



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

RSA-319-1993 (O&M)

Hoshiar Singh (deceased) through LRs

. . . . Appellants

Vs.

Mahender and Others

. . . . Respondents

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

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.

DEEPAK GUPTA, J.

The defendants have preferred the present Regular Second Appeal against the judgment & decree dated 24.10.1992 passed by the learned First Appellate Court of Additional District Judge, Rohtak, whereby the appeal filed by the plaintiffs—Mahender and others (*respondents herein*) was allowed, reversing the judgment of the Trial Court of sub-Judge 1st Class, Jhajjar dated 11.06.1990, dismissing their suit for possession by way of pre-emption.

2. ***Factual Background*** : The plaintiffs are co-sharers in the suit land comprised in Khewat Nos. 71 to 75. Said land was originally owned by several co-sharers including Smt. Chitra Bai. Acting through her attorney Smt. Manwati, Chitra Bai sold her share in the suit land detailed in para 1 of the plaint to defendant—appellant Hoshiyar Singh by a registered sale deed dated 22.10.1984 for consideration of ₹30,000/-. The plaintiffs instituted the present suit claiming



possession of the suit land by way of pre-emption, asserting their superior right as co-sharers. They alleged that no notice was served upon them before the sale, which, according to them, was mandatory in law.

3. The defendants contested the claim on multiple grounds. They denied that any notice was required to be given prior to the sale. It was further pleaded that the vendor Smt. Chitra Bai had inherited the property from her father Baljeet Singh, and therefore, under Section 15 of the Punjab Pre-emption Act, 1913, the sale executed by her could not be pre-empted.

4. ***Trial Court Findings*** : After framing issues and appraising the evidence on record, the trial Court held that the plaintiffs had failed to establish a valid right of pre-emption and accordingly dismissed the suit vide judgment dated 11.06.1990.

5.1 ***First Appellate Court Findings*** : On appeal filed by the plaintiffs, the first Appellate Court noticed that the learned Trial Court had overlooked the binding pronouncement of the Hon'ble Supreme Court in ***Atam Prakash v. State of Haryana, 1986 (1) PLR 329***, wherein Section 15(2) of the Punjab Pre-emption Act was declared unconstitutional being violative of Article 14 of the Constitution. The effect of the said ruling was that the distinction between sales made by male or female vendors ceased to exist, thereby making such sales equally open to pre-emption.

5.2 The First Appellate Court further held that the defendant's claim of being a co-sharer based on subsequent sale deeds dated 25.10.1985 and 16.05.1986 (Ex.DW-5/A) was untenable, since both transactions were subsequent to the sale dated 22.10.1984 sought to be pre-empted. The defendant, therefore, could not claim the status of co-sharer as on the relevant date. In view thereof, the Appellate Court allowed the appeal and decreed the plaintiffs' suit on 24.10.1992.



6. **Earlier High Court Order and Supreme Court Remand:** Defendant 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 in Second Appeal :** Assailing the reversal, learned counsel for the appellant has contended that the suit was not maintainable for non-impleadment of the vendor Smt. Chitra Bai, who was a necessary party. It is urged that in the absence of the vendor, the decree of pre-emption could not have been passed.

9. **Per contra,** learned counsel for the respondents submits that in a suit for pre-emption, the controversy is essentially between the pre-emptor and the vendee, and that the vendor, having divested her title, is neither a necessary nor a proper party. The learned First Appellate Court, it is argued, rightly decreed the suit applying the law as declared by the Hon'ble Supreme Court.

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

11. **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.D2) sought to be pre-empted was executed on



22.10.1984, and the decree was passed by the court of first instance on 11.06.1990 i.e., both prior to 1995 Amendment. Therefore, the plaintiffs' right to pre-empt remained intact.

12. The finding of the Appellate Court that the defendant could not claim co-sharership on the basis of subsequent transactions dated 05.06.1985 (Ex.DW7/A), and 16.05.1986 (Mark B) is also well founded. The right of pre-emption crystallizes on the date of sale sought to be pre-empted. Any acquisition of status thereafter is of no avail.

13. As regards the legal position under the Punjab Pre-emption Act, 1913, the Hon'ble Supreme Court in ***Atam Prakash (supra)*** declared Section 15(2) as ultra vires, holding that the classification between sales made by male and female vendors was arbitrary and violative of Article 14. The said declaration of law was directed to apply even to pending proceedings. Consequently, the First Appellate Court rightly held that the sale effected by Smt. Chitra Bai, though a female vendor, was open to pre-emption.

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 reads 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 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 situ-



ate.

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.

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 de-



creeing 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 22.10.1984, no notice whatsoever was given to them as required under law. In corresponding para of the written statement, defendant i.e. *appellant 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, defendant categorically admitted that no notice was served upon the plaintiffs prior to the sale dated 22.10.1984 (Ex.D2), 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. Chitra Bai 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 specifically plead vendor-related facts like his participation/waiver, then presence of the vendor is, at the very least, desirable, and may become necessary to effec-



tively 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 22.10.1984 (Ex.D2), Besides, statutory non-compliance of notice under Section 19 is admitted by the defendant – appellant. In the circumstances, the objection as to non-impleadment of the vendor as a party to the suit, is misconceived and unsustainable, and it 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. 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

Whether speaking/reasoned?	Yes
Whether reportable?	Yes