

2025:PHHC:032831



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

**RSA-3429-2012(O&M)
Decided on:-07.03.2025**

Yashpal Kaur (since deceased) thr. her LRs.
and others

....Appellants..

VS.

Smt.Kamlesh Chauhan and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Gurcharan Dass, Advocate,
for the appellants.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Saket Bhandari, Advocate,
for respondents No.1 and 2.

None for respondent No.3.

HARKESH MANUJA J. (Oral)

1. By way of present appeal challenge has been laid to the judgments and decrees dated 26.07.2006 and 29.03.2012 passed by the Courts below, whereby, the suit for pre-emption filed at the instance of plaintiff-Mela Singh Virk while claiming himself to be tenant over the suit property-house (since deceased represented thr. his LRs.), stands dismissed.

2. Briefly stating, having pleaded that the suit property-house bearing No.632/633, Ward No.3 with New Number 312/9, Municipal No.26/9 measuring 96.67 sq. yards situated at Dairy Mohalla, Rohtak, was sold by defendant No.3/respondent No.3 in favour of defendants No.1 and

2/respondents No.1 and 2 vide registered sale deed dated 04.05.1998. It was

further pleaded that the predecessor-in-interest of the appellants-plaintiffs happened to be a tenant over the house in question for the last 40 years against payment of rent @ of Rs.16/- per month and thus, a right of pre-emption being in existence as per the Custom prevalent in the locality i.e. Dairy Mohalla, Rohtak, amongst tenants; he was entitled for grant of decree for pre-emption in respect thereof against payment of sale consideration of Rs.56,000/-which was though offered to the respondents but not accepted. Hence, the present suit.

3. Upon notice, respondents-defendants chose not to contest and were thus, proceeded against ex-parte.

4. The Trial Court vide judgment and decree dated 26.07.2006 dismissed the suit while recording that the existence about custom of pre-emption in favour of tenants over properties situated in Dairy Mohalla, Rohtak was not established on record and thus, no decree for pre-emption could be granted.

5. Aggrieved thereof, the appellants filed first appeal, which came to be allowed vide judgment and decree dated 13.05.2008, thereby granting decree for pre-emption in their favour on deposit of sale consideration.

6. Defendants No.1 and 2 being aggrieved of the decision dated 13.05.2008 approached this Court having filed RSA-2738-2009, which came to be decided on 13.09.2011 and the matter was remanded back to the first Appellate Court for its fresh adjudication with the following observations:-

“Hence, in view of the aforementioned facts, there is force in the argument of learned counsel for appellants-defendants that the impugned judgment and decree passed by passed by learned first appellate Court cannot be sustained in the eyes of law. From these facts following substantial question of law arises

for consideration in this regular second appeal:-

Whether learned first appellate Court has committed illegality in allowing the application for additional evidence filed by respondents-plaintiffs without giving any notice to present appellants-defendants and in reversing the judgment and decree passed by learned trial Court and in decreeing the suit filed by respondents-plaintiffs without hearing appellants-defendants?

In view of above discussion, the said question of law is decided in favour of present appellants-defendants and against respondents-plaintiffs.

In consequence thereof, the present regular second appeal is accepted. The impugned judgment and decree passed by learned first appellate Court is set aside.

Learned first appellate Court is directed to decide the application filed under Order 41 Rule 27 CPC and the appeal filed by respondents-plaintiffs afresh after hearing both the parties.

Parties are directed to appear before learned first appellate Court on 14.10.2011 for further proceedings in accordance with the law.

In view of the fact that present litigation is pending since the year 1999, learned first appellate Court is directed to decide the same expeditiously and efforts be made to decide the same within six months from the next date of hearing.”

7. On fresh consideration, the first appellate Court though permitted the appellants to produce in additional evidence the judgment and decree dated 27.06.1939 as Ex. PA and Ex.PB, respectively, however, dismissed the appeal vide judgment and decree dated 29.03.2012.

8. By way of present appeal, the aforementioned judgments and decrees dated 26.07.2006 and 29.03.2012, passed by the Courts below have been assailed at the instance of legal heirs of plaintiff-Mela Singh Virk.

Learned counsel for the appellants while relying upon Haryana Government Gazette notification dated 07.05.1995 relating to the Punjab Pre-emption (Haryana Amendment) Act, 1995, whereby, Section 15 of the Punjab Pre-emption Act, 1913 (for short, "1913 Act") was substituted to the following effect i.e. "15. Right of pre-emption to vest in tenant:- The right of pre-emption in respect of sale of agricultural land and village immovable property shall vest in the tenant who holds under tenancy of the vendor or vendors the land or property sold or a part thereof.", submits that the property in question being situated in Dairy Mohalla, Rohtak was a village immovable property and thus, the predecessor-in-interest of the appellants being tenants thereof were entitled for right of pre-emption, once, it was sold by the owner-landlord-respondent No.3 vide sale deed dated 04.05.1998. No other argument has been addressed by the appellants.

9. On the other hand, learned Senior counsel representing respondents No.1 and 2 submits that Ex.PA & PB i.e. judgment and decree dated 27.06.1939, nowhere refers to the material fact that the subject property formed part of Dairy Mohalla, Rohtak. He also points out that the perusal of judgment and decree dated 27.06.1939 (Ex.PA & PB) no where reflects that any specific issue about right of pre-emption based on custom in Dairy Mohalla, Rohtak was either set-up or adjudicated by the Court concerned. In support, he also relies upon the judgment rendered by this Court in ***"Rameshwar Dayal vs. Krishan Kumar Sanghi (deceased) through LRs and others, reported as 2024(2) RCR (Rent) 354***, to submit that even from a decision rendered by any Court, particular custom could not be established as it was to be proved on record through independent evidence led by the parties. It was thus, prayed that the appeal be dismissed.

10. I have heard learned counsel for the parties and gone through the record. I am unable to find substance in the submissions made on behalf of the appellants.

11. A perusal of notification dated 07.05.1995 issued by the Government of Haryana, shows that Section 15 of the 1913 Act was substituted so as to include right of pre-emption as regards a tenant in respect of sale of agricultural land and village immovable property, which was under tenancy of the vendor-landlord. In the present case from the entire evidence available on record, it has not been established that the suit property situated in Dairy Mohalla, Rohtak either formed part of any village immovable property or was agricultural land, thus, the said notification nowhere helped the cause of the appellants. Moreover, even as per the case set-up in the plaint, the suit property bears a municipal number and thus, admittedly forms part of Municipality. Even, the Revenue Department, Government of Haryana vide its notification dated 08.10.1985, declared that no right of pre-emption shall exist in respect of sales of land falling in the areas of any Municipality in Haryana. This aspect was even dealt with by this Court in a latest decision rendered in **Rameshwar Dayal's** case (supra). The relevant paragraphs No. 7 to 9 of the said judgment are extracted hereunder:-

“7. This RSA deserves to be dismissed for the simple reason that even prior to dismissal of the suit on 21.11.1986, seeking to pre-empt the sale, the Revenue Department of Government of Haryana, by way of a Gazette Notification dated 08.10.1985 had already declared - 'that no right of pre-emption shall exist in respect of sales of land falling in the areas of any Municipality in Haryana.'

8. It is the settled preposition of law that a person seeking

to pre-empt the sale, must have the right to pre-empt not only on the date of sale, but also on the date of filing of the suit and also on the date of passing of the decree by the Court of first instance. Reliance in this regard can be placed upon "Didar Singh v. Ishar Singh", (2001)8 SCC 52, which was later on also relied by the Hon'ble Supreme Court in "Pirithi v. Mohan Singh", 2011(9) SCC 107.

9. *In the present case, the transaction in question took place on 24.12.1979 by virtue of a gift deed, which the Courts below have found to be a sale by way of concurrent finding. It is not in dispute that property in question, i.e. Haveli, the portion of which has been purchased by contesting defendant-Krishan Kumar Sanghi, exists in the Municipal Town of Narnaul. Although, both the Courts below have held that existence of custom of pre-emption is not proved in the Town of Narnaul, but even if without holding so, such a custom is assumed to exist for the sake of arguments, and that at the time of sale on 24.12.1979 or at the time of filing of the suit on 16.01.1981, plaintiff had the right to pre-empt the sale, he definitely had lost that right, when the suit was decided by the Court of first instance on 21.11.1986, because prior thereto, the Notification dated 08.10.1985 had already been issued by the Revenue Department of Government of Haryana declaring that no right of pre-emption shall exist in respect of sales of land falling in the areas of any Municipality of Haryana."*

11.1 Thus, in such circumstances, when admittedly, the property in question was situated within the Municipal Limits of Rohtak and the alienation in question by respondent No.3 in favour of respondents No.1 and 2 was made by registered sale deed dated 04.05.1998 i.e. much after the issuance of notification dated 08.10.1985, no right of pre-emption qua the property in question on the day of execution of sale deed dated i.e.

04.05.1998 was available to the plaintiffs/appellants being tenant.

12. Furthermore, no evidence at all has been referred to or pointed out by learned counsel appearing on behalf of the appellants to establish that any custom about right of pre-emption as regards a tenant over the property situated in Dairy Mohalla, Rohtak was in existence/available or prevalent. Even the judgment and decree dated 27.06.1939 proved on record as Ex.PA & P-B by the appellants during the first appeal would not come to their help as from the said documents it could never be established that the custom qua right of pre-emption in favour of tenant was either available as on the date of alienation made in the present case by registered sale deed dated 04.05.1998 or even the same was in existence as on the date of filing of suit i.e. 16.01.1999 as also on the date of final determination thereof on 26.07.2006, the said facts were essentially required to be proved on record.

13. In such circumstances, finding no illegality or perversity in the concurrent findings recorded by the Courts below which are based upon proper appreciation of pleadings and the evidence available on record and there being no misreading thereof been pointed out specifically, the impugned judgments and decrees call for no interference. Resultantly, the present appeal being devoid of merits is dismissed.

14. Pending application, if any, also stands disposed of.

07.03.2025

sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No