

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

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RSA-323-1994

Date of decision: 20.03.2024

PURAN SINGH & ORS.**..Appellants****Versus****JEET SINGH****..Respondent****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Raj Kumar Gupta, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. The plaintiff has filed this regular second appeal to assail the correctness of the judgment and decree passed by the First Appellate Court, which in turn has reversed the judgment and decree passed by the trial Court.

3. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

4. The land measuring 9 kanal and 8 marlas was sold by Sh. Harbel Singh, Sh. Maluk Singh, Sh. Tirlok Singh and Sh. Karnail Singh sons of Sh. Surain Singh in favour of Sh. Jeet Singh son of Sh. Baja Singh for a sale consideration of Rs.85,000/- vide registered sale deed dated 16.07.1990. The appellants filed a suit for possession by way of pre-emption claiming superior right to purchase the land. The civil suit was decreed on 02.11.1992, however, the First Appellate Court vide an elaborate judgment dated 20.07.1993, held that there is a mistake in the description of the property and that the plaintiffs have omitted to include Khasra No.5 min of Rectangle

No.55 in the plaint and therefore, the suit is not maintainable. In substance,

the Court held that partial pre-emption of the sale deed is not maintainable. The First Appellate Court relied upon the various judgments passed by the High Court. The plaintiffs regular second appeal was admitted for regular hearing, which has come up for hearing after a period of 30 years.

5. There have been significant developments in between that warrant acknowledgment.

6. The Five Judge Bench of the Supreme Court in **Atam Parkash vs. State of Haryana (1986) 2 SCC 249**, described that the right of pre-emption is based on consanguinity and it is 'feudal' 'piratical', 'tribal', 'weak', 'easily defeatable' etc., and resultantly, declared it as ultra vires the Constitution. Subsequently, the Government of Haryana also recognized and repealed the pre-emption rights in favour of co-sharers by Haryana Act No.10 of 1995. However, the old cases are required to be decided as per the unamended provisions as held by another 5 Judges Bench in **Shyam Sunder and others vs. Ram Kumar and another (2001) 8 SCC 24**, however, the pre-emption right has been characterized as feudal, archaic, out-moded, piratical, and inequitable. Recently, in **Jhabbar Singh (deceased) through legal heirs and others Vs. Jagtar Singh son of Darshan Singh, 2023(1) ARC 812**, the same view has been reiterated by the Supreme Court again.

7. This Court has considered the submissions of the learned counsel representing the appellants.

8. Ordinarily, such kind of typographical or clerical mistake can be overlooked, however, the plaintiffs are seeking a right, which has been recognized by the Courts as inequitable and easily defeatable right. Two Five Judge Benches of the Supreme Court have already declared that the

pre-emptory right is an outmoded right and is not in consonance with the developments, which have taken place during all this while. This Court also exercises equitable jurisdiction. It will not be equitable after a passage of 34 years to permit the appellants to exercise superior right of pre-emption on being a co-sharer in the undivided land particularly when the superior right to pre-empt the sale deed on the basis of the co-sharer has already been omitted by Haryana Act No.10 of 1995. As already mentioned, the old cases are being decided as per the unamended provisions. The right of pre-emption is a right of substitution of the pre-emptor with that of the vendee.

- 9. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.
- 10. Dismissed accordingly.
- 11. All the pending miscellaneous applications, if any, are also disposed of.

March 20th, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No