

RSA-927-1995 (O&M)

2026:PHHC:040047



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-927-1995 (O&M)

Gurnam Singh(since deceased) through LRs and another

...Appellants

Versus

Bal Kaur (since deceased) through LRs and another

...Respondents

Reserved on 12.03.2026

Pronounced on: 16.03.2026

Pronounced fully/operative part: Fully

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by: Mr. D.P.S. Bajwa, Advocate for the appellants.

Mr. Vicky Sharma, Advocate and

Mr. K.S. Dhaliwal, Advocate for the respondents.

DEEPAK GUPTA, J.

The present Regular Second Appeal has been filed by defendants No.1 and 2, who were the vendees in the transaction in question, challenging the concurrent findings recorded by the Courts below. The suit for possession by way of pre-emption filed by the plaintiff Bal Kaur (*now represented through her legal representatives – respondent No.1 herein*) was decreed by the learned trial Court vide judgment & decree dated 29.05.1992. The appeal preferred by the defendants–vendees (*appellants herein through their respective LR*s) was dismissed by the



learned First Appellate Court on 02.03.1995, thereby affirming the findings recorded by the trial Court.

2. For the sake of convenience and to avoid confusion, the parties shall hereinafter be referred to as per their status before the learned trial Court.

3. **Admitted Fact** : The relevant facts, which are largely undisputed, may briefly be noticed.

(i) The plaintiff Bal Kaur and her brother Gurbachan Singh proforma defendant No.3 (*now represented through his LRs – respondent No.2 herein*) were recorded as co-sharers in the land comprised in Khewat/Khata No.181 Min/212 Min, as reflected in the jamabandi for the year 1981-82 pertaining to the land situated in village Piplutha.

(ii) Defendant No.3 – Gurbachan Singh entered into an agreement dated 06.06.1985 (Ex.D1) with defendants No.1 and 2 (*the present appellants*) agreeing to sell his share measuring 6 kanals out of the aforesaid khewat for a sale consideration of ₹25,000/-. Pursuant to this agreement, a sale deed dated 16.12.1985 (Ex.D2) was executed in favour of the vendees in the presence of witnesses. It is specifically recited in the sale deed that at the time of its execution itself, physical possession of the suit land was delivered to defendants No.1 and 2.

(iii) However, when the sale deed was presented for registration



before the Sub-Registrar, the vendor – defendant No.3 fled away, due to which the registration of the sale deed could not be completed on that day.

(iv) The vendees – defendants No.1 and 2 were, therefore, compelled to institute a suit for specific performance of the agreement to sell. The said suit was decreed on 05.06.1989. Pursuant to the decree for specific performance, the sale deed originally executed on 16.12.1985 was ultimately registered on 06.11.1989.

4. ***Plaintiff's Case*** : After the registration of the sale deed on 06.11.1989, the plaintiff Bal Kaur, who is the sister of the vendor Gurbachan Singh, instituted the present suit on 05.01.1990 claiming a right of pre-emption on the ground that she was a co-sharer in the khewat.

5. Although in the plaint, the plaintiff also disputed the amount of sale consideration mentioned in the sale deed, the said issue has not been pressed before this Court and so, it is not in dispute that the sale consideration was ₹25,000/-.

6.1 ***Vendees - Defendants' Stand*** : The suit was contested by defendants No.1 and 2 mainly on the ground that the suit was barred by limitation. It was pleaded that the possession of the suit land had already been delivered to them on 16.12.1985 at the time of execution of the sale deed itself. Consequently, in view of Section 30 of the Punjab Pre-emption Act, 1913, the limitation period of one year for filing a suit for pre-emption



had commenced from the date of delivery of possession, and therefore, the suit filed on 05.01.1990 was clearly beyond limitation.

6.2 It was further pleaded that the plaintiff was fully aware not only of the agreement dated 06.06.1985 and the execution of the sale deed dated 16.12.1985 but also of the delivery of possession to the vendees and the pendency of the suit for specific performance. Despite such knowledge, she remained silent during the pendency of the litigation and instituted the present suit only after her brother - vendor had lost the suit for specific performance. According to the defendants, the suit was, therefore, collusive and filed in connivance with the vendor and his sons.

7. On the basis of the pleadings of the parties, the learned trial Court framed the necessary issues and the parties led evidence in support of their respective stands.

8. ***Findings of the Courts Below*** : After appreciating the evidence on record, the learned trial Court held that the plaintiff, being a co-sharer in the khewat, had a superior right of pre-emption. The trial Court further held that the limitation for filing a suit for pre-emption would commence from the date of registration of the sale deed, i.e. 06.11.1989. Consequently, the suit filed on 05.01.1990 was held to be within the prescribed period of limitation. Although the trial Court noticed that the plaintiff had admitted in her cross-examination that she filed the suit after her brother had lost the litigation for specific performance, it was held that



such circumstances did not render the suit collusive, as the plaintiff had an independent statutory right of pre-emption. Accordingly, the suit was decreed vide judgment & decree dated 29.05.1992.

9. The appeal preferred by defendants No.1 and 2 was dismissed by the learned First Appellate Court vide judgment dated 02.03.1995. The First Appellate Court affirmed the findings recorded by the trial Court, holding that the suit was within limitation as the period of limitation had to be computed from the date of registration of the sale deed i.e. 06.11.1989.

10. Aggrieved by the aforesaid concurrent findings, the present second appeal has been filed by the vendees – defendants No.1 and 2.

11.1 ***Contentions of the Appellants – Contesting defendants :***

Learned counsel appearing on behalf of the appellants has contended that both the Courts below have committed a grave error in law in holding that the suit was within limitation. Drawing attention to Section 47 of the Registration Act, 1908, it is argued that a registered document operates from the date of its execution and not from the date of its registration. On this basis, it is contended that although the sale deed was registered on 06.11.1989, it must be deemed to have come into operation from the date of its execution, namely 16.12.1985. Reliance is placed on ***Hamda Ammal vs Avadiappa Pathar, 1991 SCC (1) 715.***

11.2 It is further argued that since physical possession of the suit



property had admittedly been delivered to the vendees on 16.12.1985 itself, the limitation for filing a suit for pre-emption under Section 30 of the Punjab Pre-emption Act would begin from that date. Consequently, the suit filed on 05.01.1990 was clearly barred by limitation.

11.3 Learned counsel has also submitted that the plaintiff had full knowledge of the agreement dated 06.06.1985, the execution of the sale deed dated 16.12.1985 and the delivery of possession to the appellants. She was also aware of the pendency of the suit for specific performance between the vendor and the vendees. In these circumstances, it is argued that the plaintiff having remained silent for several years was estopped from asserting a right of pre-emption and the principles of waiver and estoppel are clearly attracted.

11.4 An additional contention raised on behalf of the appellants is that after the amendment carried out in the year 1995 in the Punjab Pre-emption Act, the right of pre-emption on the ground of co-sharership no longer survives. It is argued that since an appeal is a continuation of the original proceedings, the said amendment must be taken into account even at the stage of second appeal and therefore, the plaintiff cannot now claim any right of pre-emption.

12. ***Reply by the Respondent – Plaintiff : Per contra***, learned counsel appearing on behalf of the contesting respondent – plaintiff submits that the plaintiff had an independent statutory right of pre-



emption as a co-sharer and that such right could not be defeated merely because she was aware of the litigation between the vendor and the vendees. It is further argued that the limitation for filing a suit for pre-emption commences from the date of registration of the sale deed and not from the date of execution. Since the sale deed was registered on 06.11.1989 and the suit was filed on 05.01.1990, the suit was clearly within the period of limitation. With these submissions, learned counsel for the respondent has prayed for dismissal of the appeal.

13. ***Consideration by this Court*** : This Court has considered the submissions made by learned counsel for the parties and has carefully perused the record.

14. In ***Shyam Sundar & Anr. v. Ram Kumar & Anr. 2001 AIR (SC) 2472***, the Hon'ble Supreme Court authoritatively held that the relevant date for determining the existence of the right of pre-emption is the date of decree passed by the trial Court. If such right existed on the date of decree of the Court of first instance, subsequent legislative changes cannot divest the pre-emptor of the vested right.

15. In the present case, the sale deed sought to be pre-empted (Ex.D2) was executed on 16.12.1985 and subsequently registered on 06.11.1989. The decree of the trial Court allowing the suit for pre-emption was passed on 29.05.1992, which was prior to the amendment of the Act in the year 1995. Consequently, the right of pre-emption claimed by the



plaintiff had already crystallized prior to the amendment and therefore, cannot be defeated on that ground.

16. At the same time, it is equally well settled that the right of pre-emption is a weak right. It is not a right of ownership but merely a preferential right to acquire property in substitution of the vendee. Because of its restrictive nature, the Courts have consistently held that such a right can be defeated by all legitimate means including waiver, estoppel, acquiescence or improvement of the vendee's status.

17. In ***Bishan Singh & Ors. v. Khazan Singh & Anr. 1958 AIR (SC) 838***), the Hon'ble Supreme Court observed that the right of pre-emption is a weak right and must be strictly construed. The said principle has been reiterated in ***Barsat Eye Hospital & Ors. v. Kaustabh Mondal (2019) 19 SCC 767***, ***Raghunath (D) by Lrs. v. Radha Mohan (D) through Lrs & Ors. (2021) 12 SCC 501***, and ***Jhabbar Singh v. Jagtar Singh (AIR 2023 SC 2074)***.

18. In the present case, the principal issue is whether the suit for pre-emption filed on 05.01.1990 was within the period of limitation prescribed under law.

19. ***Substantial question of law*** : Thus, the substantial question of law, which arises for determination is -

- 'Whether the limitation for filing a suit for pre-emption would commence from the date of delivery of possession under the sale or



from the date of registration of the sale deed.’

20. Section 30 of the Punjab Pre-emption Act, 1913 provides for limitation for filing a suit to enforce a right of pre-emption. The relevant part reads as follows:

“30. Limitation.- In any case not provided for by article 10 of the Second Schedule of the Indian Limitation Act, 1908, the period of limitation in a suit to enforce a right of pre-emption under the provisions of this Act shall, notwithstanding anything in Article 120 of the said schedule, be one year -

(1) in the case of a sale of agricultural land or of village immovable property;

from the date of the attestation (if any) of the sale by a Revenue Officer having jurisdiction in the register of mutations maintained under the Punjab Land Revenue Act, 1887; or

from the date of which the vendee takes under the sale physical possession of any part of such land or property;

whichever date shall be the earlier;”

21. Thus, in any case not provided for by Article 10 of the Second Schedule of the Indian Limitation Act, 1908, the period of limitation in a suit to enforce a right of pre-emption shall be one year, from the date on which the mutation is attested on basis of sale, or the vendee takes under the sale physical possession of any part of such land or property, whichever date shall be earlier.

22. Article 10 of the Limitation Act, 1908 (corresponding to Article 97 of the Limitation Act, 1963) similarly provides that a suit to enforce a



right of pre-emption must be filed within one year from the date when the purchaser takes physical possession of the property sold, or where the subject matter does not admit of physical possession, from the date of registration of the instrument of sale.

23. Thus, the statutory scheme clearly indicates that where the property sold admits of physical possession, the starting point of limitation is the date, when the vendee takes possession under the sale, and only in cases where possession cannot be delivered does the limitation commence from the date of registration of the sale deed.

24. In the present case, it is an admitted position that the sale deed Ex.D2 was executed on 16.12.1985 and that physical possession of the suit land was delivered to the vendees on the same day, as is expressly recited in the sale deed itself. Therefore, the transaction of sale was complete in substance on that date.

25. The argument raised on behalf of the respondent that limitation would begin from the date of registration of the sale deed, i.e. 06.11.1989, cannot be accepted. The language employed in Section 30 of the Punjab Pre-emption Act, 1913 as well as Article 10 of the Limitation Act, 1908 refers to the point of time, when the purchaser takes possession under the sale. It does not make registration the determinative factor, where possession has already been delivered.



26. Further support for this conclusion can be drawn from Section 47 of the Registration Act, 1908, which provides as under :-

“A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required, and not from the time of its registration.”

27. It is thus clear that a registered document shall operate from the time from which it would have commenced to operate if no registration had been required. The effect of this provision is that once a document is subsequently registered, its operation relates back to the date of its execution.

28. Consequently, in the present case, the rights created under the sale deed in favour of the vendees must be treated as having come into existence from 16.12.1985, when the sale deed was executed and possession delivered.

29. In ***Hamda Ammal v. Avadiappa Pathar, 1991 SCC (1) 715***, the Hon’ble Supreme Court reiterated that upon registration, the rights created under a sale deed relate back to the date of execution by virtue of Section 47 of the Registration Act, 1908. Therefore, the subsequent registration does not postpone the legal effect of the transaction.

30. Applying the aforesaid principle to the present case, the sale transaction must be taken to have come into operation on 16.12.1985, the date on which the sale deed was executed and possession delivered to the



vendees.

31. Consequently, the limitation of one year prescribed for filing a suit for pre-emption commenced from 16.12.1985. The suit instituted by the plaintiff on 05.01.1990 was, therefore, clearly beyond the statutory period of limitation.

32. It is also noteworthy that the plaintiff was not unaware of the transaction. In her cross-examination, she admitted that she was aware of the litigation relating to specific performance between the vendor, who is none else than her brother, and the vendees and that she instituted the present suit only after her brother had lost the said litigation. This conduct clearly indicates that she was aware of the transaction and the possession of the vendees.

33. Thus, apart from being barred by limitation, the conduct of the plaintiff also indicates acquiescence in the transaction for several years.

34. For the foregoing reasons, this Court is of the considered view that both the Courts below fell in error in holding that the limitation would commence from the date of registration of the sale deed.

35. Once it is held that possession was delivered on 16.12.1985, the limitation for filing a suit for pre-emption commenced from that date and expired long before the institution of the present suit. The suit filed by the plaintiff on 05.01.1990 was, therefore, clearly barred by limitation.



36. It may be noticed that ordinarily this Court, while exercising jurisdiction under Section 100 of the Code of Civil Procedure, does not interfere with concurrent findings of fact recorded by the Courts below. However, where such findings are based upon an incorrect interpretation of statutory provisions or a misapplication of settled legal principles, the same give rise to a substantial question of law warranting interference in second appeal.

37. In the present case, both the Courts below proceeded on the assumption that the limitation for filing a suit for pre-emption would commence from the date of registration of the sale deed i.e. 06.11.1989. In doing so, the Courts below failed to appreciate the statutory scheme under Section 30 of the Punjab Pre-emption Act, 1913 read with Article 10 of the Limitation Act, 1908 (corresponding to Article 97 of the Limitation Act, 1963), which clearly provides that where physical possession of the property sold has been delivered to the vendee, the period of limitation begins from the date of such delivery of possession. The evidence on record clearly establishes that possession of the suit property was delivered to the vendees on 16.12.1985 at the time of execution of the sale deed itself. Once such possession was delivered, the limitation for instituting the suit commenced from that date.

38. The Courts below also failed to take into account the effect of Section 47 of the Registration Act, 1908, which provides that a registered

RSA-927-1995 (O&M)

2026:PHHC:040047



document operates from the date of its execution and not from the date of its registration. Upon registration of the sale deed on 06.11.1989, the rights created thereunder related back to the date of its execution i.e. 16.12.1985.

39. Thus, the concurrent findings recorded by the Courts below suffer from a manifest error of law in computing the period of limitation and therefore cannot be sustained.

40. The substantial question of law framed in the present appeal, namely – *‘whether the limitation for filing a suit for pre-emption would commence from the date of delivery of possession under the sale or from the date of registration of the sale deed’* - is accordingly answered in favour of the appellants.

41. Consequently, the present Regular Second Appeal is allowed. The judgments and decrees passed by the Courts below are set aside and the suit filed by the plaintiff–respondent for possession by way of pre-emption is dismissed as being barred by limitation. The parties shall bear their own costs.

16.03.2026

Yogesh/Jiten

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

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