



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

**RSA No.807 of 1994 (O&M)
Date of decision : 28.10.2024**

Ladhu Ram and others

Versus

....Appellants

Birbal (deceased) through his LR's.

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. P.K. Ganga, Advocate
for the appellants.

Mr. Ashok Verma, Advocate
for respondent No.1.

PANKAJ JAIN, J. (ORAL)

Defendants are in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellants as the defendants and the respondent as the plaintiff.

3. Plaintiff filed suit for possession by way of pre-emption asserting his right as co-sharer in the property purchased by the defendants. Sale Deed sought to be pre-empted is dated 27th of June, 1988 whereby the defendants purchased land measuring 23 Kanals 13 Marlas. Suit was instituted on 5th of June, 1989.



4. Defendants resisted the suit claiming that the plaintiff seized to be co-sharer in the suit property on passing of the order of partition dated 7th of August, 1991.

5. On the basis of the pleadings of the parties, following issues were framed :

- “i) Whether the plaintiff has superior right to pre-empt the suit land to that of the vendees/defendants? OPP.
- ii) Whether the vendees/defendants are entitled for stamp and registration charges, if so to what amount? OPD.
- iii) Whether the vendees/defendants are entitled for improvement charges, if so to what extent ? OPD.
- iii-A) Whether the order dated 7.8.1991 is without jurisdiction, null and void and is not binding on the rights of plaintiff? OPP.
- iii-B) Whether plaintiff is not the co-sharer in the suit land in view of the order dated 7.8.91 as alleged? OPD.
- iv) Relief.”

6. Trial Court decided issue No.i, iii-A and iii-B together. Trial Court came to the conclusion that on passing of the order dated 7th of August, 1991, Exhibit D-2, the suit land stands partitioned. Plaintiff having seized to be co-sharer prior to the passing of the decree cannot claim right of pre-emption. His superior right came to an end after the relationship between the parties got snapped on passing of the order of partition.

7. In the appeal preferred by the plaintiff, lower Appellate Court reversed the finding recorded by the Trial Court holding that the relationship between the co-sharers does not come to an end with the passing of the order



of the partition but only after instrument of partition is drawn. Lower Appellate Court thus reversed the findings recorded by the Trial Court and decreed the suit filed by the plaintiff holding him entitled to pre-empt the sale deed.

8. Ld. Counsel for the appellants submits that the findings recorded by the lower Appellate Court are in the teeth of settled proposition of law. With the passing of the order of partition Exhibit D-2, the status of the plaintiff as a co-sharer in the land under sale has come to an end and thus the suit filed by the plaintiff deserves to be dismissed. Reliance is being placed upon the law laid down by Apex Court in the case of **Jhabbar Singh (deceased) through legal heirs and others vs. Jagtar Singh son of Darshan Singh, 2023 AIR (Supreme Court) 2074.**

9. Ld. Counsel for the respondent per contra submits that until and unless instrument of partition is drawn, the parties continued to be co-sharers. He thus submits that the lower Appellate Court has rightly decreed the suit filed by the plaintiff.

10. I have heard counsel for the parties and have carefully gone through records of the case with their able assistance.

11. There is no dispute that as per law of pre-emption, pre-emptor can succeed in a *lis* claiming superior right to pre-empt only if he is able to prove that right of pre-emption vested in his favour on the following three stages:



- (i) the date of sale deed ;
- (ii) the date of filing of the suit; and
- (iii) on the day of passing of the decree by the Court of first instance.

12. There is no dispute regarding the plaintiff being co-sharer on the date of the sale deed and on the date of the filing of the suit. The question is the effect of order of partition, Exhibit D-2 passed on 7th of August, 1991 i.e. prior to the date of passing of the decree by the first instance i.e. 25th of May, 1992. The decision to the aforesaid issue depends upon the following question :

“Whether the status of co-sharer would get severed on the date of acceptance of Naksha Be or on the date of issuance of sanad taksim i.e. instrument of partition?”

13. The issue is no more *res-integra* and has been answered by Supreme Court in **Jhabbar Singh’s** case (supra) wherein it has been observed as under:

“32. So far as the facts of the present case are concerned, the Assistant Collector i.e., concerned Revenue Officer vide the order dated 25.05.1982 had rejected the objections raised by the plaintiff Jagtar Singh and others with regard to the mode of partition and had confirmed the mode of partition accordingly. On that day, the “Naksha Be” was already annexed to the file and the case was listed on 31.05.1982 for hearing the objections as to the “Naksha Be”. On 31.07.1982, the Assistant Collector passed the order

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stating inter alia that the Patwari and Kanungo were present, and they had explained the parties about the passage and the boundaries of the plots, and that as per “Naksha Be”, the partition was accepted. The details of the number of khasras allotted to both the parties i.e., to Jhabbar Singh and others and to Jagtar Singh were also mentioned in the said order. The partition having been accepted as per the said “Naksha Be”, the joint status of the parties had stood severed. Of course, the said order dated 31.07.1982 was challenged by the plaintiff Jagtar Singh by way of an appeal before the Collector who vide the order dated 12.10.1982 had dismissed the same. The said order of Collector was further challenged by the said Jagtar Singh by filing revision application before the Commissioner. Though, the Commissioner had initially granted stay against the operation of the order dated 31.07.1982 upto 16.11.1982, admittedly the said stay was not further extended thereafter. Under the circumstances, the joint status of the parties had come to an end on 31.07.1982, when the Assistant Collector passed the order and when the same was confirmed by the Collector on 19.10.1982. The trial court and the appellate court, under the circumstances, had rightly held that the plaintiff Jagtar Singh did not possess the status of co-sharer on the date of decree i.e., on 01.12.1982, and that his right of pre-emption had not survived till the date of passing of the decree in the suits. In our opinion, the High Court had grossly erred in misinterpreting the provisions of Punjab Pre-emption Act and of Land Revenue Act, and in setting aside the judgments and decrees passed by the trial court and the appellate court.”

14. Ld. Counsel for the respondent is not in position to dispute that order of partition was passed on 7th of August, 1991, Exhibit D-2, which is prior to the date of passing of the decree by the Court of first instance i.e. 25th of May, 1992.

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15. In view of above, this Court finds that the present appeal merits acceptance. Consequently, the same is allowed. Judgment and decree passed by the lower Appellate Court are held to be unsustainable. Judgment and decree passed by the Trial Court are restored.
16. Pending application, if any, shall also stand disposed off.

October 28, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No