



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

**RSA-318-1993 (O&M)**

**Hoshiar Singh (deceased) through LRs and Others . . . . Appellants**

**Vs.**

**Mahender and Others . . . . Respondents**

**Reserved on: 07.11.2025  
Pronounced on: 11.11.2025**

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**CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA**

Argued by:- Mr. H.S. Dhindsa, Advocate and  
Mr. G.S. Gurna, Advocate for  
the appellants.

Mr. Ashish Aggarwal, Senior Advocate with  
Mr. Vishal Pundir, Advocate and  
Mr. Anmol Rattan S. Dhillon, Advocate  
for the respondents.

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**DEEPAK GUPTA, J.**

The present appeal by the defendants is directed against the judgment and decree dated 24.10.1992 passed by the learned first Appellate Court of Additional District Judge, Rohtak, whereby the appeal filed by the plaintiffs (*respondents herein*) was allowed, and their suit for possession by way of pre-emption was decreed in entirety, reversing in part the findings of the trial Court of Sub-Judge 1<sup>st</sup> Class, Jhajjar dated 14.06.1989.

2. ***Factual Background*** : The plaintiffs had become co-sharers in land comprised in Khewat Nos. 71 to 75 by virtue of judgment & decree dated 08.10.1984 (Ex.P1 & Ex.P2) and consequential mutation dated 13.06.1986 (Ex.P1) in Civil Suit N: 408 of 1984 suffered in their favour by their father Surjan. One of the co-sharers, Smt. Sarjo wife of Baljeet, through her attorney Manwati, sold her share in these Khewats to the extent of 44 Kanal 16 Marla ('the suit



land') to the defendants—Hoshiar Singh, Smt. Vidya, and Smt. Savitri, vide registered sale deed dated 05.06.1985 (Ex.P4) for a consideration of ₹20,000/-. The plaintiffs instituted the present suit seeking pre-emption of the said sale on the ground that being co-sharers in the Khewat, they possessed a preferential right and that no prior notice under Section 19 of the Punjab Pre-emption Act, 1913 was ever served upon them.

3. The defendants contested the suit, asserting that they had already become co-sharers in the same Khewat through sale deeds dated 22.10.1984 (Ex.D3), and 16.05.1986 (Ex.D2), registered on 21.05.1986.

4. ***Trial Court Findings*** : After framing issues and appraising the evidence on record, the trial Court partly decreed the suit, holding that defendant No.1 Hoshiar Singh had already become co-sharer in Khewat Nos.71 to 74 by virtue of sale deed (Ex.D3) dated 22.10.1984. Consequently, the plaintiffs' pre-emption claim in respect of that portion failed. However, for land in Khewat No.75, defendants were strangers, and the suit was decreed to that extent.

5. ***First Appellate Court Findings*** : On appeal filed by the plaintiffs, the first Appellate Court reversed the above findings and decreed the suit in toto. It reasoned that the sale deed dated 16.05.1986 (Ex.D2) came into existence after the impugned sale deed dated 05.06.1985 (Ex.P4) and thus, conferred no co-sharer status at the time of sale. As to sale deed (Ex.D3) dated 22.10.1984, though defendant No.1 Hoshiar Singh became co-sharer in Khewat Nos.71 to 74, but he subsequently purchased the suit land jointly with two strangers, namely Smt. Vidya and Smt. Savitri. Consequently, his earlier qualification as a co-sharer stood neutralized, and under Section 21 of the Punjab Pre-emption Act, he was to be treated as a stranger. The appellate court relied on ***Garib Singh v. Harnam Singh, 1971 PLJ 579 (Full Bench)***.



6. **Earlier High Court Order and Supreme Court Remand:** Defendants preferred the present appeal against above reversal. This Court initially, vide order dated 11.09.2000, allowed the appeal by holding that the Haryana Amendment Act No.10 of 1995 abolished the co-sharers' right of pre-emption.

7. However, on 12.10.2001, in Civil Appeal No.7169 of 2001, & 7170 of 2001 arising out of SLP [C] N: 1874 of 2001, & SLP [C] N: 2223 of 2001 respectively, Hon'ble Supreme Court set aside the said order by referring to ***Shyam Sundar v. Ram Kumar, AIR 2001 SC 2472***, and remanded the matter for decision afresh, clarifying that the right of pre-emption must subsist only up to the date of decree of the trial court.

8. **Submissions:** Learned counsel for the appellants-defendants contended that (i) the vendor Smt. Sarjo was not impleaded, rendering the suit defective for non-joinder; and that (ii) the right of pre-emption based on co-sharership stood abolished by the 1995 Amendment.

9. Conversely, learned senior counsel for the respondents-plaintiffs argued that the right to pre-empt existed on the date of decree (14.06.1989) and that plaintiffs had specifically pleaded absence of notice under Section 19, which defendants admitted to be 'not required', amounting to statutory violation.

10. This Court has considered rival submissions and perused the record.

11. **Points for Determination :** The following questions arise for determination:

*(i) Whether plaintiffs had a subsisting right of pre-emption on the date of decree?*



(ii) *Whether defendants could resist the suit as co-sharers?*

(iii) *Whether non-joinder of the vendor vitiates proceedings?*

(iv) *Whether non-compliance with Section 19 affects the sale?*

12. **Analysis by this Court:** In *Shyam Sundar v. Ram Kumar (AIR 2001 SC 2472)*, Hon'ble Supreme Court held that the relevant date for determining existence of a pre-emptive right is the date of decree of the trial court. In the present case, the sale deed (Ex.P4) was executed on 05.06.1985, and the decree was passed by the court of first instance on 14.06.1989 i.e., both prior to 1995 Amendment. Therefore, the plaintiffs' right to pre-empt remained intact.

13. The defendants' plea of co-sharership fails as sale deed (Ex.D3) dated 22.10.1984 was only in favour of only one of the defendants - Hoshiar Singh and not defendants N: 2 & 3/co-vendees Vidya and Savitri, who were strangers to the Khewat. By associating strangers in purchase, qualification of Hoshiar as co-sharer was lost, in view of the Full Bench ruling in *Garib Singh v. Harnam Singh (1971 PLJ 579)*, which was later on followed in *Ram Saran Dass v. Har Kishan Lal and another, 1977 PLJ 340*; and *Ram Krishan v. Ratti Ram, 1986 PLJ 701*.

14. As regards non-serving of notice to the plaintiffs prior to sale, Section 19 to 21 of the Punjab Pre-emption Act, are relevant in this regard, which read as under.

**"19. Notice to pre-emptors.** – When any person proposes to sell any agricultural land or village immovable property or urban immovable property or to foreclose the right to redeem any village immovable property or urban immovable property, in respect of which any persons have a right of pre-emption, he may give notice to all such persons of the price 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 lim-



its 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 mount 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.

21. **Suits for pre-emption.** – Any person entitled to a right of pre-emption may, when the sale or foreclosure has been completed, bring a suit to enforce that right.”

15. The effect of non-serving of notice to the plaintiffs prior to sale, in the light of above provisions i.e., Section 19 to 21 of the Punjab Pre-emption Act was considered by a co-ordinate Bench of this court in **“Ram Murthy versus Ram Parshad”** in RSA No.30 of 1994 decided on 21.7.2025, and it was held as under.

“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 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 is to respond 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.”

16. The court then referred to the observations made by Hon’ble Supreme Court in ***Jhabar Singh vs. Jagtar Singh 2023 AIR (Supreme Court) 2074*** and held that it is true that vendor in a suit for pre-emption is a proper party and not a necessary party and that suit cannot be dismissed solely on the ground that vendor was not made a party. However, the issue is not the non-joinder of the necessary party, and rather, the absence of the statutory notice.

17. In the present case, plaintiffs i.e., *respondents herein*, specifically pleaded in para N: 3 of the plaint that prior to the sale dated 05.06.1985, no notice whatsoever was given to them as required under law. In corresponding para of the written statement, defendants i.e. *appellants herein* did not specifically deny the said fact and rather, pleaded that it was not required to send a notice to the plaintiffs.

18. Meaning thereby, defendants categorically admitted that no notice was served upon the plaintiffs prior to the sale dated 05.06.1985 (Ex.P4), though the said notice was in fact mandatory under section 19 of the Punjab Pre-emption Act. Thus, statutory non-compliance of notice under Section 19 is proved, and so, plaintiffs’ right could not be extinguished under Section 20.

19. The last contention as raised by Ld. counsel for the appellants-defendants is regarding the non-joinder of Smt. Sarjo i.e. vendor as a party to the suit. This court in *RSA No.947 of 1995 decided on 03.11.2025* titled ***“Mansa Ram versus Jasmer Singh”*** has held that where the plaintiff has based the suit on lack of notice under Section 19 of the 1913 Act and the defendants specifi-



cally plead vendor-related facts like his participation/waiver, then presence of the vendor is, at the very least, desirable, and may become necessary to effectively and finally adjudicate the controversy, as was observed in **Jhabbar Singh (supra)** by placing reliance on **U.P. Awas Evam Vikas Parishad v. Gyan Devi, AIR 1995 SC 724** distinguishing “necessary” and “proper” parties.

20. In **Mansa Ram’s case (supra)**, the defendant (*vendee*) had specifically pleaded that the plaintiffs (*pre-emptor*) had negotiated and finalized the bargain with the vendor Sarwan Singh, and therefore were estopped from pre-empting. Based on evidence, this contention was found to be duly proved. It was in this factual matrix that this court held as under:

“21. If the pre-emptor participated in or brought about the sale, insistence on a pre-sale notice becomes academic, as the object of Section 19 is to apprise a potential pre-emptor. Where the pre-emptor is himself a moving force behind the transaction, the foundation of the plea (want of notice) collapses.

22. Once such participation is established, the doctrine of waiver or estoppel squarely applies. A pre-emptor who himself arranges, facilitates, or consents to a sale cannot thereafter turn around to displace that very transaction by invoking a right of preference. The principle that the right of pre-emption can be defeated by any legitimate means, enunciated in **Bishan Singh v. Khazan Singh (supra)** fully governs the present case. Hence, the reliance on **Rikhi Ram (supra)** and **Kidar Nath (supra)** is misplaced, as those decisions dealt with situations of mere passive knowledge, not with proven active negotiation and facilitation by the pre-emptor himself.”

21. The facts of present case are entirely distinguishable from **Mansa Ram’s Case (supra)**, in as much, in present case, there is no plea of vendor’s participation, directly or indirectly, in the sale dated 5.6.1985 (Ex.P4). Besides, statutory non-compliance of notice under Section 19 is admitted by the defendants – appellants. In the circumstances, non-joinder of the vendor as a party to the suit does not affect the right of plaintiffs to pre-empt the sale.



22. **Conclusion** : Based on the above discussion, it is found that plaintiffs had a valid subsisting right to pre-empt as co-sharers. Defendant N: 1, by joining strangers in the sale, lost that status. Non-impleadment of vendor is not fatal in the facts and circumstances of the above case; and the statutory notice under Section 19 was admittedly not served.

23. Therefore, the findings of the first Appellate Court are well-reasoned. There is no reason to disturb the findings. Consequently, the appeal is dismissed. The judgment and decree of the first Appellate Court dated 24.10.1992 are affirmed. Parties to bear their own costs.

(DEEPAK GUPTA)  
JUDGE

11.11.2025  
Neetika Tuteja

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|----------------------------|-----|
| Whether speaking/reasoned? | Yes |
| Whether reportable?        | Yes |