**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****225-2****Date of decision: 16.02.2026****1.RSA-798-2020 (O&M)****Teja Ram and others****...Appellant(s)****Vs.****Smt. Saroj Lamba and others****...Respondent(s)****2. RSA-6033-2018 (O&M)****Ram Sarup and another****...Appellant(s)****Vs.****Saroj Lamba and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Kartar Singh Malik-1, Advocate
for the appellants in RSA-798-2020.

Mr. Vikas Singh, Sr. Advocate with
Ms. Anamika Sheoran, Advocate
for the appellants in RSA-6033-2018.

Mr. Ashwani Kumar Chopra, Sr. Advocate with
Mr. Brahmjot Singh Nahar, and
Mr. Hardeep Kason, Advocate for
respondent No.1.

NIDHI GUPTA, J.**CM-9090-C-2022**

Prayer in the present application under Section 151 C.P.C. is to
place on record the copy of judgment and decree dated 08.08.2013 passed



by Ld. District Judge, Panchkula in **Civil Appeal No. CA/16000001/2011** titled as '**Atma Ram Vs. Jyuna and Another**' (Annexure A-4).

2. Heard.

3. In view of the averments made in the application, the same is allowed and the copy of judgment and decree dated 08.08.2013 is taken on record, subject to all just exceptions.

CM-2969-C-2025

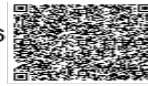
Prayer in the present application under Section 151 C.P.C is to place on record the copy of judgment and decree dated 30.08.2024 (Annexure A-4), passed by Ld. Additional District Judge, Panchkula in Civil Appeal No. 291 dated 27.11.2017.

2. Heard.

3. In view of the averments made in the application, the same is allowed and the copy of judgment and decree dated 30.08.2024 is taken on record, subject to all just exceptions.

RSA-798-2020 (O&M)

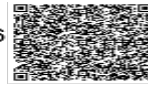
Plaintiffs are in Second Appeal against the concurrent judgments and decrees of the learned District Courts; whereby the suit filed by the appellants for decree of possession by way of pre-emption of the suit land as described in the plaint; **and** for permanent injunction, has been dismissed by the learned Additional Civil Judge (Senior Division), Panchkula vide judgment and decree dated 28.11.2016; and the Civil Appeal there against has been dismissed by the learned Additional District Judge, Panchkula vide judgment and decree dated 30.09.2019.

**RSA-6033-2018 (O & M)**

Plaintiffs (performa respondents-defendants no.3 and 4 in the above said connected RSA 798 of 2020) are in Second Appeal against the concurrent judgments and decrees of the learned District Courts; whereby the suit filed by the appellants for decree of possession by way of pre-emption of the suit land as described in the plaint; **and** for permanent injunction, has been dismissed by the learned Civil Judge (Junior Division), Panchkula vide judgment and decree dated 21.01.2015; and the Civil Appeal there against has been dismissed by the learned Additional District Judge, Panchkula vide judgment and decree dated 26.9.2017.

2. Both the above said Second Appeals are being disposed of by this common order as both appeals, although arising out of separate suits, are in respect of the same suit land, between same parties, and the facts and issues involved in both appeals are identical. For the sake of facility, facts are being drawn from, and parties are being referred to as per their status in RSA 798 of 2020.

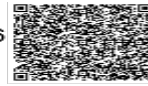
3. It was the pleaded case of the appellants in the plaint that Mir Mohd. Raza Ali Khan/defendant No.2 was co-sharer of the suit land. Plaintiffs and their brothers/performa defendants No.3 and 4 (appellants in connected RSA 6033 of 2018), were tenants over the suit land since long. Defendant No.2 was residing in Aligarh, U.P. and was only co-sharer in the suit land but not in possession of any part of the suit land. Vide 4 separate Sale Deeds, defendant No.2 had sold the suit land to defendant No.1. However, plaintiffs and performa defendants No.3 and 4 being in



possession over the suit land as tenants, had pre-emptory rights. Entries in the column of possession of Jamabandi were also in favour of the plaintiff and performa defendants. Being tenants over the portion of the suit land, plaintiffs and performa defendants are entitled to pre-empt the Sale Deeds. Even no notice of Sale Deed dated 19.10.2011 was given to the plaintiffs. Plaintiffs requested defendants to admit the right of the plaintiffs but they failed to do so. Thus, present suit was filed on 17.10.2012.

4. Upon appraisal of the pleadings and the evidence led by the parties, the learned District Courts had dismissed the suits and Civil Appeal of the plaintiffs vide respective judgments. Hence, the present second appeals by the plaintiffs.

5. It is *inter alia* submitted by learned counsel for the appellants that the learned District Courts have erred in law in holding that the appellants had failed to prove the relationship of landlord and tenant. It is submitted that in this regard, learned District Courts have misread and failed to consider the Jamabandis for the years 1987-1988, 1992-1993, 2007-2008 in which the appellants alongwith their brothers have been shown to be in possession in the column of cultivation; with Batai/Tehai in the column of rent qua khasra No. 23//21/1/2 and 47//1/2. It is pointed out that in the Jamabandi for the year 1987-1988 and 1992-1993 it is clearly mentioned that the appellants are in possession as cultivators on payment of rent. Thus, the Id. District Courts have not appreciated the documentary evidence.

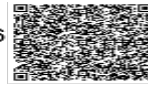


6. Learned counsel for the appellants further submits that the learned courts below have erred in holding that after the Jamabandi for the year 1987-1988 and 1992-93, correction has been made in the record vide Ex.P15. It is contended that the learned courts below have misinterpreted the Report Ex.P-15. It is submitted that as per law once a tenant, always a tenant. The plaintiffs or their predecessor-in-interest never surrendered their tenancy rights in favour of anybody else. No ejectment order has been passed against the appellant till date. The revenue authorities were not competent to change the entries of tenant in the subsequent revenue record. The appellants are not bound by the changed entry. It is reiterated that in the jamabandi for the year 1977-1978, appellants are clearly shown to be tenants on payment of rent. It is argued that the learned courts below have erred in not taking into consideration the well settled law, that if there is conflict in former and later Jamabandi, then previous Jamabandi is to prevail. As per law if earlier revenue entries have been changed in the later revenue entries, then it is for the defendants to prove as to how the change in the entry came to be made. Thus, when it is clear from the Jamabandi for 1977-1978 that plaintiffs are tenants on payment of rent, any subsequent entry to the contrary is irrelevant.

7. It is further submitted that the learned courts below have also erred in observing that if there is no entry of rent in the column of rent then the appellants cannot be considered as tenant over the land. In the Jamabandi 1987-1988 and 1992-1993, the appellants and their



brothers/ appellants in connected RSA 6033 of 2018, have been shown as tenant on payment of batai/Tehai over the part of the suit land. Moreover payment of rent is not necessary to prove the tenancy. Only there must be an agreement of landlord and tenant and the entries in the Jamabandi is an agreement of tenancy. It is contended that therefore, the appellants have succeeded in proving themselves a tenants over land situated in khasra No. 23//21/1/2 and 47//1/2, which is part of the suit land. However, the said facts have not been appreciated by learned District Courts. It is reiterated that there is presumption of continuity of tenancy. Once it is proved that person was tenant over the land he shall be presumed to continue as such till he abandoned the tenancy. In the present case, revenue record produced by the appellant proves the tenancy over the land in question. It is submitted that therefore, once the tenancy of the suit land is proved, the learned courts below erred in not appreciating that when a tenanted part of land is involved in the sale, the tenant has a right of preemption qua the entire sold land and vendee cannot resist the same. The appellants successfully proved by producing the Jamabandi for the year 1987-1988, 1992-1993 and other revenue record that they are tenant over khasra number 23//21/1/2 and 47//1/2 which is part of land involved in the present suit. It is contended that the findings of the District Courts to the contrary are based on misreading of the evidence, and beyond the revenue entries mentioned in the Jamabandi and khasra girdwari of the land in question.



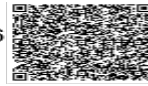
8. It is accordingly prayed that the present Appeal be allowed; and impugned judgments and decrees of the Id. District Courts be set aside.

9. *Per contra*, learned Senior Counsel for respondent No.1/defendant No.1 opposes submissions made on behalf of the appellants and submits that defendant No.1. is the purchaser of the suit property from Mir Mohd. Raza Ali Khan/defendant no.2.

10. Ld. Senior counsel refers to the concurrent findings of the learned District Court to submit that Teja Ram/plaintiff No. 1, while appearing as PW1 has himself admitted before the learned District Courts that he was not paying any rent to the owner Mir Mohd. Raza Ali Khan/defendant no.2. As such, plaintiffs cannot be taken to be tenants over the suit property.

11. It is further submitted that the reliance of the appellants over Jamabandi for the year 1977-1978 is misplaced as, it is admitted fact on record that thereafter consolidation proceedings had taken place whereafter khasra numbers have been changed. It is submitted that no evidence whatsoever has been led by the plaintiffs to prove that the khasra nos. prior to the consolidation match with the khasra nos. of the suit land.

12. It is submitted that the present Civil Suit has been filed on the basis of Jamabandi for the year 2007-2008, which reflects possession of the plaintiffs over some part of the suit land as gair marusi. Learned Senior Counsel for respondent No.1 submits that even if appellant says that he is

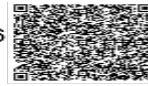


gair marusi, even then entry in column of rent i.e. Column No.9 has to be seen; and in the present case admittedly, column No. 9 is blank. Ld. Senior counsel further clarifies that in any event, thereafter, paimaish tod was done, and correction was made in the revenue record; and as per Report Ex.P15, column of rent is left blank. It is pointed out that admittedly the said report has not been challenged by the appellants.

13. It is further submitted that contention of the appellants that no notice was served upon them prior to execution of Sale Deed, is also untenable as the appellants were not tenants of the suit property; and therefore, no notice was required to be served upon them. Furthermore, as per law laid down by this Court in **RSA-941-1991** titled as **Smt. Chawli Devi (since deceased) through her LRs vs. Inder Paul and others**, plaintiffs were required to examine owner of the suit land to prove their contention; whereas, in the present case, plaintiffs failed to examine defendant no.2. It is pointed out that the said judgment has been upheld by the Hon'ble Supreme Court. Thus, as defendant No.2 owner of the suit land has not been examined by the appellants, therefore, appellants were unable to prove that they had no notice of sale.

14. Ld. Senior counsel appearing for the appellants-plaintiffs in connected RSA 6033 of 2018 submits in addition to the above, that in terms of Section 4(5) of the Punjab Tenancy Act, 'tenant' is defined as follows:-

“(5) “tenant” means a person who holds land under another person, and is, or but for a special contract would be, liable to



pay rent for that land to that other person; but it does not include-

(a) an inferior landowner; or

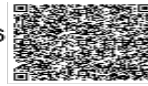
(b) a mortgagee of the rights of a landowner, or

(c) a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land-revenue Act, 18871, for the recovery of an arrears of land-revenue or of a sum recoverable as such an arrears ; or

(d) a person who takes from the 2[Government] a lease of unoccupied land for the purpose of subletting it;”

15. It is submitted that as per the above provision, a person may be a tenant but need not pay rent if there exists a special contract between the tenant and the owner. Learned Senior counsel contends that in the present case, as the appellants/ tenants had reclaimed the land through existing special contract between the appellants and the defendant No.2/owner, therefore, the appellants continued to be tenants on the suit property irrespective of whether they paid rent or not.

16. Ld. Senior Counsel for the appellants in RSA-6033-2018 further submits that Ld. First Appellate Court has wrongly and illegally dismissed the application filed by the appellants under Order 41 Rule 27 CPC seeking permission to adduce additional evidence i.e. certified copies of the relevant record in respect of the land in question i.e. Khatauni Paimaish, Jamabandi Istemal, Khatauni of Chakkbandi of land, Sizra Nasab and Mauja Ganauli Hadbast No. 200 Tehsil Naraingarh, District Ambala as well as Aksh Shazra Kistwar of Mauja Ganauli Hadbast No. 200, Tehsil Naraingarh, District Ambala, from which it is evident that the appellants



are tenants in the suit property and had got superior right to pre-empt the suit land.

17. Learned Senior Counsel for respondent No.1 vehemently opposes submissions made on behalf of learned counsel for the appellants and submits that first and foremost, appellants have failed to challenge order dated 26.09.2017 whereby application of the appellants under Order 41 Rule 27 was dismissed by the learned First Appellate Court. It is further submitted that there is no pleading of the appellants at any stage with regard to any special contract existing between the appellants and defendant No.2. Even no evidence in this regard has been led by the appellants. Even defendant No. 2 has not been examined by the appellants to prove that there existed a special contract between the appellant and defendant No.2.

18. Accordingly, prayer for dismissal of present Appeals is made.

19. The above submissions of learned Senior Counsel for respondent No.1 is repelled by learned Senior Counsel for the appellants by submitting that under Order 43 Rule 1(A) read with Section 151 CPC, interim order can be challenged alongwith main Civil Appeal.

20. No other argument is raised by learned counsel for the parties. I have heard Id. counsel and perused the case files in detail. I find merit in the submissions advanced on behalf of learned Senior Counsel for respondent No.1.

21. For ease of appreciation, the brief factual matrix in chronological order may be noticed as follows:



19.10.2011: Defendant/Respondent No.1, Saroj Lamba, bought land measuring 19 Acres 07 Kanals 08 Marlas from Meer Mohd Raza Ali Khan/ defendant no.2 vide 04 Registered Sale Deeds.

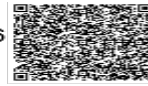
28.12.2011: Mutations of above Sale Deeds were sanctioned in the name of Respondent No.1.

17.10.2012: Plaintiffs/Appellants instituted suit for possession by pre-emption of 73 Kanals 04 Marias and for permanent injunction, claiming themselves to be tenants on the land. [in connected RSA-6033-2018, Ram Sarup & Ors instituted a suit for 47 K 09 M].

07.02.2013: Defendant No.1 filed written statement while denying that Plaintiffs/Appellants were ever tenants and contested the suit.

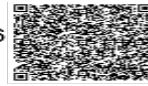
22. Vide the impugned concurrent judgments, plaintiffs were nonsuited after considering the entire facts, evidence, and legal position holding that the Plaintiffs had failed to prove themselves as tenants over the suit land and that no permanent Injunction can be granted against the true owner Defendant-Respondent No.1 and dismissed the suit with costs.

23. It is the first contention of learned counsel for the appellants that the appellants had proven themselves to be the tenants over the part of the suit property by way of Jamabandi for the year 2007-2008 Ex.P1. No doubt, in the said Jamabandi, appellants are reflected as gair marusi over some portion of suit land. However, admittedly there is no entry regarding 'rent' in the said Jamabandi for the year 2007-2008 Ex.P1 relied upon by the appellants. Admittedly, the column of rent i.e. column no.9, is left blank. In column 9, nothing has been mentioned regarding making



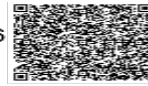
payment of rent or nature of rent. It is trite law that tenancy is a contract between the landlord and tenant; and necessarily therefore, there are bound to be certain terms and conditions regarding rate of rent or its nature. In the Jamabandis, neither rate of rent nor its nature has been mentioned. Thus, it is not proved that the present appellants are tenants on the suit property as there is no evidence on the file regarding payment of rent; as it is settled law that possession itself is not enough to prove the tenancy. In this situation reference may be made to judgment passed by this Court in **‘Maman Singh vs. The Resident Magistrate, Gohana and others’ (Punjab) Law Finder Doc Id # 61339**. The relevant para of the said judgment is as under:-

“5. The other contention of Mr. Sarin, which he has advanced with a certain amount of vehemence, is that there was no material before respondent No. 1 on the basis of which he could give a finding that the petitioner was the tenant of the Gram Panchayat. The jamabandi, upon which reliance was placed by respondent No. 1, it is urged, merely showing that the petitioner was in possession of the aforesaid land of the Gram Panchayat, but it did not show that the petitioner was a tenant. There is considerable force in this contention and the copy of the jamabandi of 1960-61, on which respondent No. 1 has placed reliance in arriving at the finding that the petitioner is a tenant of the Gram Panchayat, does not in my opinion support that finding. It is well-settled that in deciding whether a person is a tenant, we have not to look to the entries in the column of cultivation in the jamabandi because that column only gives the name of the person in occupation, irrespective of the capacity in which he is occupying the land.



*On the contrary we have to look to the column of rent because it is the entries in that column which go to show as to whether the person is occupying the land as a tenant, and, if so, on how much rent, or whether he is occupying the land in any other capacity. See **Ghulam Murtaza v. Nagina, AIR 1930 Lahore 991**, *Puran v. Kure*, 57 P.L.R. 57 and **Sher v. Phuman Ram, 1942 P.L.R. 497**. So far as the entries in the present case in the column of rent of the jamabandi of 1960-61 relating to the land comprised in khasra No. 2962 are concerned, they show that the petitioner is in occupation of the land in question without payment of rent because of his previous possession. The entries in the jamabandi thus militate against the conclusion that the petitioner is a tenant of the Gram Panchayat. According to Section 4(5) of the Punjab Tenancy Act, tenant means a person who holds land under another person and is or but for a special contract would be liable to pay rent for that land to that other person. Certain other categories of persons are also excluded from the definition of tenant, but we are not concerned with them. As stated above, the petitioner is occupying the land without payment of rent and there is nothing to show that the non-payment of rent was because of any special contract. On the contrary the entry shows that the petitioner was paying no rent because of his old possession of the land which was previously part of shamlat deh as is clear from annexure 'G'."*

24. Thus, in terms of the above judgment, in the column of rent payment of rent by the appellants ought to have been shown to prove their tenancy. Entry in jamabandi only shows possession of the plaintiffs over the suit land. Moreover, even gair marusi possession does not

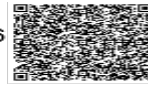


establish appellants' status as tenant. 'Gair Marusi' only means that proper capacity of occupant is not known to the revenue official. Thus, it is only from the entries made in the column of rent that it is established that occupant is in possession as a tenant. This vital factor is missing in the present case.

25. No doubt in the Jamabandi for the year 1987-1988 Ex.P13, and Jamabandi for 1992-1993 Ex.P14, qua khasra No. 23//21/1/2 (1-16) and 47//1/2 (5-16) plaintiffs have been shown in the column of possession as kashtkar/cultivator; and in the column of rent, it is shown that appellants are paying batai/tehai. However, it is undisputed fact on record that thereafter, paimaish tod was done vide Report Ex.P15 and correction was made in the said revenue record Ex.P13 and Ex.P14, wherein in respect of the said khasra nos. correct entry was made as "*lagan nadarad bavaja No Tod*", meaning thereby that there is no rent revenue and the possession of the plaintiffs is without break. Admittedly, Report Ex.P15 has not been challenged by the appellants at any stage.

26. Even otherwise, appellants can derive no benefit from a stray incorrect entry in previous Jamabandis as, firstly the said entries were corrected vide Ex.P15. Moreover, no benefit can accrue to the appellants from a stray entry in their favor; as held by a Division Bench of this Court in **Tansukh v. Financial Commissioner and Principal Secretary (P&H)(DB) : Law Finder Doc Id # 465390**, as under:-

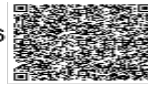
"10. The primary submission, by counsel for the appellants, is that as the jamabandi does not record the names of the



private respondents' predecessor, the Financial Commissioner should not have held that it is mere stray entry that has to be ignored. It is true that a presumption of truth attaches to an entry in the jamabandi but where an entry appears without any reason or contradicts earlier and subsequent entries, a revenue authority and a court may validly ignore such an entry as an error or a stray entry."

27. Furthermore, plaintiff No.1 Teja Ram while appearing as PW1 has himself admitted that he was occupying the suit land continuously, however was not paying any rent to Raza Ali Khan/defendant No.2. Plaintiff No.1 has made statement Ex.D3 in another civil suit titled 'Madhu Kaur vs. Teja'. Ex.D4 is the statement of plaintiff No.1/Teja Ram recorded in another case titled as 'Madhuprit Kaur vs. Teja', wherein also appellant has admitted that he is cultivating part of the suit land as "*lagan nadarad bavaja No Tod*" i.e. continuously occupying the land without giving batai to owner. Father of the plaintiffs Amar Singh had also made a statement Ex. D6 to the effect that land was being occupied without paying rent to defendant No.2. In view of these admitted facts also, that appellant is not tenant over the suit land, pre-emption right under Section 15 of the Act was not available to him.

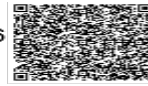
28. Reliance of the plaintiffs over Jamabandi for the year 1987-88 is misplaced as admittedly, consolidation proceedings were carried out thereafter; and there is nothing on record to connect the Khasra nos. mentioned in the said Jamabandi with the suit land. Not even a smidgen of evidence has been led by the plaintiffs in this regard. Reliance of the



plaintiffs over khasra girdawar entries is also of no help as, there is no presumption of truth to the said entries, and said revenue entries only reflect possession. This Court, in **Natha Singh v. Bikkar Singh, (P&H) : Law Finder Doc Id # 52967**; has held that: *“Punjab Land Revenue Act, Section 44 - Khasra Girdawari entries - No presumption of truth attaches - Proof of possession - Held that entries can be looked into as a piece of evidence in proof of possession of land - khasra Girdawari entries are record of acts of a public servant performed in discharge of his official duties under Section 35 Evidence Act.”*

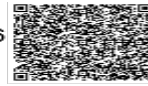
The relevant para of the said judgment is as under:-

“3. The sole point urged by the learned appellants' counsel is that the Courts below have come to a wrong conclusion that Nachhattar Singh appellant is not proved to be in possession as a tenant. It is submitted that the Khasra Girdawaris of this land contain the entries which indicate that Nachhattar Singh appellant is occupying the land as a tenant. It is, therefore, contended that relying upon the Khasra Girdawari entries Nachhattar Singh may be held to be a tenant of the land in dispute and resultantly the plaintiffs' suit for possession may be dismissed. I am unable to accept this contention on two grounds. Firstly, it is a pure finding of fact concurrently arrived at by the trial Court and the first appellate Court and as such it is not possible to upset the same in second appeal. Secondly, there is no infirmity in the finding given by the Courts below that no presumption of truth is attached to the entries in the Khasra Girdawaris and, therefore, in the absence of a positive evidence regarding creation of tenancy in favour of Nachhattar Singh it is not possible to hold simply



*on the basis of the Khasra Girdawari entries that Nachhattar Singh is occupying the land in the capacity of a tenant. It is well-settled that entries in the Khasra Girdawari can be looked into a piece of evidence in proof of possession of land. Since presumption of truth is not attached to such entries they cannot be considered evidence of title. The learned appellants' counsel placed reliance on a judgment of this Court in **Khiali Ram etc. v. Sant Lal, 1972 Cur L.J 402**, which, I find, is of no help to his case. The proposition propounded in this judgment is that Khasra Girdawari entries are the record of the acts of a public servant performed in the discharge of his official duties and are, therefore, relevant under section 35 of the Indian Evidence Act. It is nowhere held in this judgment that the entries in the Khasra Girdawari are sufficient to prove the existence of landlord and tenant relationship between the parties in the absence of other cogent material which ought to be produced to prove this relationship.”*

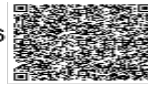
29. The second contention of the appellants is that they received no notice of sale prior to execution of Sale Deed in favour of defendant No.1 by defendant no.2. However, plaintiff No.1/Teja Ram as PW1 has admitted in his cross-examination that he was aware of the sale of suit property by defendant No.2 in favour of defendant No.1 (at pages 132-133 of the LCR). Still further, the said contention of the appellants is also liable to be rejected in view of the fact that admittedly owner of the suit land/defendant No.2 was given up as unnecessary party by the appellants before the learned District Courts. In para 4 of the judgment dated 28.11.2016, learned Additional Civil Judge (Junior Division), Panchkula has



recorded that defendant No.2 has been given up by the plaintiffs as unnecessary party vide statement dated 10.01.2014. Thus, defendant No.2 has not been examined by the appellants to prove that they received no notice of sale. Thus, suit of the plaintiffs is bad for nonjoinder of necessary party as in the absence of vendor, suit of the plaintiffs cannot be effectively decided. In case of **Smt. Chawli Devi** supra, relied upon by Id. Senior counsel for the respondent no.1, it is held that: -

“23. In view of above, the vender Kalanwati may not be a necessary, but only a proper party to the lis. This Court however finds that non-examination of Kalanwati has a bearing on the suit. Plaintiffs were required to prove that they had no notice of the sale as provided under Section 19. Apart from bald pleadings raised in para 4 of the plaint, that no notice with respect to sale deed was served upon them, plaintiffs have not led any evidence to come out of the mischief of Sections 19 and 20 of the Act of 1913. Though Kalanwati was not required to be impleaded as a necessary party in view of the settled law, still plaintiffs ought to have examined her to prove that statutory notice was not served upon them. Lower Court below has totally ignored the aforesaid fact and has held plaintiffs entitled to preempt the sale deed without returning any finding on the statutory notice. In view thereof, this Court finds that without discharging onus to prove that there was no notice upon the plaintiffs under Section 19 of the Act of 1913, the suit of the plaintiffs cannot succeed.”

30. The above said position in law has been reiterated by this Court in **RSA-1273-1993** titled as **Ram Singh and others vs. Hari Singh and**



another, Neutral Citation No. 2024: PHHC:171700; the relevant para of which reads 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.

XXXXXXXXXXXXXXXXXXXXX

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.”

31. Lastly, needless to say, no injunction cannot be granted against the true owner. It is also not disputed by learned counsel for the appellants that defendant No.1 has filed a civil suit for mandatory injunction to take possession of suit land from the appellants, which is now pending for orders on 28.02.2026.

32. The relevant findings of the learned Additional Civil Judge (Senior Division), Panchkula as contained in para 15 of the judgment dated 28.11.2016 are as under:-

“15. In order to prove the fact that plaintiffs are tenants over the suit property, in addition to the oral testimonies of PW1 (Teja Ram) and PW2 (Rampal), they have produced



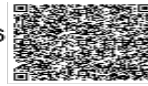
*jamabandi for the year 2007-08 (Ex.P1). Said jamabandi reflects that plaintiffs have been reflected as gair marusi over some portion of the suit property mentioned in the plaint. Plaintiffs have also produced khasra girdwari for the year 2009-11 (Ex.P2) to prove their possession. It has been contended by learned counsel for the plaintiffs that though in the jamabandi (Ex.P1), there is no entry of rent, but same was there in the jamabandi for the year 1987-88 (Ex.P13) and jamabandi for the year 1992-93 (Ex.P14). Though, in the above said two documents Ex. P12 and Ex.P13, plaintiffs along with their brothers have been shown in possession in the column of kashtkar with batai tehai in the column of rent qua Khasra No.23//21/1/2 (1-16) and 47//1/2 (5-16) (5-16), but but thereafter vide Ex.P15, correction has been made in the record and for the above said two khasra numbers, the entry (lagan nadarad bavaja No Tod) has been made. Above said entry reflects that the status of plaintiffs and their brother being tenants of the suit property was changed as the person, who makes the improvement over the land and cultivates the same as per the consent/will of owner. When any person is entered as gair marusi and there is no entry of rent in the column of rent, then he cannot be considered as tenant over the land. Hon'ble Punjab & Haryana High Court in the authority titled as **Karan Singh & others Vs. Rajpal & Others 2012 (3) CCC 734 (P&H)** held that entry in revenue record depicting possession of occupant as gair-marusi does not imply that possession is as tenant. Expression gair marusi is recorded in revenue record when proper capacity of occupant is not known to revenue official. Whether occupant is tenant or not can be ascertained from entry in column of rent.”*



33. Ld. Senior counsel for the appellants in RSA-6033-2018 has additionally argued that appellants were not liable to pay rent in view of the 'special contract' existing between the appellants and owner/defendant no.2. In this regard, I find merit in the submissions of learned Senior Counsel for respondent No.1 that there is no remote pleading by the appellants to the effect that there existed any special contract between the appellants and defendant No.2. Further, not even a smidgen of evidence has been led by the appellants in this regard to prove their said assertion. Rather, in RSA-6033-2018, Defendant No.2 was proceeded against *exparte vide* order dated 12.04.2013; and in RSA-798-2020, defendant No.2 has been given up by the appellants *vide* statement dated 10.01.2014. Thus, defendant No.2 has not been examined by the appellants to prove that there existed any special contract between the appellants and defendant No.2. As such, protection afforded to the tenants as per Section 4(5) of the Punjab Tenancy Act, is not available to the appellants.

34. Further challenge by the appellants to the dismissal of their application under Order 41 Rule 27 read with Section 151 CPC, also does not stand scrutiny in view of the findings recorded by the First Appellate Court in para 5 of order dated 26.09.2017, which reads as follows:-

"5. By way of the present application, the applicants/appellants want to lead documents i.e. Khatauni Paimaish, Jamabandi Istemal, Khatauni of Chakkbandi of land and Sizra Nasab pertaining to the land in question and Mauja Ganauli Hadbast as well as Aksh Shazra Kistwar of Mauja



Ganauli. However, perusal of the file shows that issues were framed on 31.5.2014 and after availing eleven effective opportunities, the applicants/appellants closed their evidence. Moreover, the applicants have every reach and occasion to produce the record which is public record and they were knowing from the very beginning. The case of the applicants/appellants for additional evidence does not fall in the grounds mentioned under order 41 rule 27 CPC which entitle a party to bring additional evidence at the time of appeal. Thus, finding no merit in the application, the same is hereby dismissed. To come up after lunch for arguments on main appeal.”

35. To sum up, it may be recapitulated that admittedly, the right of pre-emption is sought under Section 15 of the Punjab Pre-emption Act, 1913. According to the provisions, the Plaintiffs/Appellants had to establish three ingredients: (1) the right of pre-emption vests in them as tenants in respect of the agricultural land; (II) they were tenants under the vendor; & (iii) land or part of the land sold by the vendor. The Plaintiffs/Appellants have failed to prove the mandatory three conditions.

36. The learned Trial Court as well as the learned First Appellate Court, after taking note of the pleadings, the evidence and the law, have concurrently found and held that the Appellants have failed to prove that they were tenants and, as such, rightly, dismissed the suit and the appeal respectively of the Plaintiffs/Appellants with costs. In Second Appeal, such findings of fact cannot be disturbed.



37. The Jamabandi Ex.P1 produced and relied upon by the Plaintiffs/Appellants itself negates their case in-as-much-as Column 5 shows them as Gair Marusi, but Column 9 shows the no rent was paid/payable. Similarly, Plaintiff himself appearing as PW1, in cross-examination admitted that nowhere he has ever mentioned that batai was given and further admitted that no batai was ever paid or deposited. The Courts have rightly held that the stray entry in respect of two khasra Nos., regarding batai in Ex.P-13 and Ex.P-14 was without basis. The entry '*Lagan Nadard Bawaja Nataur*' admittedly the entries in the revenue record are not challenged and rather the said record has been produced and relied by the Plaintiffs/Appellants. (Ex. P15). It has also been rightly found and held that no injunction can be granted against the true owner.

38. The judgments relied upon by applicant/appellants, by way of filing CM-9090-C-2022 and CM-2969-C-2025 are distinguishable because in the said cases, plaintiff was proved to be tenant in possession of the suit land by the learned District Courts; whereas in present case, appellants/plaintiffs have admitted that they are not tenants over the suit land.

39. Learned counsel for the appellants is unable to dispute or controvert the above said legal and factual position.

40. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees, and findings of fact, of the learned Courts below. Both the present Regular Second Appeals are accordingly **dismissed**.



41. Pending applications, if any, stand disposed of.

16.02.2026

(NIDHI GUPTA)
JUDGE

Divyanshi

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