

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

RSA-1408-1993

PARAS RAM (SINCE DECEASED) THROUGH LRs & ANR.

...APPELLANT(S)

VERSUS

ROSHAN LAL (SINCE DECEASED) THROUGH LRs & ORS.

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sarbib Aggarwal Advocate with
Mr. Yugank Goyal, Advocate for the appellants

Mr. R.A. Yadav, Advocate for respondent no. 1(i) & 1(ii)

1.	The date when the judgment is reserved	05.02.2026
2.	The date when the judgment is pronounced	18.04.2026
3.	The date when the judgment is uploaded	22.04.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any of the pronouncement of full judgment and reason thereof.	Not applicable

SANDEEP MOUDGIL, J

Prayer

1. The present Regular Second Appeal came up before this Court assailing the judgment and decree dated 01.05.1993 passed by the Lower Appellate Court, which reversed the judgment and decree rendered by the trial Court dated 31.08.1991 primarily whereby the suit of possession by way of

pre-emption filed by the plaintiff-appellant was held to be bad in partial pre-emption.

The Conspectus Of Facts

2. A suit for possession by way of pre-emption was filed by Paras Ram and Jiwa Ram, plaintiffs against the vendors (defendants no. 2 to 24) assailing the sale of land to defendant no. 1 Roshan Lal. The suit was contested only by the defendant no. 1 – Roshan Lal. It was claimed that the plaintiff had no preferential right to purchase, inasmuch as, the defendant was also co-sharers in the suit land in view of the impugned sale deed dated 20.05.1988.

3. The learned trial Court, on the basis of material available on record, held that the plaintiff did have a superior right of pre-emption to the extent of Khewat no. 175 as the defendant was not a co-sharer of Khewat no. 175 prior to the sale deed of 20.05.1988 (Ex P-1) and that the plaintiffs had a preferential right to purchase the suit property. Consequently, the suit filed by the plaintiff was decreed in the favor of them.

4. The matter was taken up in appeal. The learned First Appellate Court re-appraised the entire evidence. The defendant raised the objection of partial pre-emption by submitting that the land had been purchased by the defendant along with the right of irrigation out of the well along with the trees but the plaintiffs did not claim these rights in their suit for possession by way of pre-emption. It was held by the learned First Appellate Court that the suit was bad for partial pre-emption. Consequently, the appeal filed by the defendant was allowed and his suit was decreed.

5. The appellant-plaintiffs have now approached this Court through the present Regular Second Appeal.

Contentions

On behalf of appellants

7. Learned counsel for the appellants–plaintiffs would contend that the finding recorded by the learned First Appellate Court on the issue of partial pre-emption is legally unsustainable and contrary to the statutory scheme governing agricultural land. It is urged that the plaintiffs had unequivocally sought pre-emption of the entire sale transaction and had expressed their readiness and willingness to pay the full sale consideration as reflected in the impugned sale deed dated 20.05.1988.

8. Learned counsel would further argue the concept of “land,” as incorporated under Section 3(1) of the Punjab Pre-emption Act read with Section 2(3) of the Punjab Alienation of Land Act, is inclusive in nature and statutorily encompasses all rights appurtenant thereto, including the right of water and trees standing on the land. The submission proceeds on the footing that the doctrine of partial pre-emption is attracted only in cases where the pre-emptor consciously relinquishes a severable and distinct portion of the property or transaction, which is not the case here.

9. It is thus asserted that the learned Trial Court had rightly decreed the suit by recognizing the superior right of the plaintiffs, and the reversal thereof by the First Appellate Court suffers from a patent error of law.

On behalf of Respondents

10. Per contra, learned counsel appearing for the respondent–defendant

would support the judgment of the learned First Appellate Court and contend that the suit, as framed, is clearly vitiated by partial pre-emption. It is argued that the sale in question was not confined merely to agricultural land simpliciter, but expressly included valuable ancillary rights, namely the right of irrigation from the well and the trees standing on the land, which constituted an integral and inseparable part of the bargain between the vendor and vendee.

11. According to the learned counsel, the plaintiffs, by failing to specifically claim these rights in the plaint, have sought to pre-empt only a portion of the transaction, thereby rendering the suit legally defective. Emphasis is laid on the well-settled principle that a pre-emptor must take the whole bargain or leave it altogether, and cannot be permitted to selectively enforce the right of pre-emption. It is further contended that the right of pre-emption, being a weak and restrictive right, must be strictly construed and any ambiguity or omission in the pleadings must operate to the detriment of the pre-emptor.

12. Learned counsel would thus submit that the First Appellate Court rightly appreciated the evidence and the legal position in holding that the plaintiffs' claim was incomplete and legally untenable, warranting dismissal of the suit on the ground of partial pre-emption.

13. Arguments were heard and the judgement was kept reserved on 05.02.2026.

SUBSTANTIAL QUESTION OF LAW

14. During the course of arguments, the following **substantial question of law** was found to have arisen in the present regular second appeal:

As to whether the suit filed by the plaintiff could be treated to be bad for partial pre-emption ?

Analysis

15. The core issue which arises for determination in the present Regular Second Appeal is whether the omission on the part of the plaintiffs pre-emptors to expressly include the ancillary rights, namely the right of irrigation from the well and the trees standing on the land, renders the suit liable to be dismissed on the ground of partial pre-emption. The answer to this question must be located not merely in procedural technicalities but in the substantive conception of “land” under the governing statutory framework, read in light of the settled jurisprudence on the doctrine of pre-emption.

16. At the outset, it is necessary to underscore that the right of pre-emption, though historically regarded as a weak right, has been consistently recognized as a statutory right capable of strict but purposive enforcement. The jurisprudential trajectory of pre-emption law has been delineated by the Supreme Court in ***Bishan Singh v. Khazan Singh 1958 INSC 62***, wherein it was held that the right of pre-emption is not a right to the thing sold, but a right to the offer of the thing about to be sold, and is required to be exercised strictly in accordance with the statute. However, such strictness does not justify an unduly pedantic or hyper-technical interpretation that defeats substantive rights. Relevant extract of the same is as under:

“11. The plaintiff is bound to show not only that his right is as good as that of the vendee but that it is superior to that of the vendee. Decided cases have recognised that this superior right must subsist at the time the pre-emptor exercises his right and that that right is lost if by that time another person with equal or superior right has been substituted in place of the original vendee. Courts have not looked upon this right with great favour, presumably, for the reason that it operates as a clog on the right of the owner to alienate his property. The vendor and the vendee are, therefore, permitted to avoid accrual of the right of pre-emption by all lawful means. The vendee may defeat the right by selling the property to a rival pre-emptor with preferential or equal right. To summarise : (1) 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.”

17. In the case at hand, it is an admitted position that the defendant-respondent had executed a sale deed dated 22.05.1988 (Ex- P1) vide which 4 Kanals 17 Marlas consisting of 3/160 share, measuring 4 Kanals 2 Marlas consisting out of Khewat No. 175, Khatuni No. 230 to 234 Kitta No. 33 total measuring 217 Kanals 9 Marlas and 15 Marlas only representing 1/640 share out of Khewat no. 176 Khatauni No. 235, Kitta No. 39 total measuring 236

Kanals 18 Marlas out of land had been purchased by him along with the right of irrigation out of the well (Main Haq Nal Chah Aavpashi Dhora Nal Chah etc.) for irrigation along with trees etc. For Rs. 23,000/-. The sale had been assailed by the plaintiff-appellant before the trial court claiming possession while asserting a superior right of pre-emption as a co-sharer against the defendant appellant. The same was decreed by the trial court in favor of the petitioner only to the extent of having a superior right of pre-emption in land situated in Khewat No. 175.

18. The same was again agitated in appeal, however, the learned First Appellate Court appears to have proceeded on the premise that since the plaintiffs did not specifically claim the right of irrigation and trees, which formed part of the sale transaction, the suit was vitiated by partial pre-emption as in the plaintiff's suit for pre-emption any right to water enjoyed by the defendant-appellant or the trees have not been claimed by the appellant.

19. This reasoning, in the considered view of this Court, suffers from a fundamental misapprehension of the statutory definition of "**land**" as incorporated in Section 3(1) of the Punjab Pre-emption Act, 1913 read with Section 2(3) of the Punjab Alienation of Land Act, 1900. The provisions are reproduced as under:

Section 3(1) of the Punjab Pre-emption Act, 1913 says :

*"In this Act, unless a different intention appears from the subject or context -
(1) "Agricultural land" shall mean "land" as defined in the Punjab Alienation of Land Act, 1900 (as amended by Act 1 of 1907), but shall not include the rights of a mortgagee, whether usufructuary or not, in such land;"*

*In the **Punjab Alienation of Land Act**, the expression "land" has been defined as :*

"2. (3) the expression "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agricultural or for pasture, and includes -

- (a) the sites of buildings and other structures on such land;*
- (b) a share in the profits of an estate or holding;*
- (c) any dues or any fixed percentage of the land-revenue payable by an inferior landowner to a superior landowner;*
- (d) a right to receive rent;*
- (e) any right to water enjoyed by the owner or occupier of land as such;*
- (f) any right of occupancy; and*
- (g) all trees standing on such land."*

A conjoint reading of these provisions makes it abundantly clear that "land" is not confined to the physical soil alone but includes, inter alia, "any right to water enjoyed by the owner or occupier of land as such" and "all trees standing on such land." The legislative intent is thus unmistakably expansive, subsuming within the concept of land all rights that are appurtenant, incidental, and inseparably connected with its enjoyment.

20. In this context, it would, thus be seen that by virtue of clause (e) of section 2(3) of the Punjab Alienation of Land Act, the right to water is included in the definition of "land". That being so, if a pre-emptor files a suit for pre-emption regarding the sale of agricultural land, he would automatically be pre-empting the right of water in such land, unless the same was specifically excluded by the vendor in the sale-deed. The omission to separately plead the right of water or trees cannot be construed as a relinquishment of those rights. The doctrine of appurtenance operates with full

vigour: what is inherently attached to the land passes with it, unless expressly severed.

21. Therefore, when the plaintiffs filed a suit for possession by way of pre-emption claiming a superior right on ground of being a co-sharer in respect of the sale of the suit land, assailing the sale of agricultural land as a whole and unequivocally expressed their readiness to pay the entire consideration, they must, in law, be deemed to have pre-empted every integral component of the transaction. The insistence on a separate mention of each appurtenant right would amount to elevating form over substance, a course consistently deprecated by constitutional courts.

22. Applying these principles to the facts of the present case, it becomes evident that the plaintiffs never intended to pre-empt the land in a truncated manner. The plaint, read as a whole, discloses a clear intention to step into the shoes of the defendant by paying the full sale consideration and acquiring the entirety of the rights conveyed under the impugned sale deed. Moreover, as evident from the First appellate court order, the plaintiff-appellant had been directed by the Trial court, learned Sub Judge, Mohindergarh, to deposit the sale consideration on 01.10.1991 and the same has been done. There is no indication whatsoever of an attempt to carve out or abandon any component of the bargain. The right of irrigation from the well and the trees standing on the land, being statutorily included within the definition of “land,” automatically form part of the subject-matter of pre-emption.

23. The approach adopted by the First Appellate Court, in isolating these rights and treating their non-mention as fatal, amounts to a

misapplication of the doctrine of partial pre-emption. Such an approach runs contrary to the statutory scheme as judicial discipline requires that legal fictions and inclusive definitions enacted by the legislature be given their full effect, rather than being diluted by procedural formalism.

Conclusion

24. Consequently, the **substantial question of law is accordingly answered in favour of the appellants–plaintiffs**, and against the respondent–defendant as the omission to expressly refer to the right of water or trees does not detract from the comprehensive nature of the claim, as these rights are inseparably annexed to the land itself. As a result of the aforesaid discussion, the judgment and decree of the learned First Appellate Court are set aside and the judgement and decree of the Trial Court are hereby upheld.

25. The present Regular Second Appeal is hereby allowed.

26. Pending application(s), if any shall be disposed off, accordingly.

(SANDEEP MOUDGIL)
JUDGE

18.04.2026

NainaRajput

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