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

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Reserved on:16.01.2025

Pronounced on:09.04.2025

DHANI RAM**...APPELLANT****VERSUS****NAFE SINGH & OTHERS****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. Harshit Joon, Advocate &
Mr. Sagar Bathla, Advocate
for the appellant.

Mr. Ashish Gupta, Advocate
for respondent No.1.

Names of respondents No.2 to 10 being proforma respondents
have been ordered to be deleted from the array of parties
vide order dated 27.01.1994.

SUVIR SEHGAL, J.

1. Appellant/defendant No.1 is in second appeal assailing concurrent finding recorded by the two Courts below.
2. Respondent No.1/plaintiff filed a suit for possession of 16 marlas land by way of pre-emption of sale deed dated 03.06.1986. His pleaded case is that he was co-sharer of unpartitioned land measuring 7 kanals 6 marlas along with Bharat Singh and Vaid Singh. Bharat Singh sold his 1/9th share, that is 16 marlas, besides other agricultural land totalling 18



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kanals 04 marlas to defendant No.1 vide sale deed dated 03.06.1986 for a consideration of Rs.60,000/-. Claiming that he is a co-sharer in Khewat No.89 with Bharat Singh, plaintiff filed a suit for pre-emption of 16 marlas land asserting that inflated consideration of Rs.30,000/-, has been mentioned in the sale deed. Upon being served, suit has been contested by defendant No.1, wherein he denied the status of the plaintiff as a co-sharer. Explaining the sale consideration, defendant No.1 averred that half the amount was paid as earnest money and the balance amount was paid at the time of registration of the sale deed. Defendant No.1 claimed to be in possession of the suit land and stated that a similar suit had been filed by defendant No.10 at an earlier stage, but it was dismissed. An objection was taken that the suit is bad for partial pre-emption and that the plaintiff has not deposited the *zarepanjam*. Defendant No.1 stated that he was a tenant in the suit land and had purchased it after paying the agreed consideration of Rs.60,000/-. Defendants No.2 to 10 did not appear and were proceeded against ex parte. Plaintiff filed a replication reasserting the averments of the plaint. On the basis of the pleadings of the parties, Trial Court framed issues. After the parties led evidence and were heard, vide judgment and decree dated 15.11.1990, Trial Court decreed the suit. Defendant No.1 remained unsuccessful in the first appeal, which was dismissed by the learned Additional District Judge, Jind, vide judgement dated 31.07.1991, resulted in the institution of the instant second appeal.

3. Counsel for the appellant has argued that a total of 18 kanal 4 marlas of land falling in three different khewat numbers was purchased by the appellant by virtue of sale deed dated 03.06.1986. He submits that respondent No.1/plaintiff is the co-sharer in khewat No.89 to the extent of 7



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kanals 6 marlas. A suit for pre-emption of a part of the land sold to the appellant, is not maintainable. He has placed reliance upon

(i) **Ram Chand Versus Randhir Singh & others (1994) 6 SCC 552;**

(ii) **Banta Singh etc. versus Harbhajan Kaur etc. 1974 (2) ILR(Punjab) 178;** and

(iii) **Ganga Singh versus Narinjan Singh, 1969 Current Law Journal 177.**

4. Per contra, counsel for respondent No.1 has urged that being a co-sharer, plaintiff has a superior right of pre-emption and he is entitled to get a decree for possession in respect of the part of the property in which he has a joint holding. He asserts that the plaintiff is entitled to claim pre-emption in respect of a portion of the property sold by virtue of sale deed dated 03.06.1986. Reference has been made by him to:

“(i) **Basawa Singh Vs. Santa Singh and another 1966 (2) ILR (Punjab) 202;**

(ii) **Moti Ram Versus Bakhwant Singh 1968 (1) ILR (Punjab) 104;**

(iii) **Phulla Singh and another Versus Sulakhan Singh 1988 PLJ 15;** and

(iv) **Umar Khan Versus Nawal Singh 2009 (4) PLR 338.**”

5. I have heard counsel for the parties and considered their submission besides examining the Trial Court record.

6. In **Shyam Sunder and others Versus Ram Kumar and another (2001) 8 SCC 24**, a five judges Bench of the Supreme Court has observed that in modern times, the right of pre-emption based on statutes is a maligned law. Such a right is feudal, archaic and outmoded although its



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origin is based on custom. It was subsequently codified out of necessity for preservation, integrity and maintenance of peace in the then village community and society. In changed circumstances, the right may be outmoded, but as long as it is statutorily recognized it has to be given the same treatment as any other law deserves. Noticing that the pre-emption right in favour of a co-sharer has been repealed by the Government of Haryana vide Act No.10 of 1995, Supreme Court observed that this legislation is prospective in operation and does not affect the substantive or vested right of the parties. Section 15 of the Punjab Pre-emption Act, 1913 as substituted by the Haryana amendment is not either expressly or by necessary implication retrospective in operation, which may affect the rights of the parties on the date of adjudication of the suit and is not required to be taken into consideration by the appellate Court. This appeal, therefore, has to be decided on the basis of the law as it existed prior to the amendment of the Punjab Pre-emption Act, 1913.

7. The legal issue which has arisen for consideration in the instant appeal is as to whether partial pre-emption of a sale deed is permissible on the ground that the plaintiff was a co-sharer only in one khewat and not in other khewats, particularly when the sale deed had been executed with respect to agriculture land located in three different khewats. A Full Bench of this Court in ***Banta Singh's case (supra)*** has held that a suit for partial pre-emption is not competent and such a suit has to be dismissed.

8. The question directly came up for consideration before a Division Bench of this Court in ***Ganga Singh's case (supra)***. The relevant observations of the Division Bench are reproduced hereunder:-

“..... In the first place it has not been brought to our notice what is the law of pre-emption law



prevailing in Oudh. In the second place, so far as the pre-emption law in Punjab is concerned, one rule is firmly settled that the right of pre-emption is a right of substitution. In other words, the name of the vendee is rubbed from the sale deed and that of the pre-emptor is introduced therein. There is another way of looking at the matter. Supposing, the vendee purchases property for a particular purpose and by permitting partial pre-emption on payment of the whole consideration he is left with part of the property which does not serve his purpose, he is unnecessarily bound down to that part of the property and it would be no argument to say that there is no loss to the vendee. From the various considerations which have to be taken notice of while dealing with a claim of pre-emption and, as already stated, the right of pre-emption being a right of substitution, the very basis of that right is destroyed by permitting a decree for partial pre-emption though on payment of the entire sale consideration. The view we have taken is amply supported by authorities. For the reasons recorded above, these appeals fail and are dismissed. As there is no representation for the respondent, there will be no order as to costs."

9. A similar view has been taken by two Coordinate Benches of this Court in **Bal Ram Versus Smt. Sarbati 2010 (3) RCR (Civil) 561** and **Jadish Chander and others versus Prem Lata and another, RSA No.3819 of 1987 decided on 16.02.2011.**

10. Instant appeal has to be decided in view of the legal position noticed above. A perusal of the plaint shows that the plaintiff has filed a suit for possession by way of pre-emption of agriculture land measuring 16 marlas in khewat No.89, by averring that Bharat Singh sold his 1/9th share i.e. 7 kanals 6 marlas in this khewat. Suit has been filed for pre-emption of



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16 marlas of land on payment of proportionate money. It has been pleaded that the plaintiff was a co-sharer although he did not specify his share, along with defendant No.3 and Bharat Singh, deceased, who is represented by his legal representatives, defendants No.2 to 9, by averring that Bharat Singh sold 16 marlas of suit land to defendant No.1 by virtue of sale deed dated 03.06.1986 for an ostensible sale consideration of Rs.60,000/-. In its written statement, defendant No.1 has taken a specific objection that the suit land cannot be bifurcated from the other land purchased by virtue of the same sale deed and the suit for partial pre-emption is bad. Issue No.5 has been framed by the Trial Court on the objection taken by defendant No.1, however, without appreciating the legal position, this issue has been decided against defendant No.1 and the findings have been upheld by the First Appellate Court. The findings recorded by both the Courts under issue No.5 being contrary to the settled law, noticed above, are liable to be reversed and set aside. Judgements relied upon by counsel for respondent No.1 would not come to his aid in view of the legal position as has been settled by a Full Bench of this Court.

11. For the foregoing reasons, appeal is allowed. Judgements and decrees passed by the Courts below are set aside and suit filed by respondent No.1/plaintiff is dismissed, though with no order as to costs.

09.04.2025

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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No