



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

101

**RSA-1925-1991 (O&M)
Reserved on : 18.03.2026
Pronounced on : 05.05.2026**

KAMLESH DEVI**...APPELLANT****VERSUS****RAM PRATAP (DECEASED) THROUGH L.RS.****...RESPONDENT****CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Arash Deep Kaur, Advocate
for appellant.

*********PARMOD GOYAL, J.**

Present regular second appeal has been preferred by appellant-defendant for setting aside the judgment and decree dated 13.12.1990 passed by learned Additional Senior Sub Judge, Sirsa whereby suit for possession through pre-emption filed by respondent-plaintiff was decreed and also for setting aside judgment and decree dated 04.09.1991 passed by learned Additional District Judge, Sirsa, whereby first appeal preferred by appellant-defendant was dismissed.

2. Respondent-plaintiff vide his suit for possession through pre-emption sought to pre-empt sale in favour of appellant-defendant qua land measuring 42 kanals 04 marlas situated within revenue estate of village Kutiana, Tehsil and District Sirsa. It was asserted that suit land was sold by Nathu Ram and Lachmi Narain vide registered sale deed dated 14.06.1985 for a total sale consideration of Rs.35,000/-. That to defeat the pre-emptive rights of respondent-plaintiff, a fictitious sale price of Rs.49,500/- was

shown as sale consideration for the suit land whereas sale price at the time of sale was Rs.35,000/-. It was also asserted that no prior notice was ever issued to respondent-plaintiff before such sale and therefore respondent-plaintiff being co-sharer at the time of sale and even at the time of filing the suit had got superior right to pre-empt the sale. Hence, suit was preferred.

3. Appellant-defendant on the other hand took various objections regarding maintainability of suit, including plea that suit is barred by limitation. It was asserted that suit land was purchased by appellant-defendant vide a registered sale deed for total consideration of Rs.49,500/- as per market value. It was further asserted that respondent-plaintiff is not a co-sharer in suit land and he had no superior right to pre-empt the sale. It is asserted that appellant-defendant took the possession of suit land at the time of agreement much prior to execution of sale deed. Additionally, it was pleaded that Rs.5,000/- was incurred for improvement of the land in dispute by appellant-defendant. Appellant-defendant had claimed said amount along with stamp and registration charges in case suit is decreed in favour of the appellant/defendant. Dismissal of suit was prayed for.

4. From the pleadings of the parties, following issues were framed:-

- i. Whether the plaintiff has a superior right to pre-empt the suit property as alleged? OPP
- ii. Whether the sale price mentioned in the sale deed was fixed in good faith and was actually paid? OPP
- iii. If issue No.2 is not proved, what was the market value prevalent at the time of sale of suit property? OPP

- iv. Whether the defendant is entitled to stamps and registration charges? If so to what amount? OPD
- v. Whether the defendant is entitled to any improvement, if so, to what amount? OPD
- vi. Whether the suit is barred by limitation? OPD
- vii. Relief?

5. No witness was examined by respondent-plaintiff. He had only tendered *jamabandi* (Ex.P1) for the year 1983-1984 in evidence, whereas appellants-defendants had examined two witnesses Bhagwat Sarup as DW1 and Balbir as DW2 and had also produced original sale deed dated 14.06.1985 as Ex.D1.

6. Both the learned Courts, after appreciating revenue records i.e. copy of *jamabandi* for the year 1983-84 (Ex.P1), concluded that respondent-plaintiff was co-sharer in the suit land on the date of sale as well as on date of institution of suit. Learned counsel for appellant-defendant has challenged findings of both the learned Courts below on the ground that learned Courts below have erred in recording finding that that respondent plaintiff was entitled to pre-emption of suit merely on the basis of Ex.P1. It is asserted that Ex.P1 is *jamabandi* for the year 1983-1984, whereas registered sale deed was executed on 14.06.1985 and suit for possession by way of pre-emption was preferred by respondent-plaintiff on 12.06.1986. It is further asserted that no evidence by respondent-plaintiff except Ex.P1 has been placed on record. Respondent-plaintiff has not appeared in witness box to assert that he was co-sharer on the date of sale as well as on the date of institution of suit, especially when appellant-defendant had specifically denied that respondent-plaintiff was co-sharer in the suit property in

paragraph number 14 of written statement and has got no right to pre-empt the land. Learned counsel for appellant-defendant also argued that the jamabandi for the year 1983-1984 only depicted the status of partition as co-sharer in the year 1983-1984 and same was prior to date of registration of impugned sale deed as well as filing of suit. It is also asserted that there is no material on record to show that on the date of execution of sale deed as well as on the date of institution of suit, respondent-plaintiff continued to be co-sharer or that suit property was not partitioned and continued to be joint having share of respondent-plaintiff.

7. The principle of law that a co-sharer can seek his right of pre-emption if he is able to show that he was co-sharer on the date of execution of sale deed as well as on the date of filing the suit is not in doubt. In **Mange Ram & Anr. Vs. Shiv Charan & Ors.**, RSA No.2458 of 1991, decided by this Court on 23.08.2024, it was held as under:-

“[19] Mere status of co-sharer is not enough to mature into a right of pre-emption. As per settled law in order to succeed in a suit enforcing right of pre-emption, it is imperative to show that:-

1. *The pre-emptor had the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree.*
2. *The pre-emptor who claims the right to pre-empt the sale on the date of the sale must prove that such right continued to subsist till the passing of the decree of the first court. If the claimant loses that right or a vendee improves his right equal or above the right of the claimant before the adjudication of suit, the suit for pre-emption must fail.*

3. *That no notice of the proposed sale of the land as provided under Section 19 was served upon pre-emptor showing the price at which vendor was willing to sell the property.*
4. *In case notice under Section 19 of 1913 Act was served upon him, the pre-emptor within a period as prescribed under Section 20 of 1913 Act served notice on the vendor accepting the price expressing his willingness to pay the same.”*

8. Therefore, in order to succeed in suit, it was mandatory for respondent-plaintiff to show that on date of execution of sale deed as well as on the date of filing of suit, he was co-sharer having right to get sale pre-empted. It was also duty of respondent-plaintiff to prove that no prior notice of proposed sale of land, as provided under Section 19 of The Punjab Pre-Emption Act, 1913 (hereinafter referred to as ‘**1913 Act**’), was served upon him showing the price at which vendor was willing to sell the property. Learned counsel for appellant-defendant has, therefore, argued that mere reliance upon Ex.P1 in absence of examination of any witness, including that of respondent-plaintiff, especially in absence of impleadment of vendor, would be fatal to the case of respondent-plaintiff.

9. In present case, Ex.P1 is not sufficient to conclude that on the date when the sale deed was executed in favor of appellant-defendant i.e. 14.06.1985, respondent plaintiff continued to be a co-sharer having right to pre-empt the sale. Similarly, Ex.P1 is also not sufficient to conclude that on the date of filing of suit i.e. on 12.06.1986, respondent-plaintiff continued to be a co-sharer and had right of preemption. In absence of testimony of any

other witness, no pre-emption or assumption can be raised from *jamabandi* for the year 1983-84 (Ex.P1) that respondent-plaintiff continued to be a co-sharer on 14.06.1985 date of sale deed and on 12.06.1986 date of filing of the suit. Failure of respondent-plaintiff to examine himself or any other witness to show that he remained co-sharer on the date of execution of sale deed i.e. on 14.06.1985 and on the date of filing of suit i.e. 12.06.1996 is fatal to the case of respondent-plaintiff. Respondent plaintiff unless establishes that he continued to be a co-sharer having right of pre-emption on 14.06.1985 as well as on 12.06.1986 cannot succeed to get possession by way of pre-emption. Secondly, in present case, vendor has not been made a party to present suit for pre-emption. No witness was examined by respondent-plaintiff to show that prior notice of sale as provided under Section 19 of 1913 was not issued to him. Even respondent-plaintiff has not dared to step into witness box to claim that he had not received a notice under Section 19 of 1913 Act. Mere statement in a plaint that no notice with respect to sale deed was served upon respondent-plaintiff will not absolve respondent-plaintiff from proving non-compliance of Sections 19 and 20 of 1913 Act.

10. The Courts below have totally ignored the aforesaid aspect in present case and held respondent-plaintiff entitled to pre-emption of sale deed without returning any finding on the statutory notice. The onus to prove that respondent-plaintiff was co-sharer on the date of sale as well as on the date of filing of suit and that no notice under Section 19 of 1913 Act was issued by vendor prior to sale deed was upon respondent-plaintiff, which he failed to discharge by not leading any evidence except for *jamabandi* for the

year 1983-1984 (Ex.P1). Respondent-plaintiff, therefore, has failed to prove that he was co-sharer on the date of sale and filing of suit and no notice under Section 19 of 1913 Act was issued to him which was pre-requisite to succeed in suit for pre-emption.

11. In view of above, both the Courts have erred in accepting the case of respondent-plaintiff. Accordingly, judgments and decrees passed by both the Courts below are liable to be set aside. Hence, present appeal is allowed, suit preferred by respondent-plaintiff stands dismissed.

12. Pending application(s), if any, stand disposed of.

05.05.2026

Sunil Chander

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No