

2025.PHHC:150524



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 947 of 1995(O&M)

Reserved on: 29.10.2025

Pronounced on: 03.11.2025

Mansa Ram & Ors.

...Appellants

Versus

Jasmer Singh & Anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Rajinder Goyal, Advocate with
Mr. Anupam Sharma, Advocate
Mr. Purusharth Dhull, Advocate
For the appellants.

Mr. Pritam S. Saini, Advocate with
Ms. Parul Saini, Advocate; and
Ms. Kiran Bala Jain, Advocate
For the respondents.

DEEPAK GUPTA, J.

This Regular Second Appeal has been filed by the defendants–
appellants against the concurrent findings of the Courts below, inasmuch as, the
suit for possession by way of pre-emption filed by plaintiffs Jasmer Singh and
Krishan Lal (*respondents herein*) was decreed by the learned trial Court on
15.09.1994, which was affirmed in appeal by the learned Additional District Judge,
Ambala, vide judgment and decree dated 01.03.1995.

2. For convenience, the parties shall be referred to as per their status
before the learned trial Court.

3. ***Pleadings:*** As per the pleadings, two brothers, namely Hazura Singh
and Sarwan Singh, were owners in equal shares of land measuring 32 kanals com-
prised in one Khewat situated at village Barauli, Hadbast No. 287, Tehsil and Dis-
trict Ambala. Hazura Singh sold his half share, i.e., 16 kanals, in favour of the

plaintiffs by virtue of a registered sale deed dated 22.06.1988, thereby making the plaintiffs co-sharers in the joint Khewat. Subsequently, the other brother Sarwan Singh sold his half share, i.e., 16 kanals, to the defendants through a sale deed dated 31.05.1989 (Ex.D1) for an ostensible sale consideration of ₹62,000/-.

4. The plaintiffs instituted the present suit to pre-empt the aforesaid sale dated 31.05.1989 being co-sharers and alleged that the actual sale consideration was only ₹57,000/-.

5. The defendants contested the claim, raising preliminary objections regarding maintainability of the suit. It was pleaded that the land owned by Hazura Singh and Sarwan Singh had already been privately partitioned and that each brother was in separate and exclusive possession of his respective portion. Consequently, the plaintiffs could not claim to be co-sharers in the land sold. It was further pleaded that the sale consideration of ₹62,000/- was genuine and commensurate with the market value; that the defendants had been put in possession by their vendor at the time of sale; that the plaintiffs had in fact participated in and negotiated the transaction; and therefore, they were estopped from claiming the right of pre-emption. The defendants also claimed to have spent ₹5,000/- on improvements and raised an objection of non-joinder of the vendor, Sarwan Singh, as a necessary party. Dismissal of the suit was accordingly prayed for.

6. In rejoinder, the plaintiffs denied the alleged partition and reiterated their right of pre-emption as co-sharers.

7. ***Findings of courts below:*** Upon framing of issues and appraisal of the evidence led by both sides, the learned trial Court held that the alleged private partition was not proved, and that the land continued to be joint in the revenue records. Consequently, it was held that the plaintiffs, being co-sharers in the Khewat, had a superior right to pre-empt the sale dated 31.05.1989. The suit was accordingly decreed. The learned First Appellate Court, on reappraisal of the record, affirmed the findings of the trial Court and dismissed the appeal filed by the defendants.

8.1 ***Submissions on Behalf of the Appellants:*** Assailing the concurrent findings, learned counsel for the appellants contended that both Courts had failed

to appreciate the evidence showing that there had been a private partition between Hazura Singh & Sarwan Singh and that each was in separate possession of his demarcated portion, and hence the plaintiffs ceased to be co-sharers in the specific portion sold to the appellants.

8.2 It is further urged that the right of pre-emption is a weak right and can be defeated by any lawful means available to the vendee. Learned counsel also pointed out that the vendor, Sarwan Singh, had not been impleaded as a party to the suit, and therefore the plaintiffs failed to establish that the vendor had given any notice of sale to them as required under Sections 19 and 20 of the Punjab Pre-emption Act, 1913. It is urged that the evidence on record, particularly the oral depositions, established that it was in fact the plaintiffs, who had negotiated the impugned sale and had taken an active part in its execution. Hence, they were estopped from exercising the right of pre-emption.

9.1 ***Submissions on Behalf of the Respondents*** : *Per contra*, learned counsel for the respondents—plaintiffs supported the judgments of the Courts below and contended that there was no legal or revenue partition between Hazura Singh and Sarwan Singh. Mere separate cultivation of different khasra numbers for convenience did not amount to partition in the eye of law, unless such division was sanctioned or reported to the revenue authorities. It is pointed out that the sale deed (Ex.D1) itself described the subject-matter as one-half share in the joint Khewat, thereby confirming that the property continued to be joint. Attention is also drawn to the testimony of one of the defendants, who admitted to having applied before the revenue authorities for partition of the land after the sale, an admission, which clearly established that no prior partition had taken place.

9.2 Learned counsel also argued that non-joinder of the vendor, Sarwan Singh, was immaterial in a suit for pre-emption, as the contest lay primarily between the vendee and the pre-emptor. It was further denied that the plaintiffs had negotiated the sale or had any prior knowledge of the transaction. It is argued that concrete proof is required that pre-emptor had been made the offer before the sale in favour of the vendee. Reliance is placed on ***Rikhi Ram Vs. Virsa Ram 1977 PLJ 273***. It is also the contention of Ld. Counsel that mere oral statements or evidence of circumstances indicating that pre-emptor had knowledge of

the sale are insufficient to establish waiver or estoppel and that there should be clear evidence to deprive a person of his legal right of pre-emption. Reference is made to ***Kidar Nath vs Bagh Singh AIR 1937 Lahore 504.***

9.3 With these submissions, it is urged that the concurrent findings, being based on proper appreciation of evidence, call for no interference.

10. This court has considered submissions of learned counsel for the parties and have carefully perused the record of the Courts below.

11. ***Analysis by this court: (a) Plea of Private Partition*** - Jamabandi (Ex.P-1) for 1987-88 and khasra girdawaris show the land continuing as joint between the two brothers Hazura & Sarwan. Sale Deed Ex.D-1 itself describes the transfer as “½ share in the joint Khewat.” DW-1 Mansha (a defendant) admitted filing an application for partition after purchase, affirming the joint character. Though PW-2 Sita Ram admitted separate cultivation, but there is no sanctioned partition or revenue reflection of any private partition. Mere separate cultivation does not, by itself, effect partition. Until the private partition is reported and mutated, the Khewat remains joint. Thus, there is no error in findings of courts below that the plaintiffs were co-sharers on the date of sale.

12. ***(b) Issues Involved:*** This appeal centers around the following points:

(i) Whether, despite the land remaining joint, the plaintiffs’ right of pre-emption survives in the facts proved on record (estoppel/waiver and notice under Section 19 of the Punjab Pre-emption Act, 1913)?

(ii) Whether non-joinder of the vendor Sarwan Singh vitiates the decree in the circumstances of this case?

(iii) Scope of interference with concurrent findings in light of the above.

13. ***(c) Nature of Pre-emption right:*** Pre-emption is a weak right. It may be defeated by all legitimate means like waiver, estoppel, or improvement of the vendee’s status, as observed in ***Bishan Singh v. Khazan Singh, AIR 1958 SC 838;*** followed in ***Barasat Eye Hospital v. Kaustabh Mondal, (2019) 19 SCC 767;*** ***Raghunath v. Radha Mohan, (2021) 12 SCC 501;*** and ***Jhabbar Singh v. Jagtar Singh, AIR 2023 SC 2074.***

14. (d) Effect of non-joinder of vendor; (e) Effect of Vendor's participation in the deal; and (f) Plea of Waiver/Estopple - 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 (including participation/waiver), presence of the vendor is, at the very least, desirable, and may become necessary to effectively and finally adjudicate the controversy, as 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. This court followed these authorities in *Ram Singh Vs. Hari Singh* (RSA N: 1273 of 1993 decided on 20.12.2024).

15. The defendants – appellants specifically pleaded that the plaintiffs negotiated and finalized the bargain with the vendor Sarwan Singh, and therefore were estopped from pre-empting. Crucially, the defendants examined their vendor Sarwan Singh as DW-3, who deposed that the deal was first struck with Jasmer (plaintiff), and when he expressed inability to purchase, he himself got the bargain finalized in favour of the defendants. There is no cross-examination of DW-3 on this material assertion. A material statement that goes unchallenged in cross-examination is ordinarily deemed accepted and the Court may draw an inference that the opposing party does not dispute it in view of Section 114, illustration (g) of the Evidence Act. The statement, therefore, stands unrebutted and is entitled to full weight.

16. Once the plaintiff is shown to have actively facilitated/substituted the purchasers, he waives the preferential claim and the vendee's title cannot thereafter, be displaced by a later assertion of superiority. This squarely attracts the principles in *Bishan Singh* (weak right, which is defeasible by legitimate means) and is consistent with the line of cases treating participation in the sale as estoppel against pre-emption.

17. Learned counsel for the respondents has relied upon *Rikhi Ram v. Virsa Ram*, 1977 PLJ 273 and *Kidar Nath v. Bagh Singh*, AIR 1937 Lahore 504, to contend that a plea of waiver or estoppel must rest on clear, cogent and affirmative proof, and that mere knowledge of a contemplated or completed sale is not enough to deprive a co-sharer of his statutory right of pre-emption. It is further

urged that no evidence exists to show that the plaintiffs were ever offered the property before its sale to the defendants, and therefore, in absence of such proof, their right cannot be forfeited.

18. This Court is fully conscious of the principle laid down in the said decisions that the right of pre-emption, though weak, cannot be defeated by vague or inferential evidence of waiver. However, the factual matrix of the present case is materially different. Here, the defendants not only pleaded that the plaintiffs themselves negotiated and finalized the transaction but have proved the same through the direct testimony of DW-3 Sarwan Singh, the vendor of the defendants. DW-3 categorically deposed that the initial bargain for sale was struck with Jasmer Singh (plaintiff No. 1), who, being unable to pay, himself persuaded the vendor to sell the land to the defendants and facilitated the execution of the sale deed.

19. Significantly, this part of DW-3's testimony remained wholly unchallenged in cross-examination, as has been noted above. The plaintiffs did not confront the witness, suggest falsity, or adduce any rebuttal evidence. Applying the rule of evidence embodied in Section 114 Illustration (g) of the Evidence Act, the Court must presume that had the statement been false, the plaintiffs would have cross-examined or contradicted it. The omission therefore amounts to an acceptance of the witness's version.

20. The unrebutted testimony of the vendor, who is the author of the impugned sale, constitutes direct and positive proof that the plaintiffs not only had full knowledge but actively participated in bringing about the sale. The requirement of "clear evidence" emphasized in **Rikhi Ram** and **Kidar Nath** thus stands satisfied in the present case. It is not a matter of inference from circumstances. It is an express admission by the vendor himself, corroborated by surrounding conduct of the parties.

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.

23. Accordingly, this Court finds that the plaintiffs, by their own conduct as established on record, waived and lost their preferential right. The plea that absence of formal notice or offer preserves their claim is untenable, once it stands proved that they were the moving force behind the transaction itself.

24. Further, ordinarily, pre-emption contests are effectively tried between pre-emptor and vendee. However, this suit is built on the dual planks of (i) want of notice, and (ii) denial of plaintiff's participation. Both planks are vendor-centric facts. In ***Jhabbar Singh (supra)***, Hon'ble Supreme Court emphasized that where compliance with Section 19 and vendor-related facts are in issue, the presence of the owner/vendor is desirable to ensure complete and final adjudication.

25. In this case, despite a specific plea by the defendants and the vendor's testimony directly supporting the defence and going unrebutted, the plaintiffs neither impleaded the vendor nor sought to summon him as their witness. In these circumstances, the vendor's absence is not a mere irregularity; it impairs effective adjudication of the plaintiffs' foundational plea on notice/waiver. The suit, therefore, suffers from non-joinder in a manner fatal to the decree.

26. As far as contention of Ld. Counsel for respondents regarding concurrent Findings is concerned, though the Courts below focused correctly on jointness, but failed to give due legal effect to (i) the unrebutted testimony of DW-3 establishing plaintiffs' participation, resulting in estoppel/waiver, and (ii)

the procedural consequence of not impleading the vendor, where Section 19 compliance and vendor-centric facts are central. These are material legal errors warranting interference by this court.

27. **Conclusion:** Consequent to above discussion, it is concluded that though the land remained joint but the plaintiffs actively negotiated and finalized the sale in favour of the defendants, attracting estoppel/waiver and rendering Section 19 notice otiose; and so, in these vendor-centric circumstances, non-joinder of the vendor vitiates the decree.

28. **Final Order:** Accordingly, impugned judgment and decrees passed by the Courts below, granting the right to pre-empt the sale in favour of the plaintiffs, cannot be sustained, and are hereby set aside. The appeal is allowed. The suit for possession by way of pre-emption filed by plaintiffs – respondents is hereby dismissed. Parties are left to bear their own costs.

03.11.2025
Jiten

(DEEPAK GUPTA)
JUDGE

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