

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1442-1988 (O/M)

Date of decision : 11.05.2026

Puran Singh through his LR's

..... Appellant

Versus

Nachhattar Singh through his LR's

..... Respondent

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. K.S. Godara, Advocate
for appellant.

Mr. Abhijeet Chaudhary, Advocate (Amicus-Curiae)
for respondent.

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HARSH BUNGER, J.

1. This is appellant-defendant's Regular Second Appeal against judgment and decree dated 05.10.1987, passed by learned Senior Sub Judge, Sirsa; whereby the suit for possession and pre-emption filed by the original plaintiff (Nachhattar Singh), was decreed and also judgment and decree dated 07.05.1988, passed by learned Additional District Judge, Sirsa; whereby an appeal, filed by Puran Singh (defendant in the suit) against trial Court judgment and decree dated 05.10.1987, was dismissed.

1.1 In this judgment, the parties are referred by their original status in the suit before the trial Court.

2. Briefly, plaintiff (Nachhattar Singh son of Chitan Singh) filed a suit for possession and pre-emption against defendant (Puran Singh) on the plea that he was a co-sharer in the joint khewat of suit land at the time of sale, executed by Smt. Sachiar Kaur widow of Shri Surjeet

Singh son of Chitan Singh, vide registered sale deed dated 28.01.1986, in favour of defendant (Puran Singh). It was pleaded in the plaint that the plaintiff (Nachhattar Singh) continued to be a co-sharer till the filing of the suit and that Smt. Sachiar Kaur had sold the suit land to the defendant (Puran Singh) without any notice to the plaintiff (Nachhattar Singh).

2.1 It was pleaded case of the plaintiff (Nachhattar Singh) that he being a co-sharer in the joint khewat of the suit land; was entitled to pre-empt the sale upon payment of sale consideration. Accordingly, the suit was filed.

2.2 On the other hand, Puran Singh (defendant) appeared in the suit and contested the claim of plaintiff (Nachhattar Singh) by filing written statement; wherein a plea was taken that the plaintiff-Nachhattar Singh was not a co-sharer in the suit land at the time of sale. It was further stated that plaintiff (Nachhattar Singh) had no superior right to pre-empt the sale in question. Amongst other objections, it was also asserted by Puran Singh (defendant) that the suit was barred by limitation and suit was bad for partial pre-emption.

2.3 It appears that plaintiff (Nachhattar Singh) submitted his replication and from the pleadings of the parties, the trial Court framed the following issues :-

- “1. Whether the plaintiff has a superior right to pre-empt the suit land on the ground of his being a co-sharer in the suit land ? OPP*
- 2. Whethre the entire sale consideration was fixed in good faith and was actually paid ? OPP*
- 3. If issue no. 2 is not proved what was the market value of suit land at the time of sale ? OPP*

4. *Whether in the event of suit being decreed the defendant is also entitled for stamp and registration charges besides the amount of sale consideration ? If so to what amount ? OPD*
5. *Whether the suit is bad for partial pre-emption ? OPD*
6. *Whether the suit is time barred ? OPD*
7. *Relief.”*

2.4 Under issue No. 1, the trial Court held that on the basis of evidence, it was established that the plaintiff (Nachhattar Singh) was a co-sharer at the time of filing of suit and continued to be so till the date of passing of judgment i.e. dated 05.10.1987; accordingly, plaintiff (Nachhattar Singh) was held entitled to pre-empt the sale under clause 'Fourthly' of Section 15(1)(b) of Punjab Pre-emption Act, 1913 (in short '1913 Act').

2.5 Before the trial Court, defendant (Puran Singh) also raised the plea that the case of plaintiff (Nachhattar Singh) would not fall under clause 'Fourthly' of Section 15(1)(b) of 1913 Act, but the same would fall under Section 15(2)(b) of 1913 Act as plaintiff (Nachhattar Singh) was the vendor's (Sachiar Kaur) husband's brother's son. It was stated that plaintiff (Nachhattar Singh) is son of Chitan Singh; whereas husband of Sachiar Kaur, namely, Surjeet Singh was also son of Chitan Singh. It was contended that Section 15(2) of 1913 Act was declared as ultra vires the Constitution of India by Hon'ble the Supreme Court of India in the case of *Atam Parkash Versus State of Haryana and others, AIR 1986 Supreme Court 859*; therefore, plaintiff (Nachhattar Singh) could not claim right of pre-emption at all.

2.6 The aforesaid contention raised on behalf of defendant (Puran Singh) did not find favour with the trial Court, who observed that although Section 15(2) of 1913 Act was declared as ultra vires the Constitution of India by Hon'ble the Supreme Court of India in ***Atam Parkash's*** case (supra); however, Section 15(1) of 1913 Act stands intact and cannot be controlled by the provisions of Section 15(2) of 1913 Act. Accordingly, it was reiterated that plaintiff (Nachhattar Singh) can claim right of pre-emption under Section 15(1)(b) of 1913 Act, therefore, a finding was returned under issue No. 1 that plaintiff (Nachhattar Singh) had superior right to pre-empt the sale in question on the basis of his being a co-sharer in the suit land.

2.7 Under issue No. 2, a finding was returned that vendee (Puran Singh) was entitled to sale consideration of Rs. 25,000/-. Under issue No. 4, it was held that the vendee (Puran Singh) was also entitled to stamp and registration charges for a sum of Rs. 3,125/-, as recited in the sale deed (Ex.P2). Under issue No. 5 the plea of defendant-Puran Singh that the suit was bad for partial pre-emption, was also rejected. Under issue No. 6, the suit filed by plaintiff (Nachhattar Singh) was held to be within limitation period.

2.8 Keeping in view the findings returned by trial Court on all issues, the suit filed by plaintiff (Nachhattar Singh) was decreed, vide judgment and decree dated 05.10.1987, by granting the following relief :-

“20. As a sequel to my findings on various issues above, it follows that this suit has to be decreed but subject to the condition that the plaintiff will have to pay a total amount of Rs. 28125/- to the defendant which includes Rs. 25,000/- on

account of sale consideration and a sum of Rs. 3125/- on account of stamp and registration charges. I, therefore, decree this suit hereby and pass a decree for possession by way of pre-emption in respect of the suit land in favour of the plaintiff and against the defendant subject to the plaintiff's paying a total amount of Rs. 28125/- to the defendant. The plaintiff has already deposited a sum of Rs. 5000/- towards 1/5th pre-emption amount in this case. So he will have to deposit an amount of Rs. 23,125/- more to be paid to the defendant. He will deposit this amount upto 5.11.1987 failing which his suit shall stand dismissed with costs. In case, however, if he deposits this amount within time then title in respect of the suit land shall be deemed to have accrued in his favour from the date of such deposit. Decree-sheet be drawn accordingly and file be consigned to the record room."

2.9 Feeling aggrieved against aforesaid judgment and decree dated 05.10.1987, defendant-Puran Singh preferred an appeal before first appellate Court, which has been dismissed by learned Additional District Judge, Sirsa, vide judgment and decree dated 07.05.1988, the relevant extract of which reads as under :-

"7. The parties have addressed this Court only on issue No. 1. Under this issue, learned counsel for the appellant urged that since the impugned sale was made by a female the case fell u/s 15(2) of the Act. He further urged that Section 15(2) of the Act has been held ultra-vires by the Hon'ble Supreme Court of India in case of Atam Parkash Vs. State of Haryana and others, 1986 S.C. 859 and as such the plaintiff has no right to pre-empt the impugned sale made by a female. I have gone through these submission and I do not find any merit in these contentions of learned counsel for the appellant. Section 15(2) of the Act is no more on the statute

book in view of the above cited authority of Atam Parkash. Therefore, it is to be seen if the present case falls in any of the clauses of section 15(1) of the Act and I find that the plaintiff who is father's brother's son of the vendor and also a co-sharer, his case falls under Section 15(1)(b) Fourthly of the Act, because his relationship does not fall under any of the first three clauses of this Section. Accordingly, I hold that the learned Senior Sub Judge, Sirsa rightly observed under issue No. 1 that the plaintiff being a co-sharer had a superior right of pre-emption. The findings recorded under issue No. 1 by the trial court in favour of plaintiff-respondent are hereby affirmed.

8. No other point has been urged before me.

9. In the result, the appellant fails and his appeal is hereby dismissed with costs. Decree-sheet be prepared and the file be consigned to the Record Room.”

3. In the aforementioned circumstances, the instant Regular Second Appeal has been filed before this Court.

4. Before this Court, learned counsel for appellant-defendant (Puran Singh) has raised only one submission that since plaintiff (Nachhattar Singh) was related to vendor (Sachiar Kaur); therefore, his (Nachhattar Singh) claim could have been decreed only by invoking the provisions of Section 15(2) of 1913 Act, which stood repealed. With the aforesaid submission, prayer has been made for dismissal of the suit of plaintiff (Nachhattar Singh).

5. On the other hand, Mr. Abhijeet Chaudhary, learned Amicus-Curiae appearing for respondent-plaintiff (Nachhattar Singh) has opposed the submissions raised by learned counsel for appellant-defendant by submitting that since Section 15(2) of 1913 Act

was declared ultra vires the Constitution of India by Hon'ble the Supreme Court of India in ***Atam Parkash's*** case (supra); accordingly, there was no bar for the courts below in considering the claim of respondent-plaintiff (Nachhattar Singh) under Section 15(1)(b) of 1913 Act. He further submits that even if Section 15(2) of 1913 Act had not been declared to be ultra vires, even then the claim of respondent-plaintiff (Nachhattar Singh) for pre-emption of sale could have been considered either under Section 15(1)(b) of 1913 Act and/or under Section 15(2) of 1913 Act. Mr. Chaudhary further places reliance upon a judgment rendered by Hon'ble the Supreme Court in ***Bhikha Ram Versus Ram Sarup, 1992 (1) SCC 319***. Accordingly, learned Amicus-Curiae appearing for respondent-plaintiff prayed that the appeal is bereft of any merit and same be dismissed.

6. I have given my thoughtful consideration to the submissions raised by Mr. Godara, learned counsel for appellant as well as learned Amicus-Curiae Mr. Abhijeet Chaudhary, Advocate.

7. The issue that arises before this Court for consideration is that as to whether the plaintiff (Nachhattar Singh) being related to vendor (Sachiar Kaur) could have claimed right of pre-emption only by invoking the provisions of Section 15(2) of 1913 Act, which has already been declared to be ultra vires the Constitution of India by Hon'ble the Supreme Court of India in ***Atam Parkash's*** case (supra) and not under Section 15(1)(b) of 1913 Act in his capacity as a co-sharer in the suit land ?

8. Having considered the matter in its entirety, I am of the considered view that the aforesaid issue would be covered by the judicial pronouncement rendered by Hon'ble the Supreme Court of India in **Bhikha Ram's** case (supra), wherein it was held that the right of pre-emption is available to relatives, who happen to be co-sharers. In the said case, appellant Bhikha Ram was the father's brother's son of vendor; accordingly, it was held that the expression 'other co-sharers' as implied in clause Fourthly in Section 15(1)(b) of 1913 Act would cover the appellant therein and he was held entitled to exercise the right of pre-emption. In nutshell, it was held that in terms of Section 15(1)(b) of 1913 Act, right of pre-emption was available to kinsfolk of vendor, if they happened to be co-sharers. The relevant extract of observations made by Hon'ble the Supreme Court of India in **Bhikha Ram's** case (supra) reads as under :-

“4. The history of the Punjab Pre-emption law may be kept in mind to understand the purport of clause 'Fourthly' of Section 15(1)(b) of the Act. Under the Punjab Pre-emption Act, 1905, the corresponding provision, Section 12, conferred a right of pre-emption, in the case of a sale of a share of such land or property held, jointly, firstly, in the lineal descendants of the vendor in male line in order of succession., secondly, co-sharers, if any, who are agnates, in order of succession; thirdly, in the persons described in sub-clause (a) i.e. in persons who but for such sale would be entitled to inherit the property in the event of his or their decease, in order of succession and fourthly, in the co-sharers jointly or severally. It will be noticed that priority for the exercise of the right was statutorily fixed and even in the case of those falling within the same class, the exercise

of right was regulated by the use of the expression 'in order of succession'. The 1905 Act was repealed and replaced by the 1913 Act, According to Section 15 of this Act before its amendment in 1960, in the case of sale of a share out of joint land or property, the right of pre-emption was conferred firstly on the lineal descendants of the vendor in order of succession; secondly, in the co-sharers, if any, who are agnates, in order of succession; thirdly in persons not included under firstly or secondly above, in order of succession, who but for such sale would be entitled, on death of the vendor, to inherit the land or property sold and fourthly, in the co-sharers. Section 15 after its amendment in 1960 provided that where the sale is of a share out of the joint land or property and is not by all the co-sharers jointly, the right of pre-emption was vested, First, in the sons or daughters or son's son or daughter's sons of the vendor or vendors; Secondly, in the brothers or brother's sons of the vendor or vendors; Thirdly, in the father's brother or father's brother's sons of the vendor or vendors; Fourthly, in the other cosharers and Fifthly in the tenants. Read in the context, it becomes clear that the legislature desired to confer the right of pre-emption on specified family members of the vendor or vendors in the first three clauses of Section 15(1)(b) and with a view to covering all the remaining co-sharers not specifically mentioned in the preceding clauses it used the expression 'other co-sharers' in the fourth clause which was meant to serve as a residuary clause to ensure that no co-sharer is left out. Since this Court found certain intrinsic contradictions in the list of relatives covered by the first three clauses, it saw no justification for the classification contained in the said provision conferring a right based on consanguinity and, therefore, struck down those clauses as discriminatory and violative of Articles 14 and 15 of the Constitution. At the

same time it upheld the right conferred on co-sharers for reasons stated earlier. Thus the purport of Atam Prakash's case, (supra) was that while co-sharers were entitled to pre-empt, the conferment of that right on certain kinsfolk based on the rule of consanguinity being a relic of the feudal past could not be tolerated. This Court never intended to exclude any specified co-owners from the scope of clause fourthly of Section 15(1)(b) of the Act. Once conferment of the right of pre-emption in favour of co-sharers was considered to be a reasonable restriction on the right to hold, acquire and dispose of property under Article 19(1)(0, the same restriction was held to be valid when tested on the touchstone of Article 14 or 15 of the Constitution. We find it difficult to hold that the purport of this Court's decision in Atam Prakash's case was to deny the right of preemption to those relative or relatives of the vendor or vendors who were specified in the erstwhile first three clauses of Section 15(1)(b) even if they happen to be co-sharers. The expression 'other co-sharers' was used in the fourth clause of the said provision to ensure that no co-sharer was left out or omitted and not to deny the right to kinsfolk-co-sharers covered by the preceding clauses. If the preceding clauses were not erased from the statute book as unconstitutional the kinsfolk would have exercised the right in the order of preference, for which no justification was found. The relations in the first three clauses of Section 15(1)(b) may or may not be co-sharers. The use of the expression 'other' in clause fourthly conveys the possibility of their being cosharer also. What this Court disapproved as offensive to Articles 14 and 15 is the classification based on consanguinity and not on co-ownership. The right of pre-emption to co-sharers is held to be intra vires the Constitution. Therefore, it is difficult to hold that this Court intended to deny the right of pre-emption of those kinsfolk

even if they happened to be co-sharers. That would clearly be discriminatory. With respect, therefore, we find it difficult to approve of the interpretation placed on clause 'fourthly' of Section 15(1)(b) of the Act by this Court in Jagdish's case (AIR 1987 Supreme Court 68). We think on a proper construction of that clause after the preceding clauses were held to be unconstitutional the word 'other' preceding the word 'co-sharer' is rendered redundant. We, therefore, do not approve the ratio of Jagdish's case and overrule the same.

5. In the result the appeal succeeds. The decision of all the three Courts below dismissing the appellant's suit is set aside and the suit is decreed. We direct that on the appellant plaintiff depositing the entire amount of sale price together with the amount needed for the stamp duty for the execution of the conveyance in his favour within three months from today, the purchaser-respondent No. 1 shall within one month of such deposit execute a conveyance of the land, i.e. his share therein derived from his vendors, in favour of the appellant and shall deliver possession thereof to the appellant. If the respondent No. 1 fails to do so, the Court shall appoint a Commissioner who shall execute the conveyance on behalf of the respondent No. 1 and the Court shall put the appellant in possession of the suit land. There will be no order as to costs throughout... ”

8.1 When the facts and circumstances of instant case are considered on the touchstone of findings returned by Hon'ble Supreme Court in the **Bhikha Ram's** case (supra), there is no manner of doubt that respondent-plaintiff (Nachhattar Singh) had right of pre-emption under Section 15(1)(b) of 1913 Act (as it existed on the date of passing of judgment and decree dated 05.10.1987 by the trial Court) being a

co-sharer in the suit land, although he was also related to vendor (Sachiar Kaur).

9. In view of the above discussion, it is held that the findings of learned Trial Court as well as learned first appellate Court are based upon proper appreciation of facts/pleadings, the evidence on record as well as law and I see no illegality or perversity therein.

10. Resultantly, the instant Regular Second Appeal is dismissed, being bereft of any merit.

11. Pending application (s), if any, shall also stand closed.

12. Before parting, this Court places on record its deep appreciation for the valuable assistance rendered by the learned Amicus Curiae-Mr. Abhijeet Chaudhary, Advocate.

(HARSH BUNGER)
JUDGE

11.05.2026
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No