IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2066-1992 (O&M)
Judgment reserved on 10.09.2025
Judgment pronounced on 24.09.2025

RAJESH KUMAR AND ANOTHER ... APPELLANTS

VERSUS

JOT RAM AND OTHERS ...RESPONDENTS

RSA-2067-1992 (O&M)

RAJESH KUMAR AND OTHERS ... APPELLANTS

VERSUS

JOT RAM AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. R.S. Longia, Advocate for
Mr. Ajay Vijarania, Advocate
for the appellants.

Mr. Mani Ram Verma, Advocate
for the respondents.

****

PARMOD GOYAL, J. (ORAL)

Two appeals have arisen from two different suits both preferred by plaintiffs seeking possession by way of pre-emption.

2. In suit bearing No. 31 of 1987 (RSA No. 2066 of 1992), the plaintiff, Jot Ram, sought possession of land by way of pre-emption in respect of 21 kanals and 14 marlas, representing a 23/240 share in the total land measuring 226 kanals and 6 marlas, comprised in Khewat No. 23/23, Khatauni Nos. 32 to 39, and Intkal No. 38 dated 26.04.1982. The basis of the suit was the plaintiff's claim of being a co-sharer (sharik) in the joint holding, thereby asserting a superior right of pre-

emption under the applicable law.

3. Plaintiff-respondents contended that Krishan and Dharamvir, sons of Jhabar, together with Brahma, Risalo, Bhateri, and Roshani, daughters of Richpal, had executed a registered sale deed (No. 2509 dated 05.02.1986) in favor of the defendants – Ramotar & others for a total consideration of Rs. 42,000/-. The plaintiff contends that prior to him, his father was a co-sharer in the suit land, and subsequently, the plaintiff himself is a co-sharer in the said land. Therefore, he asserts that he has the paramount right of pre-emption over the sale deed dated 05.02.1986.

4. In the second suit bearing No. 18 of 1987 (RSA No. 2067 of 1992), which was also instituted by plaintiff Jot Ram, the relief sought was in respect of sale deed dated 17.02.1986, executed by Gugan, Daryav Singh and others in favour of defendant Jaipal Singh and others, for a total sale consideration of Rs. 37,000/-. The suit land in question measured 24 kanals and 14 marlas, representing a 13/120 share in the total land measuring 226 kanals and 6 marlas, comprised in Khewat No. 23/23, Khatauni Nos. 32 to 40, situated in village Nourangabad Jatan. The plaintiff claimed the right of pre-emption on the basis of his status as a co-sharer in the joint holding.

5. In suit bearing No. 31 of 1987, defendant Nos. 1 to 5, 7, and 9 contested the claim made by the plaintiff, whereas defendant Nos. 6 and 8 did not choose to contest the suit. The contesting defendants reiterated their status as co-sharers in the property and denied the plaintiff's right to pre-empt the sale. In the alternative, they also sought reimbursement of expenses incurred on stamp duty, registration, and scribe fees, in addition to the sale consideration. In this case as well, Shyam Sunder was appointed as Court Guardian to safeguard the rights of

defendant No. 9.

6. In Civil Suit No. 18 of 1987, defendant Nos. 2 and 5 to 9 contested the claim of the plaintiff. Defendant Nos. 1 and 3 chose not to contest the suit, while the claim against defendant No. 4, being a minor, was not proceeded with *ex parte*. Instead, the Court appointed Sh. Shyam Sunder as guardian ad litem to represent the interests of minor defendant No. 4. The contesting defendants asserted that they themselves were co-sharers in the suit property and, therefore, the plaintiff had no superior right of pre-emption. In the alternative, they claimed expenses incurred towards stamp duty, registration, and scribe fees, in addition to the sale consideration. Minor defendant No. 4, through his court-appointed guardian, also denied the status of the plaintiff as a co-sharer and similarly asserted a claim for reimbursement of expenses incurred on stamp duty, registration, and scribe fees, over and above the sale consideration.

7. Similar issues were framed in both cases, which are noted as follows:

> "*1. Whether the plaintiff has superior right of pre-emption as against the defendants, as alleged? OPP*
> *2. Whether the plaintiff has no locus-standi to file the suit? OPD*
> *3. Whether the defendants are entitled to stamps and registration expenses? If so to what amount? OPD*
> *4. Relief.*"

8. It is pertinent to mention that the defendants have taken a specific plea that the suit property had been partitioned, and that the plaintiff is not a co-sharer, as his father, had purchased a specific khasra number and not a share in the undivided suit property.

9. Reliance was placed on behalf of the defendants-appellants on the judgments in **Inder Singh v. Om Parkash**, 1990(1) PLR 112, and **Lachhman**

Singh v. Pritam Singh, 1970 PLR 341. It was argued that a purchaser of a share in a specific killa number within a particular rectangle is not entitled to claim pre-emption over other shares or rectangles. Specifically, if the purchaser acquires a defined share in a particular rectangle where the original owner had no rights in other rectangles, such purchaser does not become a co-sharer in those other rectangles and hence cannot claim pre-emption rights therein. On the basis of the above-noted facts and judgments, the defendants argued that the plaintiff was not a co-sharer and, therefore, had no right to pre-empt the sale.

10. The material facts, however, are not in dispute. The plaintiff has successfully established his title through sale deed Ex. P-1, along with copies of mutation certificates Ex. P-2 and P-3, and the Jamabandi record Ex. P-4, which confirm that he had acquired a part of the suit property by mutation dated 26.04.1984.

11. Plaintiff – respondent has placed reliance upon the decision in **Bhartu v. Ram Sarup**, 1981 PLJ 204, wherein it was held that a person purchasing joint land, even though he acquires only a part, remains a co-sharer and is entitled to be treated as such.

12. The learned courts below have relied upon the decisions in **Ram Singh v. Partap**, 1988 PLJ 479, and **Bhartu (Supra)**, concluding that the plaintiff was indeed a co-sharer and consequently holds the superior right to seek pre-emption and accordingly had decreed both the suits. Appeals preferred by defendants – appellants were also dismissed.

13. In the present case, the sole argument advanced on behalf of the appellants is that since the father of the plaintiff-respondent Jot Ram, had purchased only a part of a specific killa number, he did not become a co-sharer

along with the defendants-appellants in the other rectangles. However, this issue raised on behalf of the learned counsel for the appellants has been squarely decided by the Full Bench (5 Judges) of this Court in the case titled **Ram Chander v. Bhim Singh and others**, 2008 (3) RCR (Civil) 685. In that case, owing to a difference of opinion between the judgments in **Lachhman Singh (Supra) (**Full Bench (3 Judges)) and **Bhartu (Supra)) (**Full Bench (3 Judges)), the matter was referred to the Full Bench consisting of five judges.

14. The precise question before the Five Judges Bench was whether respondents who had purchased land from a specific rectangle could claim any right as co-sharers. In the **Lachhman Singh** case (Supra), it was held that where a vendee purchases land out of a joint khewat by reference to a specific khasra number and from a specific rectangle, he does not become a co-sharer in other rectangles or in the joint khewat. Paragraph 9 of the judgment delivered by the Five Judges Bench framed the question as follows:

> "*9. The question, therefore, that we are called upon to answer is whether purchase of land out of a joint khewat, by reference to specific killa numbers, out of specific rectangles, entitles a vendee to assert his right as a co-sharer in the entire joint holding/khewat, comprised of other rectangles and khasra numbers. Put briefly, whether sale of land out of a joint holding, by reference to specific khasra numbers, confers the status of a co-sharer upon the vendee in the entire khewat.*

15. The five Judges Bench of this Court has held as under:-

> "*17. In order to lend weight to our conclusions, we draw upon the observations of a Division Bench judgment of this Court, relied upon and referred to in both the Full Bench Judgments, that we are called upon to interpret. While considering the nature of joint property and*

the inter se rights and liabilities of co-sharers, a Division Bench in ***Sant Ram Nagina Ram v. Daya Ram Nagina Ram, AIR 1961 Punjab*** *528 set out in detail the inter-se rights and liabilities of co-sharers in the following terms :-*

> *(1) A co-owner has an interest in the whole property and also in every parcel of it.*
>
> *(2) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.*
>
> *(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.*
>
> *(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.*
>
> *(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.*
>
> *(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.*
>
> *(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.*"

18. *It is, therefore, apparent that a co-owner has an interest in the entire property and also in every parcel of the joint land. When a co-sharer alienates his share or a part thereof in the joint holding what*

he brings forth for sale is what he owns i.e. a joint undivided interest in the joint property. A sale, therefore, of land from a specific khasra/killa number, forming part of a specific rectangle number, but being a part of a joint khewat, would, in view of the nature of the rights conferred upon a co-sharer, be deemed to be the sale of a share from the joint khewat and such a vendee would be deemed to be a co-owner/co-sharer in the entire joint khewat, irrespective of the artificial divisions of the joint land into different rectangles, khasra and killa numbers.

19. Another attribute of joint property is that where a co-owner in possession of a specific portion of the joint holding and recorded as such in the revenue record, transfers any right, title or interest, from the portion in his specific possession, his vendee would be entitled to protect the portion so transferred, without, however, asserting exclusive ownership to the portion so transferred and possessed, till such time as the joint estate is not partitioned.

20. In order to place our above conclusion in perspective, we deem it appropriate to reproduce a paragraph from the judgment in ***Bhartu v. Ram Sarup's*** *case (supra) that succinctly explains our opinion, as under :-*

> *"6. Take another example where 'A' and 'B' jointly own a khewat in equal shares measuring 200 bighas. 'B' is in separate possession of 100 bighas of land comprised of specific khasra numbers and transfers it to 'C'. This is not disputed that in spite of this sale, 'A' continues to be a co-sharer in the land transferred by 'B'. If that is so how can it be disputed that 'C' would necessarily be a co-sharer in the remaining 100 bighas of land in possession of 'A' as otherwise it would mean that 'A' is exclusively owner of 100 bighas of land in his possession and also a co-sharer with 'C' in the remaining 100 bighas which obviously is not possible. The matter can further be illustrated by another example. 'A' and 'B' are co-sharers in the joint khewat, say of 100 bighas of land*

in equal shares. 'B' who is in exclusive possession of land measuring 40 bighas of land comprised of khasra Nos. 1, 2, 3 and 4 transfers two khasra numbers, that is, 1 and 2, measuring 20 bighas to 'C' specifically stating in the deed that he is in possession of these khasra numbers as a co-sharer and is transferring his interest as such. Can it be said on these facts that 'C' has purchased anything except a co-sharer's interest in khasra Nos. 1 and 2 in spite of the fact that the sale is of specific numbers and of the specified area. The answer obviously would be in the negative and if so then the sale is obviously of a share by the co-sharer out of the joint land and nothing else."

21. As a result of the above discussion, we express our complete agreement with the opinion, recorded in the Full Bench in Bhartu v. Ram Sarup's case (supra) and are sanguine in our understanding of the law so as to hold that the Full Bench judgment in Lachhman Singh's case (supra) does not lay down the correct position in law, as while considering the rights of a vendor/co-sharer, flowing from his status as a co-sharer/joint owner, the Full Bench in Lachhman Singh's case (supra) disregarded the nature of joint property and the status of joint owners, and placed undue significance upon artificial divisions of land, made by revenue authorities intended to identify land, namely: rectangle numbers, killa/khasra numbers etc.

22. Revenue entries reflect the rights of the parties as opposed to conferring rights and raise rebuttable presumptions as to their correctness. They reflect an existing state of affairs, namely, an existing title or a state of possession. Entries in revenue records neither confer nor deprive a person of his title, whether joint or separate. Rectangle numbers and Killa numbers are revenue measures, used by revenue authorities to identify and describe fields that constitute the ownership of a land owner. A holding may be divided into different Khewats, Khataunis, rectangles and killas/khasras all bearing different numbers. Where parties are joint *owners or co-sharers, the land would comprise of a Khewat or khewats, different khataunis, rectangles and/or khasra/killa numbers. Thus, where a group of land owners holds land in joint ownership and are reflected as owners in common of the khewat, commonly known as the joint khewat, they would continue to remain owners in possession of the land, though described as being situated in different khataunis, rectangles and khasra/killa numbers. Division of land into different rectangles, khasra or killa numbers does not alter the nature of property held in common or the rights of co-sharers flowing therefrom. The Full Bench in Lachhman Singh's case (supra), disregarded the nature of joint property and by placing undue reliance upon artificial divisions of land meant to identify land, erred while holding that a vendee, who purchases land from a joint khewat by reference to specific rectangles and khasra numbers, does not become a co-sharer in the entire joint khewat.*

23. Consequently, and in view of what has been stated herein above, we hold that the opinion recorded in Bhartu v. Ram Sarup's case (supra) is the correct enunciation of law with respect to rights conferred upon a vendee, who purchases land out of a joint khewat, and the opinion recorded in Lachhman Singh's case (supra) does not lay down the correct position of law and is, therefore, over-ruled. The reference is accordingly answered in the aforementioned terms."

16. The Hon'ble Five Judges Bench concluded that the opinion of the Full Bench in Bhartu's case (Supra) represents the correct enunciation of law regarding the rights conferred upon a vendee who purchases land out of a joint khewat. Furthermore, it was held that the opinion expressed in Lachhman Singh's case (Supra) does not reflect the correct legal position and was accordingly overruled.

17. In the present case, the appellants seek protection under the interpretation given in Lachhman Singh's case (Supra), whereas the plaintiff

claims his rights based on the law as interpreted in the judgment of Bhartu's case. Since Lachhman Singh's case (supra) has been specifically overruled by the Five Judges Bench, and the interpretation given by the Full Bench in Bhartu's case has been affirmed as the correct position of law, both the learned Courts below have rightly held that although the plaintiff purchased a specific portion out of one of the rectangles, he continues to be a co-sharer. Once it is established that the plaintiff is a co-sharer, he possesses the superior right to pre-empt the sale made in favor of an outsider.

18. Learned counsel for the appellants has relied upon the judgment of this Court in ***Inder Singh's case (supra)***. However, since that judgment was rendered based on the principles laid down in Lachhman Singh's case (Supra), it is liable to be ignored in light of the subsequent authoritative decision of the Five Judges Bench, which upheld the interpretation of law as stated in **Bhartu's case (supra)** and specifically overruled ***Lachhman Singh's*** case (supra). The law relied upon by the Single Judge in Inder Singh's case (supra) is thus no longer good law. No other point was argued.

19. Therefore, no fault can be found with the findings of the learned Courts below. The appeals are devoid of merit and are accordingly dismissed, being squarely covered by the authoritative Five Judges Bench decision of this Court.

20. Pending miscellaneous application(s), if any, shall also stand disposed of.

24.09.2025 **(PARMOD GOYAL)**
manoj **JUDGE**

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