



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

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RSA-30-1994 (O&M)

Date of decision : 21.07.2025

Ram Murti and others**..... Appellants****versus****Ram Parshad****..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Rajiv Sharma, Advocate with
Ms. Indu Bala Sharma, Advocate
for the appellants.

Mr. Sunil kumar Nehra, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Defendants are in appeal aggrieved of judgement and decree passed by Court dated 24th of August 1993, whereby appeal preferred by the plaintiff has been accepted, decreeing his suit for possession by way of pre-emption by reversing judgement and decree passed by Trial Court dated 15th of June 1990.

2. The plaintiff filed suit for possession by way of pre-emption, claiming his superior right to pre-empt sale deed in favour of the defendants, 1/5 share measuring 1 kanal 10 marla of land as described in the plaint. Plaintiff claimed to be in possession of the suit land being tenant over the same under the vendor who sold land in favour of defendants. As per plaintiff, he was recorded as Tenant 'gair marusi' over land in question on payment of rent equal to 1/3 batai. He was in possession of the suit land at the time of filing of the suit and has constructed one Kotha and boundary wall over the same. He thus



asserted that being tenant over the suit land which is subject matter of sale in favour of defendant, he is entitled to the sale deed in view of provisions contained under Punjab pre-emption Act, 1913.

3. Suit was contested by the defendants, the vendees. Locus of the plaintiff to file suit was questioned. As per the pleaded case of the defendant, the plaintiff actively participated at the time of sale in favour of defendants and thus had no right to claim pre-emption. Defendant denied that plaintiff ever cultivated the land in suit as tenant.

4. Suit filed by the plaintiff was put to trial by the Court of First Instance, framing following issues:-

- “1. Whether the plaintiff has superior right of pre-emption in respect of the sale of the suit land? OPP.
2. Whether the sale price of Rs. 40,000/- has been fixed in good faith and actually paid. If so its effect? OPD.
3. Whether issue No.2 is not proved then what was the market value of the suit land at the time of its sale?OPD.
4. Whether the provisions of the Punjab Pre-emption Act are ultravires the constitution? If so its effect ?OPD
5. Whether the plaintiff has no locus-stand to file the present suit? OPD
6. Whether 1/5th pre-emption has not been deposited in time? OPD
7. Whether the plaintiff is estopped from filing the suit?OPD
8. Whether the suit is time barred? OPD
9. Whether the plaintiff has not been signed and verified in accordance with law? OPD
10. Relief.”

5. Returning finding on issue No.1, Court of the First Instance found that it having been proved on record that a colony was coming up suit land, the cultivation of land in suit at the hands of plaintiff is not proved. The Court of the First Instance found that plaintiff himself having admitted that he paid last rent in the year 1982 and thereafter



never paid, he cannot be held to be a tenant continuing in possession over the suit land. It was found that Plaintiff is an income tax payee whereas his income tax returns do not show any income from the agriculture. The Court of First Instance thus answered issue No.1 against the plaintiff and dismissed the suit.

6. In the appeal filed by unsuccessful plaintiff, the findings have been reversed. The Lower Court found that in the revenue record starting from Jamabandi for the year 1975-76 plaintiff has been recorded as tenant on the payment of 1/3 Batai. The Lower Appellate Court further found that even in the jamabandi for the year 1985-86, Ex.D5, plaintiff has been recorded as Tenant gair marusi. The other circumstances that weighed with the Lower Court to reverse the findings recorded by the Court of the First Instance was admission by defendant No.1 regarding a fight in the year 1984. The Lower Court found that the said circumstance corroborated the version of the plaintiff that Kotha over the suit land was constructed by him. The entry in Khasra Girdawri regarding existence of house over the land in question was also held to be a cogent piece of evidence that supports the case of the plaintiff.

7. Lower Appellate Court accordingly decreed the suit filed by plaintiff, reversing the judgement and decree passed by the Court of the First Instance.

8. Counsel for the appellant has assailed the findings recorded by the Lower Appellate Court. He submits that the Lower Court erred in relying upon entries made in Khasra Girdawari, which is not a record of right and there is no presumption of truth attached thereto. Mr. Sharma



further relies upon ratio of law lay down by this Court in ***RSA No. 941 of 1991*** titled as “***Chawli Devi and others vs. Inderpal and others***” ***decided on 4.11.2024***. He submits that the vendor was neither made party to the suit nor was examined to prove absence of notice under section 19 of the 1913 Act. He asserts that there is a specific pleading raised in the written statement regarding active participation of the plaintiff in the sale deed and notice to him, which has gone unrebutted. The suit ought to have been dismissed for non-compliance of Section 20 of 1913 Act.

9. *Per contra*, Counsel for the respondent-plaintiff relies upon ratio of law laid down by Supreme Court in the case of Jhabbar Singh vs. Jagtar Singh reported as **2023 AIR (Supreme Court) 2074** to contend that vendor was not a necessary party, hence, the suit cannot be dismissed for non-impleadment of vendor.

10. I have heard counsel for the parties and have carefully gone through the records of the case.

11. The right of pre-emption is a weak right and has to be construed strictly. The Supreme Court in ‘**Atam Parkash vs. State of Haryana (1986) 2 SCC 249**’ deprecated the right of pre-emption based on consanguinity as ‘feudal’, ‘piratical’, ‘tribal’, ‘weak’, ‘easily defeated’ and declared the same to be ultra vires of the Constitution of India.

12. The pre-emptor cannot succeed in a suit, asserting right of pre-emption merely by proving that he is co-sharer. Chapter 4 of the 1913 Act provides for procedure. Sections 19, 20 & 21 read as under:-

“19. **Notice to pre-emptors.**-When any person proposes to sell



any agricultural land or village immoveable property or urban immoveable property or to foreclose the right to redeem any village immoveable property or urban immoveable property, in respect of which any persons have right of pre-emption, he may give notice to all such persons of 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 situate.

20. Notice by pre-emptor to vendor.- *The right of preemption 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 preemption. 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.”*

13. 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 responded 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.

14. Hon'ble the Supreme Court in case of '**Jhabbar Singh**'(supra) answering somewhat similar situation held as under:-

"12. At the outset, it may be noted that the plaintiff Jagtar Singh, the predecessor of the present respondent, had filed the suits claiming himself to be the co-sharer in the joint khewat along with the vendor Jit Singh, and had sought relief against the defendant Jhabbar Singh and others with regard to the possession of the suit lands, on the ground that he as a co-sharer had a superior right to pre-empt the sales, and that he was not put to any notice of sale of the suit lands on or before the date of such sales. In a very loosely drafted plaint, the plaintiff had neither pleaded as to how he was the co-sharer, nor had he impleaded the said Jit Singh, the owner of the suit lands, with whom he claimed to be the co-sharer, and who had sold the suit lands to the defendants Jhabbar Singh and Others. It is needless to say that in a suit for pre-emption, the vendor i.e., the owner of the suit land who had allegedly not given any notice of sale to the plaintiff as required to be given under [Section 19](#) of the Pre-emption Act and against whom the right to pre-empt the sale is claimed would be a proper party if not a necessary party, for a complete and final adjudication on the issues involved in the suit.

13. As held by this Court in [U.P. AwasEvamVikasParishad vs. Gyan Devi](#)², 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, al-



leging 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 I, 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 I, Rule 10, C.P.C.

14. Further, having regard to the absolutely sketchy and loosely drafted plaint in the instant case, the Court is tempted to regurgitate the basic and cardinal rule of pleadings contained in Order VI, Rule 2(1) of the Code, according to which every pleading (i.e., plaint or written statement) has to contain a statement in concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be. Of course, the pleading need not contain the evidence by which such material facts are to be proved, nonetheless the facts necessary to formulate a complete cause of action i.e., the material facts must be stated. Omission of a single material fact would lead to an incomplete cause of action and [in that case](#), the statement of claim would become bad in the eye of law.

15. Now, so far as the right of pre-emption is concerned, it may be noted that it is a very weak right and could be defeated by all legitimate methods. This Court as back as in 1958, in case of [Bishan Singh and Others vs. Khazan Singh & Another](#) (supra), had set-forth the contours of the right of pre-emption. It was opined therein by the four-Judge Bench that-

“11....The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase. i.e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or



the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place.”

16. The afore-stated position was reiterated by this Court in [Barasat Eye Hospital vs. Kaustabh Mondal](#)³, and again in the recent decision in case of *Raghunath (Dead) by LRs. vs. Radha Mohan (Dead) Through LRs. And Others*⁴, wherein it has been observed as under: -

“14. We have given our thoughtful consideration to the aforesaid issue and in order to determine the same, we had, at the inception itself, set out the judgment in [Barasat Eye Hospital](#) case [[Barasat Eye Hospital v. Kaustabh Mondal](#), (2019) 19 SCC 767 : (2020) 4 SCC (Civ) 810] . We have, thus, referred to the earlier judicial view in para 10 of the judgment extracted aforesaid. The historical perspective of the right of pre-emption shows that it owes its origination to the advent of the Mohammedan rule, based on customs, which came to be accepted in various courts largely located in the north of India. The pre-emptor has been held by the judicial pronouncements to have two rights. Firstly, the inherent or primary right, which is the right to the offer of a thing about to be sold and the secondary or remedial right to follow the thing sold. It is a secondary right, which is simply a right of substitution in place of the original vendee. The pre-emptor is bound to show that he not only has a right as good as that of the vendee, but it is superior to that of the vendee; and that too at the time when the pre-emptor exercises his right. In our view, it is relevant to note this observation and we once again emphasise that the right is a “very weak right” and is, thus, capable of being defeated by all legitimate methods including the claim of superior or equal right.”

17. At this juncture, it would be also apt to mention that apart from the fact that the right of pre-emption is very weak right and capable of being defeated by all legitimate methods, the pre-emptor must establish that he had the right to pre-empt on the date of sale, on the date of the filing of the suit and on the date of the passing of the decree by the Court of the first instance. The pre-emptor or the claimant-plaintiff who claims the right to pre-empt the sale on the date of sale, has also to prove that such right continued to subsist till



the passing of the decree of the first court. If the claimant-plaintiff loses that right or the vendee improves his right equal or above the right of the claimant before the adjudication of the suit, the suit for pre-emption would fail.

18. This proposition of law has been well settled by this Court since 1971, in case of [Bhagwan Das \(Dead\) by LRS and Others vs. Chet Ram](#) 1971 (1) SCC 12. In the said case, this Court had approved the full bench decision of Punjab High Court in *Ramji Lal and Another vs. The State of Punjab and Others*, AIR 1966 P&H 374, which had ruled that a pre-emptor must maintain his qualification to pre-empt upto the date of the decree.”

15. Trite it is that vendor in the suit for pre-emption is a proper party and not a necessary party. Thus, suit cannot be dismissed solely on the ground that vendor was not made party or was subsequently given up. The issue is not non-joinder of necessary party. However, issue is absence of finding on statutory notice.

16. Mere status of co-sharer is not enough to mature into a right of pre-emption. As per settled law, in order to succeed in a suit enforcing right of pre-emption, it is imperative to show that:-

1. The pre-emptor had the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree.
2. The pre-emptor who claims the right to pre-empt the sale on the date of the sale must prove that such right continued to subsist till the passing of the decree of the first court. If the claimant loses that right or a vendee improves his right equal or above the right of the claimant before the adjudication of suit, the suit for pre-emption must fail.
3. That no notice of the proposed sale of the land as provided under Section 19 was served upon pre-emptor showing the price at which vendor was willing to sell the property.
4. In case notice under Section 19 of 1913 Act was



served upon him, the pre-emptor within a period as prescribed under Section 20 of 1913 Act served notice on the vendor accepting the price expressing his willingness to pay the same.”

17. In the present case, plaintiff in para 5 of the plaint pleaded as under:-

“5. That the sale under pre-emption was effected in a clandestine manner. No notice of the same was served upon the plaintiff which was mandatory.”

18. Defendants in their written statement raised a preliminary objection which reads as under:-

“4. That the plaintiff is estopped by his act and conduct from filing the present suit. The plaintiff personally took active part and initiation in the negotiations of sale. He was a consenting party. The land in suit was first offered to him and or his refusal to purchase the same, it was purchased by the defendant.”

19. Para 5 of the plaint was responded to as under:-

“5. That para No.5 of the plaint is absolutely wrong and hence denied and stoutly controverted. The plaintiff was a consenting party and as such no notice was required to be served upon him. Moreover, he has no claim, concern, title of interest whatsoever in the suit land, therefore, no such notice was required to be served upon him. Moreover, the sale in question was carried out very openly and to the knowledge of the world at large and the plaintiff in particular, as already stated above.”

20. The plaintiff filed replication and gave an evasive response to preliminary objection No.4 as under:-

“4. That para 4 of the preliminary objections is wrong, hence denied.”

21. In response to para 5 of the written statement, it was pleaded as under:-



“5. That para No.5 of reply on merits is wrong, hence denied.”

22. Thus, there is a specific pleading raised by defendants in their written statement regarding the land first having been offered to the plaintiff. The said plea raised by the defendants in their written statement remained un rebutted.

23. No effort was made by the plaintiffs to examine vendor to satisfy the statutory mandate. Thus, the pleadings regarding non receipt of notice of sale raised in plaint remained uncorroborated and plea of defendants of there being notice to plaint un rebutted.

24. The service of notice or non-service thereof in terms of Sections 19 and 20 of the Act is a statutory requirement, the same needs to be pleaded and proved.

25. Reliance can be placed upon the following observations made by Justice Dua in **‘Basti versus Jai Chand’, ILR (1962) 2 Punjab 290’:-**

“It certainly does not by any means relieve the plaintiff of the initial burden of bringing himself within the essential terms of the statute on which he relies for his title or preferential claim to the property sold. The obligation to make out his title or a preferential right to purchase the property would have to be discharged by him even if the negative is to be proved for establishing the right claimed. It would, therefore, in my opinion, be incumbent on the plaintiff-pre-emptor also to prove the basic fact which is the foundation of his right, that the sale is of such land as is dealt with in Section 17 and in respect of which he had been given a right to oust the vendee and to claim title to the property in his place. This basic fact is not self evident and, therefore, has to be established by the person who would otherwise fail ”.

26. The same was further relied upon by this Court in the case of **‘Behari Lal and others versus Motla and others’, 1963 PLJ 129,**



observing as under:-

“7. As regards the second contention, it is, conceded by Mr. Gandhi that it was not pleaded by his clients in the plaint that the sale was out of the surplus area or, in other words, the sale was not from the reserved area. It is no doubt true that this is a negative contention, but all the same it is a statutory requirement and it has to be pleaded and proved. Mr. Justice Dua in *Basti v. Jai Chand*, ILR (1962) 2 Punjab 290: 1962 P.L.J. 70 at p. 75), examined this matter sitting with Mr. Justice Tek Chand and observed, -

" It certainly does not by any means relieve the plaintiff of the initial burden of bringing himself within the essential terms of the statute on which he relies for his title or preferential claim to the property sold. The obligation to make out his title or a preferential right to purchase the property would have to be discharged by him even if the negative is to be proved for establishing the right claimed. It would, therefore, in my opinion, be incumbent on the plaintiff-pre-emptor also to prove the basic fact which is the foundation of his right, that the sale is of such land as is dealt with in Section 17 and in respect of which he had been given a right to oust the vendee and to claim title to the property in his place. This basic fact is not self evident and, therefore, has to be established by the person who would otherwise fail."

These observations fully apply to the facts of the present case. There is no allegation, must less any proof of the basic fact. That being so, the second contention is also sound and must prevail."

27. In the light of the afore-stated circumstances, this Court finds that without giving finding with respect to compliance of Section 19 & Section 20 of the 1913 Act, Lower Appellate Court erred in decreeing the suit filed by the plaintiffs.

28. In view of the aforesaid findings, this Court does not find it proper to dwell further into the finding recorded by the Courts below regarding tenancy of the plaintiff.



29. In view of the above, appeal preferred by defendants is allowed. Suit filed by the plaintiffs is ordered to be dismissed.

30. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

21.07.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No