



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

**RSA No.1600 of 1992
Date of decision : 30.04.2025**

Ram Datia (died) through his LRsAppellant

Versus

Nawal Kishore and othersRespondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Munish Gupta, Advocate
for the appellant.

Mr. Abhilaksh Grover, Advocate
for respondent No.1.

PANKAJ JAIN, J. (ORAL)

LRs of the plaintiff are in second appeal.

2. For convenience and to avoid confusion, the parties hereinafter are referred to by their original position before the Court of the First Instance i.e. the appellant as the plaintiff and the respondents as defendants.

3. Plaintiff filed suit for possession by way of pre-emption claiming superior right being co-sharer to pre-empt the sale deed dated 02.03.1987 executed by defendants No.2 to 7 in favour of defendant No.1. Defendants No.2 to 7 i.e. vendors were given up by the plaintiff. Suit was contested by defendant No.1. The plaintiff asserted his right of being co-sharer after purchasing part of holding vide sale deed dated 30.12.1983 (Exhibit P-3). Trial Court while returning finding on issue No.1 found that



the plaintiff having purchased land out of same *khewat*, is a co-sharer and thus has a superior right to pre-empt the sale deed *qua* defendant No.1, dated 02.03.1987 and decreed the suit filed by the plaintiff.

4. Dissatisfied, defendant No.1 filed appeal.

5. Lower Appellate Court held that the vendors of the plaintiff sold specific field numbers to defendant No.1 and held that the plaintiff being purchaser of specific *killa* numbers, did not attain status of co-sharer forming part of separate *khataunis* and reversed the findings recorded by the Court of the First Instance. Holding that the plaintiff is not a co-sharer in the suit property, the Lower Appellate Court held that he has no superior right to pre-empt the sale deed and dismissed the suit filed by the plaintiff.

6. Mr. Gupta has assailed the findings recorded by the Lower Appellate Court. He submits that the plaintiff successfully proved purchase of part of the joint land in the year 1983 from Roshal Lal, who was purchaser of the share from non-else but defendants No.2 to 7 the vendors of defendant No.1. Thus, despite the fact that the plaintiff purchased specific *killa* numbers, he is deemed to have purchased share and attained the status of co-sharer. He relies upon ratio of law laid down by the Full Bench of this Court in the case of '**Ram Chander vs. Bhim Singh**', 2008(3) R.C.R. (Civil) 685 (P&H).

7. Per contra, Mr. Grover submits that even if the finding regarding the plaintiff having attained status of co-sharer is reversed and is held to be in favour of the plaintiff, decree of pre-emption cannot be granted



in his favour. He submits that the plaintiff was required to plead and prove that he had no notice of the sale in order to comply with the requirement of Sections 19 and 20 of the Punjab Pre-emption Act, 1991 (hereinafter referred to as ‘the 1991 Act’).

8. I have heard counsel for the parties and have carefully gone through records of the case.

9. There can’t be any dispute regarding proposition of law that though the plaintiff purchased specific *killa* numbers, he attained status of being co-sharer in joint holding. Thus, finding to that effect recorded by the Lower Appellate Court needs to be reversed in view of ratio of law laid down by Full Bench of this Court in *Ram Chander’s* case (supra).

10. However, the question still remains :

“Whether the plaintiff is entitled for decree of pre-emption by merely proving that he is co-sharer in the suit land?”

11. This Court while dealing with the same issue in the case of **‘Mange Ram and another vs. Shiv Charan and others’** - *RSA No.2458 of 1991 and other connected case*, decided on 23.08.2024, observed as under:

“[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:-

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.”

12. In the present case, the plaintiff in the plaint raised plea in Para 2(b) to the effect that he was given no notice prior to sale. The same was responded to by respondent No.1 pleading that the contents of Para No.2(b) are wrong. The plaintiff was in knowledge of the sale and thus there was no requirement of giving separate notice. Plaintiff filed replication. He simply denied the contents of Para 2(b) of the written statement. No specific denial was raised regarding plea attributing prior knowledge of sale to him. Plaintiff appeared as PW-1. In the entire testimony, there was no corroboration to the plea raised in the plaint regarding absence of notice of sale. Defendants No.2 to 7 the vendors were given up by the plaintiff suffering statement on 13.09.1988.

13. In the considered opinion of this Court, plaintiff in order to succeed in the suit seeking possession by way of pre-emption, is required to



prove that he was not served with the notice under Section 19 of 1991 Act and in case the said notice was served, he matched the offer of vendee as required under Section 20. It needs to be pleaded and proved. Reliance can be placed upon the following observations made by this Court in the case of **Basti vs. Jai Chand, ILR (1962) 2 Punjab 290 :-**

“It certainly does not by any means relieve the plaintiff of the initial burden of bringing himself within the essential terms of the statute on which he relies for his title or preferential claim to the property sold. The obligation to make out his title or a preferential right to purchase the property would have to be discharged by him even if the negative is to be proved for establishing the right claimed. It would, therefore, in my opinion, be incumbent on the plaintiff-preemptor also to prove the basic fact which is the foundation of his right, that the sale is of such land as is dealt with in Section 17 and in respect of which he had been given a right to oust the vendee and to claim title to the property in his place. This basic fact is not self evident and, therefore, has to be established by the person who would otherwise fail ”

14. The afore-said view was followed by this Court in **Mange Ram’s** case (supra), observing as under:

[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 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. AwasEvamVikasParishad vs. Gyan Devi**², 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 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**³, and again in the recent decision in case of *Raghunath (Dead) by LRs. vs. Radha Mohan (Dead) Through LRs. And Others*⁴, 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 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 vapproved 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:-

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.

[20] In the present case, the plaintiff in the suit raised pleadings with respect to notice in Para No.3, which reads as under:-

“That no notice of the above said sale deed and purchase was ever issued to the plaintiffs.”

[21] However, when plaintiff No.2-Parkash entered into witness box in support of his case as PW-1, he did not utter even a single word as to whether notice was served upon them by the vendor or not. The service of the notice or non service thereof in terms of Section 19 and Section 20 is a statutory requirement. The same needs to be pleaded and proved. Reliance can be placed upon the following observations made by **Justice Dua in ‘Basti versus Jai Chand’, ILR (1962) 2 Punjab 290’:-**

“It certainly does not by any means relieve the plaintiff of the initial burden of bringing himself within the essential terms of the statute on which he relies for his title or preferential claim to the property sold. The obligation to make out his title or a preferential right to purchase the property would have to be discharged by him even if the negative is to be proved for establishing the right claimed.



It would, therefore, in my opinion, be incumbent on the plaintiff-preemptor also to prove the basic fact which is the foundation of his right, that the sale is of such land as is dealt with in Section 17 and in respect of which he had been given a right to oust the vendee and to claim title to the property in his place. This basic fact is not self evident and, therefore, has to be established by the person who would otherwise fail ”

[22] The same were further relied upon by this Court in the case of **‘Behari Lal and others versus Motla and others’, 1963 PLJ 129**, observing as under:-

“7. As regards the second contention, it is, conceded by Mr. Gandhi that it was not pleaded by his clients in the plaint that the sale was out of the surplus area or, in other words, the sale was not from the reserved area. It is no doubt true that this is a negative contention, but all the same it is a statutory requirement and it has to be pleaded and proved. Mr. Justice Dua in Basti v. Jai Chand, ILR (1962) 2 Punjab 290: 1962 P.L.J. 70 at p. 75), examined this matter sitting with Mr. Justice Tek Chand and observed, -

" It certainly does not by any means relieve the plaintiff of the initial burden of bringing himself within the essential terms of the statute on which he relies for his title or preferential claim to the property sold. The obligation to make out his title or a preferential right to purchase the property would have to be discharged by him even if the negative is to be proved for establishing the right claimed. It would, therefore, in my opinion, be incumbent on the plaintiffpre-emptor also to prove the basic fact which is the foundation of his right, that the sale is of such land as is dealt with in Section 17 and in respect of which he had been given a right to oust the vendee and to claim title to the property in his place. This basic fact is not self evident and, therefore, has to be established by the person who would otherwise fail."



These observations fully apply to the facts of the present case. There is no allegation, must less any proof of the basic fact. That being so, the second contention is also sound and must prevail.”

[23] Apart from that, no effort was made by the plaintiffs to examine vendor to satisfy the statutory mandate. Thus, the pleadings regarding non receipt of notice of sale raised in plaint remained uncorroborated.

[24] In the light of the afore-stated circumstances, this Court finds that without giving finding with respect to compliance of Section 19 & Section 20 of the 1913 Act, Courts below erred in decreeing the suit filed by the plaintiffs.”

15. In view of above, this Court finds that the matter being squarely covered against the appellant in terms of ratio of law laid down by this Court in *Mange Ram’s* case (supra), the instant appeal deserves to be dismissed.

16. Ordered accordingly.

April 30, 2025
Dpr

(Pankaj Jain)
Judge

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