



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

104

**RSA-270-1995 (O&M)
Reserved on : 11.03.2026
Pronounced on : 05.05.2026**

ARJUN AND OTHERS**...APPELLANTS****VERSUS****MOHAN LAL AND ANOTHER****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Mr. Mayank Mathur, Advocate
for appellants.

Mr. Amit Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for respondents.

PARMOD GOYAL, J.

Present regular second appeal has been preferred by appellants-defendants for setting aside the judgment and decree dated 07.06.1994 passed by learned Sub Judge, 1st Class, Kurukshetra whereby suit for possession by way of pre-emption preferred by respondents-plaintiffs was decreed and also for setting aside judgment and decree dated 14.12.1994 passed by learned District Judge, Kurukshetra, whereby first appeal preferred by appellants-defendants was dismissed.

2. Respondents-plaintiffs had preferred suit for possession by way of pre-emption on the ground that appellants-defendants No.1 to 3 have secretly purchased suit land from Dina Nath-defendant No.4 vide registered sale deed dated 04.04.1990 and respondents/plaintiffs being co-sharers have superior right to pre-empt the sale. It was asserted that actually sale had

taken place for consideration of Rs.15,500/-, however sale consideration was shown as Rs.40,000/- only to defeat the rights of pre-emption of prospective pre-emptors. Respondents-plaintiffs had accordingly sought possession by way of pre-emption.

3. Appellants-defendants No.1 to 3 contested the suit by taking number of preliminary objections regarding maintainability, etc. It was asserted that land stood partitioned and respondents-plaintiffs are not co-sharers. It was alleged that respondents-plaintiffs were well aware about the sale and were present at the time of negotiation, execution of agreement to sell as well as at the time of registration of sale deed. It was also asserted that since land stood partitioned between respondents/plaintiffs and Dina Nath-defendant No.4 prior to sale in favour of appellants/defendants No.1 to 3, therefore, respondents-plaintiffs are neither owners nor co-sharers in *khewat* in which land was purchased by appellants-defendants No.1 to 3. It was also asserted that sale, in fact, took place for Rs.40,000/- and not for Rs.15.500/- as asserted by respondents-plaintiffs. Accordingly, dismissal of suit was prayed for.

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

- i. Whether the plaintiffs have superior right to pre-empt the sale? OPP
- ii. Whether the suit is not maintainable in the present form? OPD
- iii. Whether 1/5th pre-emption money has not been deposited, if so its effect? OPD

- iv. Whether the suit land has been partitioned, if so its effect ? OPD
- v. Whether the plaintiffs are estopped from filing the suit by their own act and conduct? OPD
- vi. Whether the defendants are entitled to any improvement charges, if so, how much? OPD
- vii. Whether the defendants are entitled to stamp and registration charge ? OPD
- vii. Relief?

5. The learned Courts below have found respondents-plaintiffs to be co-sharers and held them entitled to possession by way of pre-emption and had rejected the claim of appellants-defendants No.1 to 3 that suit land stood partitioned prior to sale deed.

6. 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.”*

7. In order to succeed in their suit for possession by way of pre-emption, it was incumbent upon respondents-plaintiffs to prove that they were co-sharers, having superior right of pre-emption, as on 04.04.1990 when sale deed was executed and also on 01.04.1991 when the suit for possession by way of pre-emption was preferred.

8. In order to find out whether respondents-plaintiffs have succeeded in doing so, it is relevant to note down the evidence led by respondents-plaintiffs in support of their case. In present case, respondent-plaintiff No.1 alone had stepped into witness box as PW1 to assert his claim, as stated in the plaint and had accordingly relied upon copy of treasury challan (Ex.PA), copy of sale deed (Ex.P-2) and *jamabandi* for the year 1984-1985 (Ex.P-3). No other evidence was preferred by respondents-plaintiffs.

9. It is pertinent to mention that sale deed was executed on 04.04.1990 and suit was filed on 01.04.1991. *Jamabandi* for the year 1989-1990 showing that suit land continued to be joint property was not placed on

record by the respondents-plaintiffs despite the fact that the *jamabandi* for the year 1989-1990 had come into existence.

10. Appellants-defendants No.1 to 3 placed reliance upon testimony of appellant/defendant No.3 who appeared as DW1 and testimony of Krishan Lal, *Halqa Patwari* who appeared as DW2. Reliance was also placed upon copy of mutation (Ex.D1), copy of *jamabandi* for the year 1989-1990 (Ex.D2), copy of *jamabandi* for the year 1989-1990 (Ex.D3), copy of *jamabandi* for the year 1984-1985 (Ex.D4) and copy of mutation (Ex.D5).

11. It is the case of appellants-defendants No.1 to 3 that on the date of sale as well as on the date of filing of suit, respondents-plaintiffs were not co-sharer as suit property stood partitioned. To show partition, reliance has been placed upon testimony of DW2 as well as *jamabandi* for the year 1989-1990 (Ex.D3). Perusal of testimony of DW2 along with copy of mutation (Ex.D1) and *jamabandi* for the year 1984-1985 (Ex.D4) goes to show that suit land was comprised in *khewat* No.73 in the year 1984-1985. However, subsequent to year 1984-1985, suit land was given new numbers i.e. *khewat* No.78 and *khewat* No.79. The *jamabandi* for the year 1989-1990 goes to show that the *khewat* No.79 was owned by respondents-plaintiffs whereas *khewat* No.78 was owned by Dina Nath-defendant No.4 and other co-sharers. Admittedly, suit land sold by Dina Nath-defendant No.4 to appellants-defendants No.1 to 3, was part of *khewat* No.78 and not of *khewat* No.79. Perusal of *jamabandi* for the year 1989-1990, therefore clearly shows that in *khewat* No.78, respondents-plaintiffs were not co-sharers, rather were owners/co-sharers only in *khewat* No.79. The

jamabandi for the year 1989-1990, therefore, makes out that suit land stood partitioned between the parties and parties were having separate *khewats* and were not joint. Respondents-plaintiffs were owner in possession of land falling in *khewat* No.79, whereas Dina Nath-defendant No.4 was owner along with others excluding respondents-plaintiffs of *khewat* No.78. Neither Dina Nath-defendant No.4 had any share in *khewat* No.79 nor respondents-plaintiffs had any share in *khewat* No.78. To establish right of pre-emption, onus to prove that respondents-plaintiffs have continued to be co-sharer of suit property was upon respondents-plaintiffs. Admittedly, in present case, entries made in *jamabandi* for the year 1989-1990 have never been challenged by respondents-plaintiffs nor have been rebutted by them.

12. The Courts below have wrongly placed primary onus upon appellants that respondents-plaintiffs continued to be co-sharers in the suit property which is comprised in *khewat* No.78 on the date of sale deed i.e. 04.04.1990 and on the date of filing of suit i.e. 01.04.1991. From the *jamabandi*, it is clearly made out that land comprising *khewat* No.78 is not co-owned by respondents-plaintiff but by defendant No.4. Rather respondents/plaintiffs are owners of *khewat* No.79 alone, which was allotted subsequent to *jamabandi* for the year 1984-1985.

13. Therefore, the primary onus to show that *jamabandi* for the year 1989-1990 was incorrect was upon respondents-plaintiffs and not upon appellants-defendants No.1 to 3 as was held by both the Courts below. Both the courts have wrongly absolved respondents-plaintiffs from their primary duty to prove that they were co-sharers in suit property on the date of execution of sale deed as well as on the date of institution of the suit. Once

appellants-defendants No.1 to 3 have shown that in revenue record prior to execution of sale deed, respondents-plaintiffs were not co-sharers with them in the suit property, comprised in *khewat* No.78, then it was necessary for respondents-plaintiffs to rebut the same. However, no evidence was placed to this effect. Mere entries in *jamabandi* for the year 1984-1985, six years prior to sale deed and filing of suit, showing status of co-sharer, would not be sufficient to assume that respondents-plaintiffs continued to be co-sharers, especially when in subsequent *jamabandi*, *khewat* No.73 was bifurcated and two new separate *khewats* were carved out i.e. *khewat* No.78 and *khewat* No.79. The entries in *jamabandi* for the year 1984-1985 as well as in *jamabandi* for the year 1989-1990, carries presumption of truth. This presumption of truth should have been rebutted by respondents-plaintiffs in order to succeed in their suit for possession by way of pre-emption. Respondents-plaintiffs in present case have, in fact, failed to prove that they were co-sharers in the suit property on the date of sale deed dated 04.04.1990 and on the date of filing of suit on 01.04.1991.

14. The Courts below have failed to take notice of above aspect and have wrongly concluded respondents-plaintiffs to be co-sharers only on the basis of entries made in *jamabandi* for the year 1984-1985 which were six years old and stood changed in subsequent revenue entries.

15. In view of above discussion, both the Courts have erred in ignoring entries in subsequent *jamabandi* for the year 1989-1990 which was prior to sale as well as filing of suit. It is held that respondents-plaintiffs were not co-sharers, therefore, had no right of pre-emption. Accordingly, the judgments passed by both the Courts below are set aside.

16. Present appeal is allowed and suit preferred by respondents-plaintiffs stands dismissed.
17. Pending application(s), if any, stand disposed of.

(PARMOD GOYAL)

JUDGE

05.05.2026

Sunil Chander

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No