



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

RSA-2955-1994 (O&M)

Reserved on :- 19.09.2025

Pronounced on :-25.09.2025

Rattan Singh (Since Deceased) Through His LR

... Appellant

Versus

Mange Ram and Another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Vishal Pundir, Advocate and
Mr. Fateh Saini, Advocate
for the appellant.

Mr. Pritam Saini, Advocate with
Mr. Deepak Singh Saini, Advocate and
Ms. Vamika Johar, Advocate
for the respondents.

VIRINDER AGGARWAL, J.

1. The appellant-Rattan Singh, has challenged the concurring judgments of both the Courts below in the Regular Second Appeal (hereinafter to be referred as “RSA”), primarily on the ground that the appellant-defendant was a co-owner in the Khewat even prior to the purchase of the suit land. It is contended that, therefore, the respondent-plaintiff had no right of preemption in respect of the sale. The appellant further submits that both the Courts below erred in observing that he had failed to place on record evidence to show that Khewat No. 11, which was previously jointly held by the parties, had not been partitioned, and that the



entries in the Jamabandi for the year 1987-88 were incorrectly recorded by showing the land purchased by the appellant-defendant in Khewat No. 14/11.

2. For the sake of clarity, the facts of the present case are that the respondent-plaintiff/Mange Ram, instituted a suit for possession of the suit land invoking his right of preemption, on the allegation that Defendant No. 2, Rachni, had purportedly sold the suit property to the appellant-defendant for an ostensible consideration of ₹44,000/-, whereas the actual consideration was only ₹24,000/-. It is asserted that the plaintiff, by virtue of his superior right of pre-emption, is entitled to acquire the suit land. Defendant No.1 contested the suit, whereas Defendant No. 2 was dispensed with as an unnecessary party by the learned counsel for the plaintiff.

3. The appellant-defendant contested the suit primarily on the ground that he was a co-sharer in the Khewat well prior to the date of the sale in favour of the answering defendants. It was further contended that the subsequent *Jamabandi* for the year 1987-88 did not correctly reflect the record, in contravention of the provisions of the Land Records Manual and the Land Revenue Act, and that the entries therein were consequently illegal and unsustainable in law.

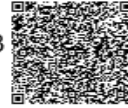
4. Upon a careful examination of the pleadings of the parties, the Court framed the following issues for determination to effectively adjudicate the rival contentions raised by the parties:-

1. Whether the plaintiff is entitled to a decree of possession by way of pre-emption of the land as detailed in para no.1 of the plaint, alongwith all rights appurtenant thereto i.e. rights of rasta, khal and share in the tubewell etc. as detailed in the copy of sale deed, on



payment of Rs. 24000/- against the defendants with costs of the suit on the basis of co- sharer-ship? OPP.

2. Whether the sale took place for Rs. 24,000/- if not, so, then what was the market value of the suit land at the time of its sale? OPP
 3. Whether no notice as required was served upon the plaintiff? If so, to what effect? OPP
 4. Whether the plaintiff has no locus standi to file and maintain the suit? OPD.
 5. Whether the suit is not maintainable? OPD
 6. Whether the suit is time barred? OPD
 7. Whether the plaintiff has not deposited the Zare-panjum in time? If so, to what effect? OPD.
 8. Whether the plaintiff has waived his right of pre-emption OPD,
 9. Whether the plaintiff has no cause of action against the defendant No. 1? OPD.
 10. Whether the defendant No.1 is entitled to improvement charges from the plaintiff, in case of decree? If so, to what amount? OPD.
 11. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD.
 12. Relief.
5. Both parties were afforded ample opportunity to adduce evidence in support of their respective claims and defenses. Upon the conclusion of the evidence and after hearing learned counsel for the parties at length, the learned Sub-Judge, 3rd Class, Kurukshetra, decreed the suit. Aggrieved by the judgment and decree, the appellant preferred an appeal, which was subsequently dismissed, thereby upholding the judgment and decree passed by the learned Sub-Judge, 3rd Class, Kurukshetra.
6. Challenging the aforementioned judgment and decree, the appellant has preferred the present appeal, which was admitted for hearing.



In consequence, notice was duly issued to the respondents, who appeared through learned counsel, and the records of the Courts below were requisitioned for careful and thorough examination by this Court.

7. I have heard learned counsel for the parties at length. Their submissions have been carefully considered in the context of the pleadings, the evidence adduced on record, and the findings recorded by the Courts below. The record has been meticulously examined to evaluate the rival contentions and to ascertain whether any legal infirmity, error, or perversity exists in the impugned judgment and decree that would warrant interference in the present appeal.

8. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of **Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157**, followed by the judgments in the case of **Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317** and **Satender and others V/s Saroj and others, 2022(12) Scale 92**. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

9. Learned counsel for the appellant primarily assailed the findings of both the Courts below on the ground that they failed to notice that, when the appellant-defendant was himself a co-sharer at the time of the purchase of the suit land, the respondent-plaintiff could not be held to have a superior right of pre-emption. It was further contended that both Courts failed to observe that the *Jamabandi* for the year 1987-88 had not been prepared in



accordance with the instructions contained in the Land Records Manual and the Financial Commissioner's Standing Orders. Consequently, the entries in the Jamabandi for the year 1987-88 are not binding, and reliance ought to have been placed on the entries of the Jamabandi for the year 1982-83 (Ex.P-3). As per the applicable rules, entries in a previous Jamabandi may be varied in accordance with the provisions of the Land Records Manual and the Financial Commissioner's Standing Orders, which, according to the appellant, was not done.

9.1. Learned counsel further submitted that the testimony of DW-5, Revenue Patwari, establishes that the land purchased by the appellant-defendant prior to the sale in question had been wrongly bifurcated, and that Khewat No. 11 was erroneously divided into two Khewats, namely 13 and 14. Moreover, it was argued that Smt Rachni had been dispensed with by the plaintiff as an unnecessary party; thus, the suit of the respondent-plaintiff is defective for non-joinder of a necessary party, as Smt. Rachni was, in fact, a necessary party. On these grounds, learned counsel contended that the appeal deserves to be allowed.

10. Learned counsel for the respondent-plaintiff, on the other hand, contended that there is no illegality or infirmity in the findings recorded by the Courts below. It was submitted that even the earlier sale deed executed in favour of the appellant-defendant, which predates the sale deed in question in the present suit and is sought to be preempted (copy marked as Ex.D-3), was executed out of Khatoni No. 14. At the relevant time, Khewat No. 11 had already been divided into two separate Khewats. Therefore, the onus was on the appellant-defendant to prove that he was a co-owner in Khewat No. 11, and consequently, that the respondent-plaintiff did not possess a

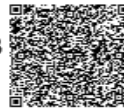


superior right of preemption. Learned counsel accordingly submitted that the appeal deserves to be dismissed.

11. Perusal of the record reveals that, as per the Jamabandi for the year 1982-83 (Ex.D3/A), Khewat No. 11 comprised Khatonis Nos. 14 to 18, with a total area of 125 Kanals 18 Marlas. The sale deed executed in favour of Rattan Singh—appellant, copy of which is Ex.D3, for 3½ Marlas, pertained to Khewat No. 11, Khatoni No. 14. This clearly establishes that the appellant-defendant's claim of being a co-owner in Khewat No. 11 arises from Ex.D3 and relates to Khatoni No. 14, not Khewat No. 14.

11.1. At the time of preparation of the Jamabandi for the year 1987-88, Khewat No. 11 was bifurcated into two separate Khewats, viz., Khewat No. 13/11 Min. (Khatonis 26–30, area 124 Kanals 18 Marlas) and Khewat No. 14/11 (area 1 Kanal, Khasra No. 604), the latter being the property purchased by Mange Ram from Rachni vide sale deed Ex.D3. This bifurcation in the *Jamabandi* for 1987-88 (Ex.P6) was done without any record explaining the partition, and the onus was upon the plaintiff-respondent to establish that this bifurcation was the result of a lawful partition among co-sharers.

11.2. Both Courts below erroneously placed the onus on the appellant-defendant to prove that no partition had taken place after the purchase under Ex.D3. It is settled law that the burden of proof lies on the party asserting an affirmative fact. In the present case, the respondent-plaintiff asserted that the appellant-defendant did not become a co-owner in the joint Khewat, due to bifurcation, and therefore plaintiff had the right to preempt the sale. Accordingly, it was incumbent upon the plaintiff to prove



that the appellant-defendant did not acquire co-ownership in the joint Khewat and that the area purchased by him fell within a separate Khewat.

11.3. The appellant-defendant examined DW-5, Revenue Patwari, who brought the relevant records and deposed that there was no entry in the Rapat Rojnamcha (Ex.P5) regarding partition of Khasra No. 604 or creation of separate Khewats, and that without a proper partition, Khewat No. 11 could not have been bifurcated. In cross-examination, the Patwari admitted he could not explain how the separate Khewats were carved out, as the record had not been summoned.

11.4. While the Jamabandi for the year 1986-87 shows Khasra No. 604 in a different Khewat, reliance solely on this record cannot establish that the appellant-defendant was not a co-sharer. The Jamabandi for 1982-83 (Ex.D3/A) clearly indicates that the appellant-defendant purchased 3½ Marlas from Rachni and Bachni in Khewat No. 11, Khatoni No. 14. There is no material on record to show how this Khewat was bifurcated in the subsequent Jamabandi for 1987-88.

11.5. Therefore, the appellant-defendant was a co-owner in the joint Khewat as per the 1982-83 *Jamabandi*, and the bifurcation reflected in the 1987-88 *Jamabandi* was erroneous. Consequently, when the appellant-defendant was a co-owner, the sale in his favour extinguished any pre-emption rights of the other co-owners, including the plaintiff-respondent.

12. Furthermore, the respondent-plaintiff had dispensed with Rachni, the vendor, as an unnecessary party. In the absence of the vendor, a complete and effective adjudication of the dispute could not take place, as has been consistently held by the coordinate Benches of this Court. Vendors are indispensable parties, as held by a Co-ordinate Bench of this Court in

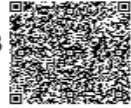


Ram Singh and Others v. Hari Singh and Another, RSA-1273-1993, decided on **20.12.2024, Neutral Citation No.2024:PHHC:171700.** In similar circumstances, where the vendor was relinquished by the plaintiff in a suit for pre-emption, it was held that the plaintiff's omission to include the necessary party rendered the suit not maintainable. Paras 16 to 19 of the judgment are reproduced as under:-

“16. Apart from above, the suit was filed on 23.08.1990, wherein vendor-Smt. Misri was impleaded as defendant No.6. However, by way of the statement made on 11.12.1990, plaintiff gave up said defendant No.6 as unnecessary party. It is required to be seen as to what is the effect of non- joining of the vendor-defendant in a suit for pre-emption.

17. The said issue has been considered by the Hon'ble Supreme Court in Jhabbar Singh's case (supra) and it has been held as under:-

13. As held by this Court in [U.P. Awas Evam Vikas Parishad v. Gyan Devi](#) AIR 1995 SC 724, 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 1 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 1. Rule 10. C.P.C."

18. It is clear from the above-said legal position on explained by Hon'ble Supreme Court that when a right to pre-empt the sale is claimed by the plaintiff, the presence of the owner as a party defendant is desirable alongwith other defendants to effectively and finally decide the dispute between the parties. Although, as per order I [Rule 9 CPC](#), no suit is to be defeated by reason of mis-joinder or non-joinder of the parties, but it is required for 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.
19. In the present case, it was specifically pleaded by the plaintiff-pre-emptor that prior to sale, the vendor-defendant N: 6 had not given him any prior notice. Still, the vendor-defendant - Smt. Misri had been given up by the plaintiff. As such, the suit becomes bad for non-joinder of the necessary party, as in the absence of the vendor, the suit cannot be effectively and finally decided."



13. In the light of the aforesaid discussion, the suit instituted by the respondent-plaintiff is also vitiated for non-joinder of a necessary party. It is well-settled that, notwithstanding the absence of a specific issue being framed on this point, a legal objection regarding the non-joinder of a necessary party can be raised at any stage of the proceedings, including at the stage of a second appeal.. Consequently, the suit is also liable to be held bad for non-joinder of necessary parties. In view of the foregoing, the judgments and decrees passed by the Courts below cannot be sustained, being vitiated both by the impermissibility of partial pre-emption and suit being based on account non-joinder of necessary parties. Accordingly, the appeal is allowed, and the impugned judgment and decree are hereby set aside.

14. In view of the adjudication of the main matter, all pending miscellaneous applications, if any, connected with or arising out of the present proceedings are also hereby disposed of in accordance with the observations and directions contained in this judgment.

(**VIRINDER AGGARWAL**)
JUDGE

25.09.2025
Gaurav Sorot

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