..Appellants

Versus

Dharma @ Dharam Singh and others

..Respondents

RSA-418 of 1989 (O&M)

Chand Rup and another

..Appellants

Versus

Dharma @ Dharam Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajiv Sharma, Advocate
for the appellants.

Mr. Rajinder Goel, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**

2. These two connected Regular Second Appeals have been filed against the concurrent findings of fact arrived at by the courts below. Two separate suits in order to pre-empt two sale deeds dated 03.12.1984 and 19.12.1984 have been decreed by both the courts below.

3. The plaintiffs claim superior right to preempt the sale deeds on

the ground that they were in possession of the property as tenants. The right was sought to be exercised in accordance with the Punjab Pre-emption Act, 1913 (hereinafter referred to as 'the 1913 Act'). Though, the right of pre-emption on the ground of relationship and the co-sharers no longer exists in view of the subsequent amendment, however, the right of pre-emption on the ground of tenancy continues to exist in the State of Haryana.

4. In order to prove that the plaintiffs have superior right of pre-emption, both the courts have noticed three judgments/orders/petitions filed inter-se between the parties in dispute.

- (1) Sh. Sewa and Sh. Mange Ram filed a suit for recovery against the plaintiffs claiming that they being the landlords are entitled to recover the amount of rent from the plaintiffs.
- (2) The appellants filed a petition under the Punjab Security of Land Tenures Act, 1953 against their tenants (plaintiffs) seeking their ejectment for the non-payment of rent.
- (3) The plaintiffs and certain other persons filed the Civil Suit no.306 of 1985 for the grant of decree of permanent injunction in which Sh. Sheo Nath, the appellant was the party. That suit was decreed while returning the findings that the plaintiffs are in possession as the tenants.

5. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

6. The learned counsel representing the appellants contends that

originally Sh. Baru was the owner of the property. He filed an eviction petition against Sh. Man Singh (the plaintiff's father) which was decreed and pursuant thereto the possession was delivered to Sh. Baru in the year 1956.

7. This Court has considered the submissions made by the learned counsels representing the parties. There is an overwhelming evidence to prove that the plaintiffs not only continued in possession but their status as tenant has been admitted by the defendants as well as by their vendors.

8. Keeping in view the aforesaid facts, the order of eviction and the delivery of possession in the year 1956 will not help the appellants (vendees) to prove that the plaintiffs were not sitting as the tenants on the land in dispute.

9. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of fact arrived at by the Courts below.

10. Both the Regular Second Appeals are dismissed.

11. All the pending miscellaneous applications, if any, are also disposed of.

December 15, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*