

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

2026:PHHC:005837



**Reserved on: 11.11.2025
Pronounced on: 15.01.2026
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RSA-1209-2025(O&M)

JOGA SINGH & ANR. ...Appellants

Versus

KAILASHNATH & ANR. ...Respondents

RSA-1210-2025 (O&M)

JOGA SINGH & ORS. ...Appellants

Versus

KAILASHNATH & ORS. ...Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present:- Mr. Lupil Gupta, Advocate &
Mr. Amit Verma, Advocate, for the appellants.

Mr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Varun Sharma, Advocate
for respondent No.2 in RSA-1209-2025 and
for respondent Nos. 2 and 3 in RSA-1210-2025.

VIKRAM AGGARWAL, J.

This judgment shall dispose of the afore-titled two
appeals involving common questions of law and facts. However, for
the facility of reference, facts are being extracted from RSA-1209-
2025.

2. This is plaintiffs' appeal against the judgment and decree dated 21.02.2025 passed by the Court of Additional District Judge, Sirsa, dismissing the appeal filed by the plaintiffs against the judgment and decree dated 18.12.2018 passed by the Court of Civil Judge (Junior Division), Ellenabad, whereby the suit filed by the plaintiffs for symbolic possession by way of pre-emption was dismissed.

3. For the sake of convenience and clarity, parties shall be referred to as per their original status.

4. The plaintiffs filed a suit for symbolic possession by way of pre-emption in respect of land measuring 6 Kanals being 1/4th share of the land measuring 24 Kanals (fully described in the plaint) situated within the revenue estate of Village Rania, Tehsil Rania, District Sirsa ('hereinafter referred to as 'the suit land'), which was sold by the defendant No.1 in favour of defendant No.2, vide sale deed dated 13.10.2011.

5. It was claimed that the plaintiffs were in lawful and peaceful possession of the suit land as per their share as tenants on payment of 1/3rd share of *Batai* under defendant No.1 as per the Jamabandi for the year 2007-2008, including the land belonging to the brothers of defendant No.1. It was further averred that defendant No.1 sold the suit land vide sale deed dated 13.10.2011 to defendant No.2 for a total sale consideration of Rs.6,00,000/-, but in the sale deed the sale consideration was mentioned as Rs.8,00,000/- per acre. It was also claimed that the earlier owners of the suit land had filed applications on Form-L against each of the plaintiffs for obtaining

Batai from time to time while admitting them as *Gair Marusi Tenants* on the suit land on payment of 1/3rd share of *Batai*. It was the case of the plaintiffs that in order to save themselves from eviction, they used to deposit the amount of *Batai* as per the orders of SDO (Civil), Ellenabad. Defendant No.1 and his brothers had also admitted the status of the plaintiffs as *Gair Marusi Tenants* of the suit land. No notice under Punjab Pre-emption Act, 1913 (for short 'the 1913 Act') was issued by defendant No.1 to the plaintiffs before the sale and, therefore, the plaintiffs were not bound by the said sale and rather, were entitled to pre-empt the sale being tenants having a preferential right of pre-emption. It was further pleaded that the plaintiffs came to know about the sale deed in favour of defendant No.2 when one Gian Nath (brother of defendant No.1), put in appearance as DW-4 in another pre-emption case titled as "Joga Singh etc. Vs. Aman Kumar and others" in 2015 regarding the remaining portion of the land measuring 24 Kanal. After coming to know about the said fact, the plaintiffs obtained certified copies of the sale deed and Jamabandis. They had requested the defendants to admit their claim, but the defendants refused to do so. Under the circumstances, the suit was filed.

6. Defendant No.1 was proceeded against *ex-parte* vide order dated 15.10.2016.

7. Defendant No. 2 contested the suit by filing written statement taking preliminary objections regarding maintainability, *locus standi*, the suit being bad for mis-joinder and non-joinder of necessary parties and the plaintiffs having concealed true and material

facts. On merits, it was asserted that defendant No.2 was a *bona-fide* purchaser of the suit land. It was further asserted that the suit land was situated within the Municipal Limits of Rania, District Sirsa and as such it was covered by the definition of urban immovable property of Town Rania. It was also claimed that the plaintiffs were not entitled to invoke the provisions of the 1913 Act as they themselves had not complied with the same. It was further the case of defendant No.2 that after execution of the sale deed dated 13.10.2011 in her favour, the possession of the suit land had been handed over to her and therefore, the question of the possession being with the plaintiffs did not arise. The plaintiffs had no right, titled or interest in the suit land and if any revenue entry was existing in the name of plaintiff No.1, the same was totally wrong and result of fabrication.

It was further asserted that in an earlier civil suit titled as “Joga Singh & Ors. Vs. Vishav Nath & Ors.”, the plaintiffs had claimed themselves to be the owners/vendees of the land including the suit land, whereas in the instant suit, they were claiming themselves to be the tenants over the suit land on payment of 1/3rd *Batai*. The said suit was dismissed by the Court of Additional Civil Judge (Sr. Division), Sirsa on 17.03.2010. Appeal filed by the plaintiffs against the said dismissal of the civil suit, was also dismissed by Additional District Judge, Sirsa on 10.04.2012. It was, thus, claimed that having lost their claim in the aforesaid civil suit, the plaintiffs had now filed the instant suit claiming themselves to be tenants over the suit land. It was averred that the claim of pre-emption was only available to the persons, who were tenants under Section 16 of the 1913 Act.

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

- “1. Whether the plaintiffs are entitled to relief of the symbolic possession as prayed for? OPP**
- 2. Whether the plaintiffs are entitled to consequential relief of permanent injunction as prayed for?OPP**
- 3. Whether the suit of plaintiffs is not maintainable?OPD**
- 4. Whether the plaintiffs have got no locus-standi to file the present suit?OPD**
- 5. Whether the suit of the plaintiffs is bad for non-joinder and mis-joinder of necessary parties?OPD**
- 6. Relief.”**

9. Parties led their respective evidence.

10. The trial Court dismissed the suit vide judgment and decree dated 18.12.2018. The appeal filed by the plaintiffs was also dismissed vide judgment and decree dated 21.02.2025 passed by the first Appellate Court leading to the filing of the present appeal.

11. Learned counsel for the parties were heard and record was perused.

12. Learned counsel for the appellants vehemently argued that the findings recorded by both Courts are based on conjectures and surmises. It was argued that the appellant-plaintiffs had been in possession of the suit land as tenants on 1/3rd share as *Batai* since long, which was so reflected in Jambandis Ex.P2 to P7, Ex.P62 and Ex.P63. It was further argued that from documents Ex.P9, Ex.P10, Ex.P12, Ex.P15, Ex.P18, Ex.P21, Ex.P23, Ex.P26, Ex.P29, Ex.P37, Ex.P40 and Ex.P43 (copies of applications on Form-L); copies of the

orders passed by Assistant Collector, 1st Grade, Ellenabad and copies of challans regarding payment, it was clear that the plaintiffs had paid *Batai* in respect of the suit land. It was further argued that in the orders passed by the Assistant Collector, 1st Grade, Ellenabad, the plaintiffs were held as tenants over the suit land on *Batai*. As regards dismissal of earlier civil suit i.e. Civil Suit No.505-C-2002, it was argued that the said suit was for specific performance of an agreement to sell and the same was dismissed on the ground that the executant of the power of attorney was not competent to enter into any agreement, being not empowered or authorized to do so. It was further argued that both Courts failed to take into consideration that before executing the sale deed in favour of defendant No.1, no notice had been given by defendant No.1 to the plaintiffs as mandated under Section 19 of the 1913 Act. Learned counsel further argued that the plaintiffs being tenants over the suit land, had a preferential right in respect of the same and, thus, the sale deed dated 13.10.2011 executed by defendant No.1 in favour of defendant No.2 was illegal.

13. On the other hand, learned Senior counsel appearing for respondent No.2, while controverting the submissions made by learned counsel for the appellants vehemently argued that the very suit filed by the plaintiffs was not maintainable. It was further argued that in terms of Notification dated 08.10.1985, issued by the Revenue Department, Government of Haryana, no right of pre-emption existed in respect of sales of land falling in the areas of any municipality in Haryana. It is further argued that the suit land being located within the urban area and governed by the municipality, the first Appellate Court

rightly recorded a finding that in view of the said notification, right of pre-emption would not be available to the plaintiffs. In support of his contentions, learned Senior Counsel relied upon the judgment of Hon'ble Supreme Court in **Jagmohan and another Vs. Badri Nath and others**, (2024)3 SCC 588; **Shyam Sunder and others Vs. Ram Kumar and another**, (2001)8 SCC 24 and **Radhakisan Laxminarayan Tosniwal Vs. Sridhar Ramchandra Alshi and others**, AIR 1960 SC 1368.

It was further argued that in the earlier suit titled as “Joga Singh & Ors. Vs. Vishav Nath & Ors.”, filed by the plaintiffs against the previous owners of the suit land, the appellant-plaintiffs had claimed themselves to be the prospective vendees and not as tenants over the suit land. The said suit was dismissed on 17.03.2010. It was further argued that in the proceedings before the Revenue Authorities, the appellant-plaintiffs had challenged the direction regarding payment of *Batai/Tihai* issued by the Assistant Collector, 1st Grade, Ellenabad and rather they had claimed themselves to be in adverse possession of the suit land. It was, thus, argued that the appellant-plaintiffs had taken contradictory stands. Lastly, it was argued that no case was made out for interference in the impugned judgments and decrees passed by the Courts below.

14. I have considered the submissions made by learned counsel for the appellants and learned Senior counsel representing defendant No.2.

15. The trial Court found that in terms of Section 3(3) of the 1913 Act, even if the property was situated within the limits of town,

the same being agricultural land, the right of pre-emption would exist regarding such land. However, the first Appellate Court, while referring to the notification dated 03.10.1985 issued by the Revenue Department, Government of Haryana, held that right of pre-emption would not be applicable to the suit land. The trial Court had non-suited the appellant-plaintiffs on the ground that they had taken contradictory pleadings in the previous suit; in the proceedings before the Revenue Authorities and in the instant suit. It was also found that in the sale deed dated 13.10.2011, it was only mentioned that in the revenue record possession of tenants had been shown over the suit land and not that the appellant-plaintiffs had the actual physical possession of the suit land. It was also found that though in the revenue record the appellant-plaintiffs had been shown as tenants over the suit land and the presumption of truth was attached with the revenue record yet the said presumption had been rebutted by the defendants. The relevant extract from the judgment of the trial Court reads as under:-

“25. As a matter of fact, plaintiffs were bound to prove their case by leading cogent and convincing evidence admissible in law. They cannot take the benefit of weakness of defendants. Though, the revenue record i.e. Jamabandi still shows plaintiffs as tenants over the suit land and it is also true that presumption of truth is attached with the revenue record. However, the presumption in this case has been rebutted. Entries in the revenue record are doubtful and it has also come out in judgment and decree dated 13.12.2002 (Ex. D9 & Ex. D10) passed by the Court of Shri Pawan Kumar, the then Learned Civil Judge (Jr. Divn.), Sirsa. The present plaintiffs were restrained vide order dated 13.12.2002 from interfering into peaceful possession of

previous owners over the suit land and the claim of plaintiffs that they are tenants was discarded by the Court of Shri Pawan Kumar, the then Learned Civil Judge (Jr. Divn.), Sirsa. The order passed by revenue authorities for correction of Khasra Girdawaries in favour of plaintiffs, was also held irrelevant and of no consequence by the Court in its judgment and decree dated 13.12.2002. These facts are sufficient for doubting the genuineness of revenue entries.”

16. The first Appellate Court found that no pre-emption rights were available in respect of the suit land in view of the notification dated 03.10.1985. It was also found that the suit filed by the appellant-plaintiffs was beyond the period of limitation. The relevant extract from the judgment passed by the first Appellate Court reads as under:-

“16. The suit had been filed by plaintiffs for pre-emption with respect to suit land on the ground that the suit land which has been transferred in favour of defendant No.2 by defendant No.1 by executing the sale deed No.6187 dated 13.10.2011, the plaintiffs been tenants over the same have preferential right over it. From the record, it is also established that the suit land comes under the territorial jurisdiction of Municipal Committee of Rania and does not come under the jurisdiction of a village. Therefore, the question whether right of pre-emption would be applicable to the suit land or not, is taken up first. In this regard, it is observed that the Hon'ble Supreme Court in the case of Shyam Sunder and others versus Ram Kumar and another, (2001) (8) SCC 24 has settled the dispute once for all that the pre-emptor, who exercises its piratical right, has to maintain his right at all the three stages i.e. at the time of sale, filing of suit and at the time of passing of decree by the Trial Court.

17. It is necessary to mention here that the Pre-emption Act of 1913 defines different categories of lands

for the purpose of application of its provisions. For easy reference Sections 3(1) (2) and (3), and 8 of the Punjab Pre-emption 1913 Act are reproduced as under:-

“3. Definitions:- In this Act, unless a different intention appears from the subject or context.-

(1) 'agricultural land' shall mean land as defined in Punjab Alienation of Land Act, 1900 (XIII of 1900) (as amended by act, 1 of 1907), but shall not conclude the rights of a mortgage, whether usufructuary or not in such land:

(2) 'village immovable property' shall mean immovable property within the limits of a village, other than agricultural land:

(3) 'urban immovable property' shall mean immovable property within the limits of town, other than agricultural land. For the purposes of this Act a specified place shall be deemed to be a town (a) If so declared by the State Government by notification in the Official Gazette or (b) if so found by the Courts:

8. State Government may exclude areas from pre-emption-

(1) Except as may otherwise be declared in the case of any agricultural land in a notification by the State Government, no right of pre-emption shall exist within any cantonment.

(2) The State Government may declare by notification that in any local area or with respect to any land or property or class of land or property or with respect to any sale or class of sales, no right of pre-emption or only such limited right as that the State Government may specify, shall exist.

18. The Hon'ble Supreme Court in the case of Jagmohan and Another Versus Badri Nath and Others, Civil Appeal No. 1753 of 2024 (Arising out of SLP (C) No. 18612 of 2015) decided on 06.02.2024 has made the distinction between land and immovable property by observing that from the provisions of the 1913 Act, if read Scheme of the Act, it is abundantly clear that the

land and the immovable property are two different terms. The immovable property is more than the land on which certain construction has been made. Further it has been observed that the notification dated 8.10.1985 of the State of Haryana limits its application for taking away the right of pre-emption only with reference to sale of land falling in the areas of any municipality and not on immovable property. It has also been observed that the notification of 8.10.1985 of the State of Haryana, which has been issued in exercise of powers conferred under Section 8(2) of the 1913 Act, enables the State Government to declare by notification either no right of pre-emption or only limited right will exist in any local area or with respect to any land or property or class of land or property. The notification provides that the right of pre-emption shall not exist in respect of sale of land falling in the areas of municipalities in Haryana.

19. Since in the present case, it is not disputed that the suit property is a land i.e. agricultural land and not an immovable property and is situated within the jurisdiction of the municipality of Rania town, by taking judicial notice of the notification dated 3.10.1985 of the Haryana State Government which excludes sale of land falling in areas of any Municipal Committee in State of Haryana from right of pre-emption and also in view of the above referred case law. It is held that the right of pre-emption will not be applicable to the suit land.

20.At the time when the plaintiffs were to pay rent, they denied their liability on the ground of they being in adverse possession but when the suit land was transferred to other persons in order to get the same at a lower price, they came up with the plea of their status as tenants. No doubt, the learned revenue authority concerned had adjudged the plaintiffs as tenants over the suit land but even against said orders, the plaintiffs had filed appeals before the Collector reiterating their claim of adverse possession over the suit land. Even though the appeals as preferred before the Collector

were initially adjourned sine-die on account of pending civil litigation and thereafter withdrawn by the plaintiffs, but said withdrawal does not amount to any change in the conduct of the plaintiffs of themselves denying their status of tenant over the suit land. The doctrine of estoppel definitely applies to the claim as raised by the plaintiffs in the suit in question and they cannot be allowed to change their stance regarding their status qua the suit land time and again. The right of presumption is a weak right and is not looked upon with favours by the courts and therefore, the courts could not go out of their way to help the pre-emptor as was laid down by the Hon'ble Supreme Court in the case of Radhakisan Laxminarayan Toshniwal Vs. Shridhar Ramchandra Alsi and others, 1960 AIR 1368 (SC).

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23. Since in the present case, the possession over the suit property mentioned to be with tenants, therefore, the terminus-a-quo would be the date of registration of the sale deed which is dated 13.10.2011, the limitation of one year would run from the date of registration of the sale deed, however, the suit had been filed in the year 2015, which is beyond the period of limitation and even on that score the suit of the plaintiffs is not maintainable.”

17. The issue as regards the validity of the issuance of notification dated 08.10.1985 and its applicability, came up for adjudication before the Hon'ble Supreme Court in Jagmohan's case (supra). It was held by the Hon'ble Supreme Court that the said notification issued in exercise of the powers conferred under Section 8(2) of the 1913 Act, excluding the right of pre-emption in respect of the land falling in the areas of municipality, was perfectly valid. It was held as under:-

“12. The right of the respondents/tenants in the property flows from Section 16 of the 1913 Act. It is not a matter of dispute that the respondents were tenants in the property from the year 1949 onwards where the rolling mill had been set up. The term ‘urban immovable property’ has been defined in Section 3(3) of the 1913 Act to mean immovable property within the limits of town, other than agricultural land. Section 3(1) defines any agricultural land to mean land as defined in 1900 Act. The term ‘land’ as defined in Section 2(3) of the 1900 Act excludes any site of any building in a town or village. Meaning thereby that the immovable property would be more than the land only or the land on which the construction has already been made. The fact that the property in dispute is located in a municipal area of Jagadhri is not in dispute.

13. After coming to the conclusion that the property in dispute on which right of pre-emption was sought to be exercised by the respondents was an urban immovable property, the only issue which requires consideration by this Court is as to whether the exemption of pre-emption as granted vide notification dated 08.10.1985 would be available to the property in dispute.

14. A perusal of the notification shows that it has been issued in exercise of powers conferred under Section 8(2) of the 1913 Act, which enables the State Government to declare by notification either no right of pre-emption or only limited right will exist in any local area or with respect to any land or property or class of land or property. The notification provides that right of pre-emption shall not exist in respect of sale of land falling in the areas of municipalities in Haryana.

15. As we have already noticed above, the term ‘land’ as such has not been defined in the 1913 Act as it is only the agricultural land which is defined. If the aforesaid notification is read with reference to the powers available with the State Government to grant exemption from pre-emption, it is evident that the same has been granted with reference to land only and not

the immovable property. The fact that Section 8(2) of the 1913 Act uses two terms independently, clearly suggests that the land and the immovable property have different meanings. It is evident even from the language of Section 15 of the 1913 Act, which also provides right of pre-emption in respect of agricultural land and village immovable property. 'Village immovable property' has been defined to mean immovable property within the limits of a village other than the agricultural land.

16. From the aforesaid provisions of the 1913 Act, if read Scheme of the Act, it is abundantly clear that the land and the immovable property are two different terms. The immovable property is more than the land on which certain construction has been made. Guidance can also be taken from the definition of immovable property, as provided in Section 3(26) of the 1897 Act, which includes land, means something more than the land.

17. As the notification dated 08.10.1985 limits its application for taking away the right of pre-emption only with reference to sale of land falling in the areas of any municipality, the same will not come to the rescue of the appellants. In the case in hand, admittedly it is sale of immovable property, which is more than the land as a rolling mill had already been set up on the land, which was in occupation of the respondents as tenants.”

18. Still further, in Shyam Sunder's case (supra), it was held by the Hon'ble Apex Court that a pre-emptor must possess qualification to pre-empt a sale on the date of decree of the Court of first instance. However, in the instant case, as found by both Courts, the appellant-plaintiffs had failed to establish on record that they were the tenants over the suit land and rather, had taken contradictory stands in various proceedings i.e. previous suit filed by them against

one Vishav Nath & Ors; cases before the revenue authorities and in the instant suit.

19. In the considered opinion of this Court, the first Appellate Court rightly affirmed the findings of the trial Court as regards the appellant-plaintiffs having failed to establish on record that they were tenants over the suit land. Still further, no fault can be found with the findings recorded by the first Appellate Court that in view of the notification dated 08.10.1985, the right of pre-emption would not be applicable to the suit land and that the suit filed by the plaintiffs was barred by limitation. It could not be pointed out that any evidence has been misread or not taken into consideration.

20. In view of the above, finding no merit in the present appeals, the same are hereby dismissed.

21. Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

15.01.2026

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