IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I. RSA No. 2060 of 1993(O&M)
Reserved on: 29.08.2025
Pronounced on: 26.09.2025

Dhan Raj & Ors.

...**Appellants**

Versus

Om Parkash & Ors.

…Respondents

II. RSA No. 2061 of 1993

Dhan Raj & Ors.

...**Appellants**

Versus

Om Parkash & Ors.

…Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Vinay Yadav, Advocate for
Appellants in RSA No. 2060 of 1993.

Mr. Bharat Bhandari, Advocate for
Appellants in RSA No. 2061 of 1993

Mr. Saurabh Bajaj, Advocate
For the respondents.

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<u>DEEPAK GUPTA, J.</u>

These two regular second appeals arise out of a common judgment dated 26.08.1993 passed by the learned Additional District Judge, Sirsa, whereby Civil Appeal Nos. 132-CA of 1992 and 133-CA of 1992 were accepted. Both appeals had been filed against separate judgments of the trial Court in two suits.

2. Parties to both the litigations are same and dispute pertains to the land forming part of same Khewat. To avoid confusion, parties shall be referred as per their status before the trial Court.

3. Nanu, Mahla Ram and Banwari sold 40 Kanal 05 Marla of land (½ share out of 80 Kanal 12 Marla) to the defendants-appellants through a registered sale deed dated 21.07.1989 for ₹1,25,781.25. Subsequently, other co-sharers of the same Khewat—namely Moji, Ladhu, Smt. Kalawati and Noja—sold 26 Kanal 17 Marla (⅓ share of the land of same Khewat) to the same vendees by another registered sale deed dated 16.08.1989 for ₹83,906.25.

4. Plaintiffs-respondents Om Parkash and others, claiming co-sharership on the basis of a prior sale deed dated 26.08.1983 in their favour regarding 153/1622 share of the Khewat (mutation sanctioned on 12.09.1986), instituted two separate suits (Civil Suit Nos. 947 and 949 of 1990) on 31.05.1990, seeking to pre-empt both sales.

5. The defendants contested the suits, asserting parity of status with the plaintiffs as co-sharers and pleading that they had paid the entire consideration, incurred expenses towards stamp and registration, and further made improvements in the purchased land.

6. By way of two separate judgments, both dated 27.02.1992, the trial Court dismissed the suits holding that the plaintiffs did not have the right to pre-empt.

7. However, the First Appellate Court, by way of common judgment dated 26.08.1993, while disposing of the two appeals filed by the unsuccessful plaintiffs, allowed the same by holding that they were entitled to pre-empt the sales.

8. The defendants of the case i.e. vendees are now before this Court in the present two regular second appeals, assailing the judgment of first appellate court.

9. Contention of Ld. Counsel for the appellants – defendants is that both the sale deeds dated 21.07.1989 and 16.08.1989 were executed in favour of the appellants – vendees, by different co-sharers of the same Khewat, prior to the institution of the two suits by the plaintiffs – respondents on 31.05.1990 and

therefore, appellate court was in error in not considering the effect of Section 21A of the Punjab Pre-Emption Act, 1913, as the appellants had improved their status as co-sharers i.e., equivalent to the plaintiffs, prior to the filing of the suits. It is urged by learned counsel that when the suit to pre-empt the sale dated 21.07.1989 was filed on 31.05.1990, the defendants-appellants had already improved their status as co-sharers by purchasing another share in the same Khewat from the other co-sharers by virtue of sale deed dated 16.08.1989, and as such the sale deed dated 21.07.1989 could not be pre-empted. It is further argued that as far as the suit for pre-empting the sale deed dated 16.08.1989 is concerned, by virtue of the prior sale dated 21.07.1989, the defendants had become co-sharers in the same Khewat much prior to the filing of the suit, and therefore, the second sale is also not pre-emptible.

10. On the other hand, the learned counsel for the respondents contend that the First Appellate Court has rightly applied Section 28A of the Pre-emption Act in order to hold that the defendants had not improved their status, as their sales were pre-emptible. He accordingly prayed for dismissal of both the appeals.

11. Submissions of learned counsel for the parties have been considered and record perused.

12. Before this Court, it is undisputed that the plaintiffs became co-sharers by virtue of the 1983 sale deed and consequent mutation of 12.09.1986, and that their names appeared in Jamabandi for 1984-85 and 1989-90. The parties also do not dispute the sale consideration or the defendants’ expenses towards stamp and registration charges. It is equally clear that the defendants failed to prove any improvements in the land.

13. Accordingly, the sole issue that now arises for consideration is whether the plaintiffs, being co-sharers, were entitled to pre-empt the two impugned sale deeds executed by other co-sharers in favour of the defendants-appellants, particularly in light of subsequent legislative repeal and judicial pronouncements characterising the right as piratical.

14. The courts have consistently described the right of pre-emption as a piratical right, a right of substitution rather than acquisition, restricting the vendor's freedom of contract. In ***Atam Prakash v. State of Haryana, 1986 (2) SCC 249,*** Hon'ble Supreme Court described it as a weak right, a clog on the freedom of vendor, and held that right of pre-emption based on vicinage is unconstitutional. While upholding co-sharers' rights, then the Court emphasized its statutory and limited nature. It is called a piratical right because it compels a vendee to surrender property lawfully purchased merely to satisfy a co-sharer, who claims preference. It allows one person to oust another from the property already acquired for consideration and so is treated as a disliked right.

15. The said right of pre-emption being a weak right, it is subordinate to the rights of the vendee and can be defeated by any lawful method. As held by Hon'ble Supreme Court in ***Bishan Singh & Ors. v. Khazan Singh & Ors. AIR 1958 SC 838***, pre-emption is a statutory but weak right, enforceable only upon completion of sale and liable to be defeated by all lawful means available to the vendees. This legal position is reiterated by Hon'ble Supreme Court in ***Raghunath vs Radha Mohan (2020), Law Finder Doc Id # 1752111;*** and then in ***Jhabbar Singh v. Jagtar Singh (2023), Law Finder Doc Id # 2196046.***

16. The Punjab Pre-emption Act, 1913 has already been repealed in its application to State of Punjab in 1973. For the Union territories of Chandigarh and Delhi, the same has been repealed in 1989. Even in Haryana, right of co-sharer to pre-empt the sale is no longer available after Haryana Act 10 of 1995.

17. Although the present case pertaining to Haryana, is governed by pre-repeal law, the consistent judicial approach has been to discourage expansion of this right. Thus, even on equitable considerations, plaintiffs cannot be granted a right that legislation itself has abolished in Punjab (1973); Delhi/Chandigarh (1989) and in 1995 in Haryana.

18. In the light of aforesaid position, it is required to be seen as to whether the right of pre-emption claimed by the plaintiffs-respondents is

lawfully defeated by the vendees-defendants *(appellants herein)* by virtue of the two sale deeds.

19. Section 21-A of the Punjab Pre-Emption Act 1913 reads as under: -

> "21A. Any improvement, otherwise than through inheritance or succession, made, in the status of a vendee defendant after the institution of a suit for pre-emption shall not affect the right of the pre-emptor plaintiff in such suit."

20. Perusal of the aforesaid provision would reveal that it invalidates the effect of acquiring any right by the defendant - vendee in a pre-emption suit for purpose of improvement of his status pendente lite except by way of inheritance or succession.

21. In the instant case, both sale deeds dated 21.07.1989 and 16.08.1989 were executed in favour of the appellants prior to the filing of the two suits on 31.05.1990. Section 21A bars improvements pendente lite, but here the improvement was prior to institution of the suits. On the date of filing the suits, the appellants were already co-sharers by virtue of the respective purchases. Consequently, the plaintiffs' right to pre-empt never accrued. The reliance placed by the respondents on Section 28A is misplaced, since that provision regulates competing rights of multiple pre-emptors, and not the situation where the vendee himself has already attained the status of a co-sharer prior to suit. In such a situation, applying the settled principle in **Bishan Singh & Ors. v. Khazan Singh & Ors.** ***(AIR 1958 SC 838),*** consistently followed in subsequent judgments, the weak and piratical right of pre-emption stands lawfully defeated, also keeping in mind the subsequent legislative repeal.

22. In the aforesaid circumstances, both these appeals deserve to succeed. Both the appeals are accordingly accepted. The judgments and decrees passed by the first Appellate Court are hereby set aside, whereas the judgments and decrees passed by the trial Court are hereby restored.

(DEEPAK GUPTA)
JUDGE

26.09.2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No