



**RSA-2173-1990 (O&M)**

**Sr.No.141**

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

**RSA No.2173 of 1990 (O&M)  
Decided on : 06.02.2025**

**Chander Singh and others**

**...Appellants**

**Versus**

**Tek Ram (deceased) through LR's and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

**Present:-** Mr. Aashish Chopra, Sr. Advocate  
with Mr. Shobit Phutela, Advocate,  
Ms. Nitika Sharma, Advocate and  
Ms. Harsheeta Rai Sharma, Advocate  
for the appellants.

Mr. Ashish Gupta, Advocate  
for respondents No.1, 3 and 7.

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**PANKAJ JAIN, J. (ORAL)**

Defendants are in second appeal aggrieved of concurrent judgments and decrees passed by the Courts below, whereby suit filed by plaintiffs seeking possession by way of pre-emption has been ordered to be decreed. For convenience, the parties are being referred to by their original position in the suit i.e. the appellants as defendants and respondents as plaintiffs.

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2. Plaintiffs filed suit for possession by pre-empting Sale Deed dated 12.06.1986 in respect of land measuring 45 kanals 19 marlas in favour of defendants, executed by proforma defendants, claiming their superior right being co-sharers. Suit was contested by vendees/defendants No.1 to 4. They denied the superior rights vested in the plaintiffs. During the course of trial, plaintiffs gave up defendants No.5 to 8/vendors.

2.1. Suit filed by plaintiffs was put to trial and the Trial Court framed following issues:-

*1. Whether the plaintiffs have superior right of pre-emption, if so, to what effect? OPP*

*2. Relief.*

2.2. Court of First Instance, after analysing the evidence on record, held that on the day the sale deed was executed, the plaintiffs were co-sharers in the suit land along with vendors. Suit was filed on 15.05.1987. On the said date also, the plaintiffs were co-sharers. While the instant suit filed by plaintiffs was in process, the parallel partition proceedings were going on. Naksha-Be, Ex.D1, was prepared on 02.05.1989. Objections filed by plaintiffs were dismissed vide order dated 28.07.1989, Ex.D3. The same was not been passed by competent Revenue Officer and was not operated upon, the same cannot be relied upon. Thus, the plaintiffs continued to be co-sharers. The Trial Court decreed the suit filed by plaintiffs for pre-emption. The aforesaid findings stand affirmed by the Lower Appellate Court.

3. Learned Senior Counsel for the appellants has drawn attention of this Court to the fact that plaintiffs during the course of trial gave up vendors.

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He refers to absence of finding on the issue of valid notice and compliance thereof by the defendants/vendees. He submits that in the absence of vendors having been examined nor there being any attempt made by plaintiffs to examine vendors, decree of pre-emption cannot be granted. He further refers specific plea taken by defendants with respect to non-compliance of Section 20 of The Punjab Pre-emption Act, 1913 (*hereinafter referred to as '1913 Act'*). He refers to ratio of law laid down in ***Mange Ram and another vs. Shiv Charan and others, passed in RSA No.2458 of 1991, decided on 23.08.2024*** and that in ***Smt. Chawli Devi (since deceased) vs. Inder Paul and others, passed in RSA No.941 of 1991, decided on 04.11.2024***. He further refers to ratio of law laid down in ***Jhabbar Singh (Deceased) through LRs and others vs. Jagtar Singh, AIR 2023 SC 2074***.

4. *Per contra*, Mr. Gupta submits that in terms of law laid down by Supreme Court in the case of ***Jhabbar Singh (supra)***, the vendors have been held to be proper parties only. He further submits that trite it is that for absence of proper party, the suit cannot be ordered to be dismissed. He further submits that plaintiffs proved their superior rights to pre-empt the sale deed being co-sharers on the date of sale deed, on the date of filing of suit and on the date of passing of decree. They are thus entitled for the grant of pre-emption. The Courts below have rightly decreed the suit filed by plaintiffs. He further submits that pure findings of fact have been recorded by the Courts below. Reappreciation of evidence by this Court is beyond the scope of second appeal and thus the instant appeal needs to be rejected.



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5. I have heard learned senior counsel as well as counsel for the parties and carefully gone through records of the case.

6. So far as the issue with respect to plaintiffs being co-sharers in the suit property on the three relevant dates i.e. date of sale deed, date of filing of the suit and on the date of passing of decree passed by the Court of First Instance, the same being pure findings of fact, this Court does not find any ground to interfere in the same. However, the issue is whether plaintiffs can claim decree of pre-emption merely on the ground of being co-sharers or were required to prove something more. Plaintiffs gave up vendors. There is no finding recorded by courts below with respect to compliance of Sections 19 and 20 of 1913 Act. This Court while dealing with the same issue in ***Mange Ram's case (supra)*** has held as under:-

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*[13] Before adverting to the merits of the case, I deem it appropriate to test the suit on the touch stone of the ratio of law laid down by Hon'ble the Supreme Court in 'Jhabbar Singh's case (supra). The plaintiffs filed instant suit, claiming superior right being co-sharers and thus asserted that they are entitled to pre-empt the sale deed, drawing strength from the Punjab Pre-emption Act, 1913. Trite it is that the right of pre-emption is a weak right and has to be construed strictly. The Supreme Court in **Atam Parkash vs. State of Haryana (1986) 2 SCC 249** deprecated the right of pre-emption based on consanguinity as 'feudal', 'piratical', 'tribal', 'weak', 'easily defeated' and declared the same to be ultra vires of the Constitution of India.*

*[14] The pre-emptor cannot succeed in a suit, asserting right of pre-emption merely by proving that he is co-sharer. Chapter 4 of*



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*the 1913 Act provides for procedure. Sections 19, 20 & 21 reads as under:-*

*“ 19. Notice to pre-emptors.-When any person proposes to sell any agricultural land or village immoveable property or urban immoveable property or to foreclose the right to redeem any village immoveable property or urban immoveable property, in respect of which any persons have right of pre-emption, he may give notice to all such persons of at which he is willing to sell such land or property or of the amount due in respect of the mortgage, as the case may be.*

*Such notice shall be given through any Court within the local limits of whose jurisdiction such land or property or any part thereof is situate, and shall be deemed sufficiently given if it be stuck up on the chaupal or other public place of the village, town or place in which the land or property is situate.*

*20. Notice by pre-emptor to vendor.- The right of pre-emption of any person shall be extinguished unless such person shall, within the period of three months from the date on Which the notice under section 19 is duly given or within such further period, not exceeding one year from such date, as the Court may allow, present to the Court a notice for service on the vendor or mortgagee of his intention to enforce his right of pre-emption. Such notice shall state whether the pre-emptor accepts the price or amount due on the footing of the mortgage as correct or not, and if not what sum he is willing to pay*

*When the Court is satisfied that the said notice has –been duly served on the vendor or mortgagee, the proceedings shall be filed.*

*[15] Thus, a pre-emptor apart from proving himself as co-sharer is also required to prove that the vendor in the sale deed sought to be pre-empted did not give notice to all persons having right of pre-emption of the price at which he was willing to sell land. Section 20 provides that any person in receipt of notice under Section 19 extinguishes his right unless he expresses his intention to exercise his right of pre-emption within a period of 03 months from the date of receipt of notice under Section 19. Thus, statute*



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casts duty upon the plaintiffs, enforcing right of pre-emption to plead that there was no notice from vendor under Section 19. In case notice under Section 19 was served on pre-emptor, he responded to the same within the time period prescribed to save his right from being extinguished under Section 20 of the 1913 Act. Court prior to decreeing the suit of pre-emptor has to return finding that Section 19 was not complied with or if complied with, vendor executed sale deed despite the pre-emptor expressing his intention to pre-empt the sale deed. For returning such finding vendor is necessary. Such plea is directed against vendor and in his absence, the issue of compliance of Section 19 cannot be adjudicated.

[16] The plaintiffs impleaded vendor as a party initially but gave him up. The question thus arises is:-

*Whether suit filed by the plaintiffs could have been decreed after plaintiffs gave up the vendor?*

[17] Hon'ble the Supreme Court in case of 'Jhabbar Singh'(supra) answering somewhat similar situation held as under:-

*“12. At the outset, it may be noted that the plaintiff Jagtar Singh, the predecessor of the present respondent, had filed the suits claiming himself to be the co-sharer in the joint khewat along with the vendor Jit Singh, and had sought relief against the defendant Jhabbar Singh and others with regard to the possession of the suit lands, on the ground that he as a co-sharer had a superior right to pre-empt the sales, and that he was not put to any notice of sale of the suit lands on or before the date of such sales. In a very loosely drafted plaint, the plaintiff had neither pleaded as to how he was the co-sharer, nor had he impleaded the said Jit Singh, the owner of the suit lands, with whom he claimed to be the co-sharer, and who had sold the suit lands to the defendants Jhabbar Singh and Others. It is needless to say that in a suit for pre-emption, the vendor i.e., the owner of the suit land who had allegedly not given any notice of sale to the plaintiff as required to be given under Section 19 of the Pre-emption Act and against whom the right to pre-empt the sale is claimed would be a proper*

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*party if not a necessary party, for a complete and final adjudication on the issues involved in the suit.*

*13. As held by this Court in U.P. was Evam Vikas Parishad vs. Gyan Devi, necessary party is one without whom no order can be made effectively; and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings. When a right to pre-empt the sale was claimed by the plaintiff Jagtar Singh as a co-sharer in the lands along with the owner Jit Singh, alleging that the mandatory provisions contained in Section 19 i.e., for giving notice to the pre-emptor, was not complied with by the owner or seller Jit Singh, his presence as the party defendant was desirable along with the other defendants Jhabbar Singh and Others, to effectively and finally decide the disputes between the parties. Though, Order I, Rule 9 states that no suit shall be defeated by reasons of the misjoinder or non-joinder of parties, care must be taken by the court to ensure that all the parties, be it the plaintiff or the defendant, whose presence is necessary for complete and final adjudication on the issues involved in the suit, are before the court. That is the reason why the courts are empowered to strike out or add parties, at any stage of the proceedings as per Order I, Rule 10, C.P.C.*

*14. Further, having regard to the absolutely sketchy and loosely drafted plaint in the instant case, the Court is tempted to regurgitate the basic and cardinal rule of pleadings contained in Order VI, Rule 2(1) of the Code, according to which every pleading (i.e., plaint or written statement) has to contain a statement in concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be. Of course, the pleading need not contain the evidence by which such material facts are to be proved, nonetheless the facts necessary to formulate a complete cause of action i.e., the material facts must be stated. Omission of a single material fact would lead to an incomplete cause of action and in that case, the statement of claim would become bad in the eye of law.*

*15. Now, so far as the right of pre-emption is concerned, it may be noted that it is a very weak right and could be defeated by all legitimate methods. This Court as back as in 1958, in case of Bishan Singh and Others vs. Khazan*



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*Singh & Another (supra), had set-forth the contours of the right of pre-emption. It was opined therein by the four-Judge Bench that-*

*“11 .....The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase i. e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place.”*

*16. The afore-stated position was reiterated by this Court in Barasat Eye Hospital vs. Kaustabh Mondal, and again in the recent decision in case of Raghunath (Dead) by LRs. vs. Radha Mohan (Dead) Through LRs. And Others<sup>4</sup>, wherein it has been observed as under: -*

*“14. We have given our thoughtful consideration to the aforesaid issue and in order to determine the same, we had, at the inception itself, set out the judgment in Barasat Eye Hospital case [Barasat Eye Hospital v. Kaustabh Mondal, (2019) 19 SCC 767 : (2020) 4 SCC (Civ) 810]. We have thus, referred to the earlier judicial view in para 10 of the judgment extracted aforesaid. The historical perspective of the right of pre-emption shows that it owes its origination to the advent of the Mohammedan rule, based on customs, which came to be accepted in various courts largely located in the north of India. The pre-emptor has been held by the judicial pronouncements to have two rights. Firstly, the inherent or primary right, which is the right to the offer of a thing about to be sold and the secondary or remedial right to follow the thing sold. It is a secondary right, which is simply a right of substitution in place of the original vendee. The*





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*pre-emptor is bound to show that he not only has a right as good as that of the vendee, but it is superior to that of the vendee; and that too at the time when the pre-emptor exercises his right. In our view, it is relevant to note this observation and we once again emphasise that the right is a “very weak right” and is, thus, capable of being defeated by all legitimate methods including the claim of superior or equal right.”*

*17. At this juncture, it would be also apt to mention that apart from the fact that the right of pre-emption is very weak right and capable of being defeated by all legitimate methods, the pre-emptor must establish that he had the right to pre-empt on the date of sale, on the date of the filing of the suit and on the date of the passing of the decree by the Court of the first instance. The pre-emptor or the claimant-plaintiff who claims the right to pre-empt the sale on the date of sale, has also to prove that such right continued to subsist till the passing of the decree of the first court. If the claimant-plaintiff loses that right or the vendee improves his right equal or above the right of the claimant before the adjudication of the suit, the suit for pre-emption would fail.*

*18. This proposition of law has been well settled by this Court since 1971, in case of **Bhagwan Das (Dead) by LRS and Others vs. Chet Ram 1971 (1) SCC 12**. In the said case, this Court had approved the full bench decision of Punjab High Court in **Ramji Lal and Another vs. The State of Punjab and Others, AIR 1966 P&H 374**, which had ruled that a pre-emptor must maintain his qualification to pre-empt upto the date of the decree.”*

*[18] Trite it is that vendor in the suit for pre-emption is a proper party and not a necessary party. Thus, suit cannot be dismissed solely on the ground that vendor was not made party or was subsequently given up. The issue is not non-joinder of necessary party. However, issue is absence of finding on statutory notice.*

*[19] Mere status of co-sharer is not enough to mature into a right of pre-emption. As per settled law in order to succeed in a suit enforcing right of pre-emption, it is imperative to show that:-*



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1. The pre-emptor had the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree.
2. The pre-emptor who claims the right to pre-empt the sale on the date of the sale must prove that such right continued to subsist till the passing of the decree of the first court. If the claimant loses that right or a vendee improves his right equal or above the right of the claimant before the adjudication of suit, the suit for pre-emption must fail.
3. That no notice of the proposed sale of the land as provided under Section 19 was served upon pre-emptor showing the price at which vendor was willing to sell the property.
4. In case notice under Section 19 of 1913 Act was served upon him, the pre-emptor within a period as prescribed under Section 20 of 1913 Act served notice on the vendor accepting the price expressing his willingness to pay the same.

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The same was followed in ***Smt. Chawli Devi's case (supra)***.

Applying the afore-stated ratio to the present case, though plaintiffs pleaded that sale deed was executed in clandestine manner in favour of vendees, but none of them appeared in witness box to corroborate the same. The most material evidence to prove absence of notice under Section 19 was the vendor(s) or the pre-emptor(s). However, vendor(s) were given up and pre-emptor(s) opted not to appear in witness box. Thus, neither issue *qua* compliance of Sections 19 and 20 of 1913 Act was framed nor any finding could be recorded.

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7. In view of above, this Court finds that judgments and decrees passed by both the Courts below cannot be sustained as there is no finding regarding compliance of Sections 19 and 20 of 1913 Act.

8. Taking up the objection raised by Mr. Gupta with respect to scope of second appeal, it needs to be pointed out that instant appeal is an appeal filed under Section 41 of Punjab Courts Act, 1918. It is now settled proposition of law that in Punjab and Haryana, the second appeals preferred are to be treated as appeal under Section 41 of the Punjab Courts Act, 1918 and not Section 100 of the Code of Civil Procedure. Reference can be made to a judgment of Supreme Court in the case of ***Pankajakshi (dead) Through LRs and others vs. Chandrika and others, (2016) 6 SCC 157***, wherein it has been held as under:-

“xxxx                      xxxx                      xxxx                      xxxx

23. *Shri Viswanathan also relied upon a Division Bench judgment of this Court in Kulwant Kaur v. Gurdial Singh Mann [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] , to submit that this decision is an authority for the proposition that there is no need to expressly refer to a local law when the legislative intent to repeal local laws inconsistent with the Code of Civil Procedure is otherwise clear.*

24. The judgment in *Kulwant Kaur case* [*Kulwant Kaur v. Gurdial Singh Mann*, (2001) 4 SCC 262] raised a question which arose on an application of Section 41 of the Punjab Courts Act, 1918. This section was couched in language similar to Section 100 of the Code of Civil Procedure as it existed before the Code of Civil Procedure (Amendment) Act, 1976, which amended Section 100 to make it more restrictive so that a



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*second appeal could only be filed if there was a substantial question of law involved in the matter. The question this Court posed before itself was whether Section 41 stood repealed by virtue of Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, which reads as under :*

*“97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.”*

*This Court concluded that Section 41 of the Punjab Courts Act was repealed because it would amount to an amendment made or provision inserted in the principal Act by a State Legislature. This Court further held that, in any event, Section 41 of the Punjab Courts Act being a law made by the Legislature of a State is repugnant to a later law made by Parliament, namely, Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, and that therefore, by virtue of the operation of Article 254 of the Constitution of India, the said provision is in any case overridden. In arriving at the aforesaid two conclusions, this Court held [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262.*

*“27. Now we proceed to examine Section 97(1) of the Amendment Act and the amendment of Section 100 CPC by the said 1976 Act. Through this amendment, right to second appeal stands further restricted only to lie where, ‘the case involves a substantial question of law’. This introduction definitely is in conflict with Section 41 of the Punjab Act which was in pari materia with unamended Section 100 CPC. Thus, so long there was no specific provision to the contrary in this Code, Section 4 CPC saved special or local law. But after it comes in conflict, Section 4 CPC would not save, on the contrary its language implied would make such special or local law inapplicable. We may examine now the submission for the respondent based on the language of Section 100(1) CPC*



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*even after the said amendment. The reliance is on the following words:*

*‘100. Second appeal.—(1) Save as otherwise expressly provided ... by any other law for the time being in force....’ These words existed even prior to the amendment and are unaffected by the amendment. Thus, so far it could legitimately be submitted that, reading this part of the section in isolation it saves the local law. But this has to be read with Section 97(1) of the Amendment Act, which reads:*

*‘97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.’ (Noticed again for convenience.)*

*28. Thus, language of Section 97(1) of the Amendment Act clearly spells out that any local law which can be termed to be inconsistent perishes, but if it is not so, the local law would continue to occupy its field.*

*29. Since Section 41 of the Punjab Act is expressly in conflict with the amending law viz. Section 100 as amended, it would be deemed to have been repealed. Thus, we have no hesitation to hold that the law declared by the Full Bench of the High Court in Ganpat [Ganpat v. Ram Devi, AIR 1978 P&H 137] cannot be sustained and is thus overruled.”*

*25. We are afraid that this judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] does not state the law correctly on both propositions. First and foremost, when Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 speaks of any amendment made or any provision inserted in the principal Act by virtue of a State Legislature or a High Court, the said section refers only to amendments made and/or provisions inserted in the Code of Civil Procedure itself and not elsewhere. This is clear from the expression “principal Act” occurring in Section 97(1). What Section 97(1) really does is to state that where a State*

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*Legislature makes an amendment in the Code of Civil Procedure, which amendment will apply only within the four corners of the State, being made under Schedule VII List III Entry 13 to the Constitution of India, such amendment shall stand repealed if it is inconsistent with the provisions of the principal Act as amended by the Parliamentary enactment contained in the 1976 Amendment to the Code of Civil Procedure. This is further made clear by the reference in Section 97(1) to a High Court. The expression “any provision inserted in the principal Act” by a High Court has reference to Section 122 of the Code of Civil Procedure by which High Courts may make rules regulating their own procedure, and the procedure of civil courts subject to their superintendence, and may by such rules annul, alter, or add to any of the rules contained in the First Schedule to the Code of Civil Procedure.*

*26. Thus, Kulwant Kaur [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] decision on the application of Section 97(1) of the Code of Civil Procedure (Amendment) Act, is not correct in law.*

*27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] . Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80-A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act,*



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*1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Shri Viswanathan's reliance upon this authority, therefore, does not lead his argument any further.*

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Absence of findings *qua* the non-compliance of mandate of statue being question of law, this Court finds it an appropriate case to interfere in second appeal.

9. In terms of ratio of law laid down by Constitution Bench in ***Pankajakshi's case (supra)***, it is evident that regular second appeal needs to be decided as per Section 41 of Punjab Courts Act, 1918 and not in terms of Section 100 of CPC. Meaning thereby, the test shall be as was prior to the amendment of 1976 in Section 100 CPC. The appellants in order to persuade this Court to interfere in regular second appeal, is required to show question of law even though it may not be a substantial question of law.

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10. In terms of settled law, misreading or ignoring cogent piece of evidence leads to perversity in the findings and the same shall be a substantial question of law. Thus, once the Courts below have ignored the documentary evidence brought on record by plaintiffs, the consideration thereof would not amount to reappreciation of evidence, but raises a question of law.

11. Finding merits in the present appeal, same is allowed. Judgments and decrees passed by both the Courts below are set aside and the suit filed by plaintiffs stands dismissed.

12. Pending application(s), if any, shall also stand disposed off.

**( PANKAJ JAIN )**  
**JUDGE**

**February 06, 2025**

*ashish*

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No