2026:PHHC:008433

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2403-1993 (O&M)
Reserved on :-**19.12.2025**
Date of Pronouncement:-**21.01.2026**
Uploaded on:-22.01.2026

Suraj Bhan and others

… Appellants

Versus

Niadri Devi (Dead) through her LRs

... Respondents

****

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Rajinder Goel, Advocate with
Ms. Anavi Parnami, Advocate and
Mr. Purusharth Dhull, Advocate
for the appellants.

Mr. M. L. Sarin, Senior Advocate with
Ms. Hemani Sarin, Advocate
for respondents.

Mr. Suneel Ranga, DAG, Haryana.

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VIRINDER AGGARWAL, J.

1. This appeal commands the earnest attention of this Court, as the appellants–plaintiffs have instituted the present Regular Second Appeal (hereinafter referred to as "RSA") impugning the judgment and decree dated 04.10.1993, rendered by the learned Additional District Judge, Sonepat, which affirmed, in their entirety, the findings recorded by the learned Trial Court. The Trial Court, by its judgment and decree dated 23.11.1992, passed by the learned Senior Sub-Judge, Sonepat, had decreed the suit instituted by

the respondent–plaintiff, seeking declaratory relief under the provisions governing pre-emption.

2. As delineated in the pleadings, it is the appellants' case that the respondent–plaintiff approached the learned Trial Court with a claim for possession under the right of pre-emption, premised on the contentions enumerated hereunder:-

> *"Tek Chand, son of Udho Dass, and Shankar Dass, son of Tek Chand, residents of Sonepat, sold 69 kanals and 16 marlas of land, comprised in Khewat No. 37, as detailed in paragraph 1 of the plaint, to Suraj Bhan, Sarup Singh, and Davinder Singh, the defendant–appellants, by a registered sale deed dated 06.11.1987, for a consideration of Rs. 2,25,000/-. The plaintiff–respondent, Smt. Niyadri, claiming herself to be a co-sharer in Khewat No. 37 and also a tenant under the vendors, Tek Chand and Shankar Dass, instituted a suit for pre-emption in respect of the said land. The plaintiff challenged the sale consideration, contending that the actual consideration paid by the vendees to the vendors was Rs. 1,75,000/-, reflecting the true market value of the land. The suit was accordingly filed seeking appropriate relief under the pre-emption provisions."*

3. On being duly served with summons, the respondents appeared through their counsel and submitted a written statement resisting the claim, wherein they set out the following contentions in detail:-

> *"The vendees contested the suit, disputing the locus standi of the plaintiff, Smt. Niadri, as either co-sharer or tenant. They contended that the sale was lawfully effected for Rs. 2,25,000/-,*

duly paid to the vendors, and that the joint khewat had been partitioned prior to execution and registration of the sale deed, with the relevant portions falling to Tek Chand and Shankar Dass. It was further alleged that the plaintiff's name had been fraudulently recorded in the revenue records as a tenant, which was later found to be fictitious. The vendees claimed reimbursement of stamp duty and registration charges, asserted that the plaintiff was estopped from instituting the suit by her conduct, and contended that the suit was improperly valued and devoid of any cause of action."

4. Having undertaken a detailed scrutiny of the pleadings and the submissions of the parties, the Court finds it appropriate to delineate the precise matters in controversy and, to facilitate a coherent and structured adjudication, frames the following issues for consideration:-

1. *Whether the plaintiff has superior right to pre-empt the sale in question? OPP*
2. *Whether the sale consideration has been fixed in good faith and has been actually paid. If not so to what effect?OPP.*
3. *Whether the plaintiff is estopped from filing the present suit by her own act and conduct? If so to what effect? OPD.*
4. *Whether the plaintiff has no cause of action? If so to what effect? OPD*
5. *Whether the suit has been properly valued for the purposes of court fee and jurisdiction? If so to what effect?OPD*
6. *Whether vendee-defendant incurred expenses on stamp and registration? If so how much and to what effect?OPD*

6-A. *Whether the plaintiff was aware of the sale in question?OPD*

7. Relief

5. In the wake of the framing of issues and after allowing both parties ample opportunity to adduce evidence, the learned Trial Court rendered a decree in favour of the respondent–plaintiff. The appeal filed by the appellants–defendants was dismissed by the learned First Appellate Court. Challenging the concurrent findings, the appellants have instituted the present RSA before this Court.

6. At the threshold, the appellants have approached this Court through the present appeal, impugning the concurrent findings and decrees of the learned Courts below. After due scrutiny, the appeal was admitted for regular hearing, with notice duly served upon the respondent. Learned Senior Counsel appeared on behalf of the respondent's legal representatives, and learned State Counsel represented the State of Haryana. The matter was thereafter heard comprehensively, having regard to the extensive submissions advanced by the learned counsel for the respective parties.

6.1. To facilitate a thorough and well-informed determination of the questions arising in this appeal, the entire record of the learned Courts below was requisitioned and made available to this Court for detailed scrutiny and consideration.

7. At the outset, having afforded learned counsel for the parties full opportunity to address the Court, and upon anxious and meticulous examination of the pleadings, evidence, and the concurrent findings of the courts below, I have undertaken a comprehensive scrutiny of the record to ascertain '*whether the impugned judgments and decrees suffer from jurisdictional irregularity, manifest perversity, or misappreciation of evidence that would justify interference in appellate jurisdiction*'?

8. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317 and Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

9. During the pendency of the present appeal, the appellants filed Civil Miscellaneous Application No. 2502-C of 2025, seeking leave of this Court to adduce additional evidence in terms of Order 41, Rule 27 of the Code of Civil Procedure, read with Section 151 CPC. The application was preferred for the purpose of placing on record subsequent developments, and to bring into evidence the documents marked as Annexures R-1 and R-2, which had come into existence during the pendency of the appeal and could not, despite the exercise of due diligence, have been produced earlier.

9.1. The appellants submitted that the order dated 07.07.1992 passed by the Financial Commissioner in the partition proceedings (Ex. D-2) had been challenged in Civil Writ Petition No. 13141 of 1992 by one Rinku, and that the said writ petition was disposed of by the High Court vide order dated 21.04.1993, a certified copy of which is annexed as Annexure R-1. The matter was subsequently remanded to the Financial Commissioner, who, by order dated 20.12.1995, directed remand of the proceedings to the Assistant

Collector, IInd Grade, Sonepat, a certified copy of which is marked as Annexure R-2.

9.2. Both these orders incontrovertibly establish that the partition between the co-owners had not been completed even as of the year 1995. These documents are therefore highly material to the present proceedings, as they demonstrate that the appellants continue to be co-sharers in the suit property and, accordingly, possess a legal right to claim pre-emption. The appellants submit that the inclusion of these documents as additional evidence is necessary for the just adjudication of the appeal and to ensure that no prejudice is caused on account of the unavailability of such records prior to their coming into existence.

10. The application was vehemently opposed by the respondent, who filed a detailed written reply praying for its dismissal. It was contended that the appellants were well aware of the existence of the said orders for a considerable period, and that the application was being filed more than two decades after the passing of the relevant orders, thereby rendering it belated and liable to be rejected.

10.1. Further, it was submitted on behalf of the respondent that the orders relied upon by the appellants neither set aside the partition order nor concern the rights of the respondent vis-à-vis the vendors of the appellants. In consequence, it was argued that such documents were wholly irrelevant for the purposes of adjudicating the present appeal and, therefore, should not be admitted as additional evidence.

11. I have given my thoughtful and careful consideration to the submissions advanced by learned counsel for the parties. It is apparent that the documents sought to be brought on record are judicial records that have

come into existence during the pendency of the present proceedings. As such, they are admissible as additional evidence, provided they bear any material relevance to the decision of this Regular Second Appeal or relate to facts crucial to the determination of the controversy at hand.

11.1. A perusal of the order dated 21.04.1993 (Annexure R-1) passed by this Court in Civil Writ Petition No. 13141 of 1992 demonstrates that the matter was remanded to the Financial Commissioner, Haryana, for a considered examination of the petitioner's plea on merits and for disposal of the civil writ petition. The petitioner in the said writ petition was Rinku, a minor, son of Smt. Santosh, whose share in the suit property was retained jointly with the respondent–applicant and had not been allocated a separate share with concomitant rights of passage or possession.

11.2. The subsequent order dated 20.12.1995 (Ex. R-2) passed by the Financial Commissioner clearly evidences that the matter was remanded to the Assistant Collector, IInd Grade, Sonepat, for a limited purpose, strictly for consideration of the petitioner's claim. The relevant portion of the last paragraph of the Financial Commissioner's order, which bears direct relevance to the present proceedings, is reproduced as under:-

> "The counsel for the petitioner pleaded that Rinku minor, the petitioner has been caused injustice as a separate piece of land i.e. Kurra has not been allotted to him. What has been allotted to him is joint Kurra with his grandmother Niadri who is inimical to the petitioner. He, therefore, requested that the minor should be allotted a separate Kurra which will have the facility of Khal and Passage. Counsel for the respondents pleaded that true facts of the case were not brought to the notice of the Hon'ble High Court. The map shown to the High Court was different from the certified copy of the map

which clearly hows that passage and khal have been provided to the Kurra which has been jointly allotted to the petitioner and his grandmother Niadri, He, however, admitted that no separate Kurra has been allotted to the minor.

I have carefully considered the arguments of both the parties and have also gone through the record, Certified copy of the map clearly shows that a separate Kurra has not been allotted to the minor Rinku. The Khal and Passage provided in the map is to serve the Kurra allotted jointly to the petitioner and Niadri. The petitioner fears that his interests may not be protected by his grandmother, and, therefore, he has been asking for a separate Kurra with the facility of Passage and Khal. I wonder why the Assistant Collector, IInd Grade did not keep this request of the minor in view while finalising the partition. In these circumstances, the case is remanded to the Assistant Collector, IInd Grade, Sonipat who may reconsider the allotment of Kurra to the petitioner qua his grandmother Niadri and decide the case on merits and in such a manner that the petitioner's lawful interests are duly protected."

12. A careful examination of the aforementioned orders reveals that the partition proceedings were not set aside in their entirety. Rather, the matter was remanded solely for the limited purpose of determining and separating the shares of Niadri Devi and Rinku. Consequently, these proceedings do not, in any manner, affect the status or rights of the vendors of the appellants vis-à-vis Smt. Niadri Devi, the respondent–plaintiff.

12.1. In the circumstances, it is evident that the orders in question bear no material relevance to the determination of the present Regular Second Appeal, as they do not alter or impinge upon the legal relationship between Niadri Devi and the vendors of the appellants–defendants, namely

Tek Chand and Shankar Dass. Having considered the matter in its entirety, the application seeking to bring these documents on record is found to be devoid of merit and is, accordingly, dismissed.

13. Learned counsel for the appellants submitted that the learned First Appellate Court has committed a manifest and grave error in decreeing the suit. It was urged that the relation of parties as co-sharer would not be subsisting till preparation of instrument of partition. It is now well-settled that such a relationship ceases only upon the passing of an appropriate order by the Collector and the subsequent preparation of the Nakshy 'Be'.

13.1. Learned counsel further contended that the learned First Appellate Court failed to appreciate that the respondent–plaintiff had not adduced any evidence to establish that the vendors of the appellants had failed to serve the requisite notice under Section 19 of the Act. In addition, the appellants emphasized that the vendors, being necessary parties to the proceedings, had been omitted by the plaintiff, thereby rendering the suit liable to be dismissed on the ground of non-joinder of necessary parties. The failure of the learned First Appellate Court to consider these critical aspects constitutes a substantial legal infirmity, resulting in the decree being unsustainable in law.

14. Conversely, learned counsel for the respondent–plaintiff contended that the findings recorded by the Courts below suffer from neither illegality nor perversity. It was submitted that the learned First Appellate Court has correctly concluded that a subsisting relationship of co-sharers existed between the plaintiff and the vendors of the appellants. Learned counsel further asserted that the relationship of co-shares would only cease

upon the preparation of a formal instrument of partition, a legal position that has been consistently upheld by this Court in its well-settled jurisprudence.

14.1. It was thus urged on behalf of the respondent–plaintiff that the judgments of the Courts below are founded upon proper appreciation of the pleadings and evidence, and that the conclusions reached therein are wholly in accordance with the law governing co-sharer relationships and the cessation of joint ownership.

15. The learned First Appellate Court, after consideration of the pleadings, evidence, and submissions advanced by the parties, has recorded its finding in paragraph Nos. 10 & 11 of the impugned judgment, which reads as under:-

> "10. xxxx
>
> D.W.1 Suraj Bhan has admitted that regarding partition order appeal was preferred before Financial Commissioner. Even after production of additional evidence by the plaintiff when order passed by Hon'ble High Court in civil writ was produced. An opportunity was given to the defendant to produce his evidence in rebuttal the reof. The Hon'ble High Court has stayed dispossession in pursuance of the so-called partition order. Despite sich opportunity cha defendents did not lead any evidence and did not produce in the trial court any partition deed. Mring appeal when it was being argued before me that no sufficient opportunity was given to the defendant- appellants to lead evidence in rebuttal of additional evidence adduced by the plaintiff and no opportunity was given to them to produce instrument of partition. I suggested to the counsel for the appellants that the appeal can be adjourned for some days and the appellants can be given an opportunity to produce instrument of partition if any but such offer was not acceptable to the counsel for appellants. The only inference

that can be drawn is that so far no instrüment of partition has been drawn in pursuance of order of Assistant Collector. The appeal has been pending since long and no application was moved by the appellants to produce any instrument of partition or any evidence to show that any instrument of partition was ever prepared.

11. In view of foregoing discussion, I have no hesitation in affirming the finding of the trial court on issue No.1 to the effect that the plaintiff was a co-sharer in the joint khewat at the time of sale, at the time of institution of the suit and at the time decree of the suit and that she had preferential right of pre-emption."

16. Learned counsel for the respondent–plaintiff has placed reliance upon the well-settled law as enunciated by this Court in ***Darbar Singh and Another vs. Gurdial Singh and Another, 1994 (1) RLR***, wherein it was held that the severance of the status of co-sharers is not effected until the formal instruments of partition have been drawn. A similar view was expressed by the Division Bench in ***Fauja Singh vs. Pritam Singh and Another, 1993 PLJ 398***, wherein it was held that a partition is not legally complete in the absence of a duly executed instrument of partition. Further, in ***Amar Singh and Another vs. Sheo Narain and Others, 1993 PLJ 113***, the Court reaffirmed that the execution of partition instruments is a sine qua non for terminating the co-sharer relationship.

16.1. On the basis of these authoritative pronouncements, it was contended that the Courts below have rightly observed that the appellants and the respondent–plaintiff continued to enjoy a co-sharer relationship until such instrument was formally executed, and that the cessation of such a relationship cannot be presumed merely on preliminary steps or informal arrangements relating to partition.

17. Learned counsel for the appellants/defendants, on the other hand, submitted that the co-sharer relationship between the parties would cease, and the partition proceedings may be deemed complete, the moment a formal order is passed by the Revenue Officer. The subsequent preparation of the instrument of partition, as contemplated under Section 121 of the Punjab Land Revenue Act, was argued to be a purely ministerial or administrative act, undertaken solely to give formal effect to the decision already arrived at in the partition proceedings.

17.1. Learned counsel placed reliance upon the judgment of the Hon'ble Apex Court in ***Jhabbar Singh vs. Jagtar Singh, AIR 2023 SC 2074***. In paragraph No. 32 of the said judgment, the Hon'ble Court considered the question of the effect of a decision taken by the Revenue Officer under Section 118, regarding the identification of property to be divided and the mode of partition. The Court observed that upon such decision, the rights and status of the parties stand conclusively determined, and the parties may be regarded as having completed the partition proceedings. The relevant portion of the judgment reads as under:-

> "30. If the said analogy is applied to the provisions contained in the Punjab Land Revenue Act pertaining to the Partition, we are of the opinion that when a decision is taken by the Revenue Officer under Section 118 on the question as to the property to be decided and the mode of partition, the rights and status of the parties stand decided and the partition is deemed to have completed. At this stage, such decision is required to be treated as the "decree". The consequential action of preparing the instrument of partition as contemplated in Section III of the Land would be only ministerial or administrative act to be carried out to completely dispose of the partition case

instituted before the Revenue Officer Hence, once the decision on the property to be divided and on the mode of partition is taken by the Revenue Officer under Section 118, the joint status of the parties would stand severed on the date of such decision, subject to the decision in appeal if any preferred by the party. The consequential action of drawing an instrument of partition would follow thereafter. Hence, merely because the instrument of partition was not drawn, it could not be said that the partition was not completed or that the joint status of the parties was not severed.

31. The first part of Section 121 of the Land Revenue Act states that "when a partition is completed". Meaning thereby, when the issue with regard to the properties to be divided and the mode of making partition stand decided and rights of the parties stand determined by the Revenue Officer, the latter part of Section 121 for preparing the instrument of partition and recording the date of partition would come into play. Such actions required to be taken as contained in the latter part of Section 121, would be only an executory work or administrative act to be carried out for completely disposing of the partition case instituted by the party before the Revenue Officer. just as in case of a decree in civil suit, the adjudication conclusively decides the rights of the parties with regard to the matter in controversy, however the decree would be preliminary when further proceedings have to be taken before the suit can be completely disposed of. In the same way, when the decision is taken by the Revenue Officer under Section 118, the partition would stand completed, the joint status of the parties would stand severed and would remain no more joint, after the period of limitation prescribed under the Act. The further proceeding to draw an instrument of

partition would be only an executory or ministerial work to be carried out to completely dispose of the partition case.

32. So far as the facts of the present case are concerned, the Assistant Collector i.e., concerned Revenue Officer vide the order dated 25.05.1982 had rejected the objections raised by the plaintiff Jagtar Singh and others with regard to the mode of partition and had confirmed the mode of partition accordingly. On that day, the "Naksha Be" was already annexed to the file and the case was listed on 31.05.1982 for hearing the objections as to the "Naksha Be". On. 31.07.1982, the Assistant Collector passed the order stating inter alia that the parwari and Kanungo were present, and they had explained the parties shoul the passage and the boundaries of the plots, and that as per "Naksha be, the partition was accepted. The details of the number of khasras allotted to both the parties Le.. to Jhabbar Singh and others and to fagtar Singh were also mentioned in the said order. The partition having been accepted as per the said "Naksha Be", the joint status of the parties had stood severed. Of course, the said order dated 31.07.1962 was challenged by the plaintiff Jagtar Singh by way of an appeal before the Collector who vide the order dated 12.10.1982 had dismissed the same. The said order of Collector was further challenged by the said Jagtar Singh by filing revision application before the Commissioner. Though, the Commissioner had initially granted stay against the operation of the order dated 31.07.1982 upto 16.11.1982, admittedly the said stay was not further extended thereafter. Under the circumstances, the joint status of the parties had come to an end on 31.07.1982, when the Assistant Collector passed the order and when the same was confirmed by the Collector on 19.10.1982. The trial court and the appellate court, under the circumstances, had rightly held that the

> plaintiff Jagtar Singh did not possess the status of co-sharer on the date of decree ie., on 01.12.1982, and that his right of pre-emption had not survived till the date of passing of the decree in the suits. In our opinion, the High Court had grossly erred in misinterpreting the provisions of Punjab Pre-emption Act and of Land Revenue Act, and in setting aside the judgments and decrees passed by the trial court and the appellate court."

18. It is respectfully submitted that in the said judgment, the Hon'ble Apex Court has unequivocally held that the joint status of co-owners is severed upon the preparation of the 'Naksha Be.' In the present case, the order of partition was passed by the Assistant Collector, IInd Grade, on 30.01.1986. The vendors of the appellants filed an appeal before the Collector, contending that the partition was not in accordance with the prescribed mode. The appeal was dismissed by the Collector on 25.06.1987. Thereafter, Bhagwati and others filed a revision before the Commissioner, which was also dismissed, following which the partition was duly incorporated in the Jamabandi for the year 1987–88, a copy of which is marked as Ex. P-8. Mutation in respect of the partition was sanctioned on 27.10.1997, subsequent to which a sale-deed was executed by Tek Chand and Shankar Dass in favour of the appellants.

18.1. By the time the sale in question took place, the partition order had been upheld up to the level of the Commissioner, the mutation in respect of the partition had been sanctioned in the revenue records, and the same had been incorporated in the Jamabandi for the year 1987–88. It is, therefore, clear that upon passing of the partition order, the joint co-sharer status between the parties was legally severed in terms of the principles laid down

by the Hon'ble Apex Court in ***Jhabbar Singh vs. Jagtar Singh (supra)***. Consequently, Smt. Niadri Devi ceased to be a co-owner along with the vendors of the appellants.

18.2. The learned Courts below, however, have failed to appreciate this crucial fact and have erroneously held that the respondent–plaintiff continued to enjoy co-ownership with the vendors of the appellants at the relevant time of execution of the sale-deed, filing of the suit, and passing of the decree. In law, in order to claim the right of pre-emption, it is essential for the pre-emptor to establish that she was a co-owner on the date of the sale, the date of filing of the suit, and the date of passing of the decree. This principle has been consistently upheld by this Court in ***Mange Ram and Another vs. Shiv Charan and Others, RSA-2458-1991***, and was subsequently approved in ***Baljinder Singh and Others vs. Jasdeep Singh and Others, 20025:PHHC:012273***. In paragraph No. 10 of the latter judgment, the relevant legal position has been succinctly articulated as follows:-

> *10. The precise issue came up before this Court in the case of* ***Mange Ram and another vs. Shiv Charan and others, RSA No.2458 of 1991****. This Court while interpreting Sections 19 and 20 of the 1913 Act, concluded 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 preemption, 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 preemptor 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."*

19. The legal position enunciated by this Court in ***Mange Ram and Another vs. Shiv Charan and Others (supra)*** has been consistently followed in subsequent decisions, including ***Smt. Chawli Devi (since deceased) vs. Inder Paul and Others, RSA-941-1991***, decided on 04.11.2024. The relevant portion of the judgment reads as under:—

"11. Review application was filed. Vide order dated 18.12.2019, the same was allowed.

12. Learned senior counsel for the appellants while assailing the impugned judgment and decree passed by the Lower Appellate Court submits that the Lower Appellate Court has totally misdirected itself in making classification between a person acquiring share in the property by way of sale deed and the one acquiring by way of

inheritance. Learned senior counsel further submits that there cannot be any classification amongst the co-shares on the basis of mode ofacquisition of title. Mr. Chopra has thus contend that the vendees having become co-sharer in the suit land prior to filing of suit on 16.07.1987, plaintiffs cannot be allowed to plead right superior to theirs and thus the present suit deserves to be dismissed. In order to hammer forth his contention, he relies upon Jhabbar Singh vs. Jagtar Singh 2023 AIR SC 2074, Chander vs. Madan Gopal 1981 PLJ 310, Duni Chand vs. Nagina Singh 1987 PLJ 598, Mala Ram vs. Subhash Chander 1989 PLJ 445, Ram Kishan vs. Smt. Sharbati 1972 RLR 188. Mr. Chopra further submits that Kalanwati-the vender was not impleaded as party to the present case and thus in the absence of finding in regard to service of notice as contemplated under Sections 19 and 20 of the Punjab Preemption Act, 1913, the instant suit deserves to be dismissed. He relies upon observations made by Supreme Court in the case of Jhabbar Singh (supra).

13. *Per contra, Mr. Aggarwal, Senior counsel appearing for the respondents/pre-emptors submits that Lower Appellate Court has rightly decreed the suit filed by the pre-emptors. Even if sale deed dated 02.01.1987 is considered, the same would not aid the cause of the vendees. By way of sale deed dated 02.01.1987, it is only Raja Ram and Bhag Chand who became co-sharers before filing of civil suit on 06.07.1987. Despite judgment and decree dated 10.09.1987, whereby Bhag Cand transferred his entire share to Om Parkash s/o Chawli Devi and Sharda Rani daughter of Chawli Devi. Chawli Devi still remains stranger to the land. He assets that it is settled proposition of law, where a co-sharer is joined by strangers in acquisition of the property, his status sinks to the level of stranger and he cannot claim superior right to that of a co-sharer. He places reliance upon ratio of law laid down by this Court in Ram Krishan vs.*

Ratti Ram reported as 1986 PLJ 701, Garib Singh vs. Harnam Singh and others reported as 1971 PLJ 213 and Full Bench of this Court in Garib Singh vs. Harnam Singh reported as 1971 PLJ 578.

14. *Mr. Aggarwal further submits that in view of provision as contained under Section 28-A of Pre-emption Act, 1913 while suit bearing No.607/1987 to preempt sale deed dated 02.01.1987 was pending, defendants cannot be allowed to take plea of being co-owners until the suit for pre-emption is finally decided and period for limitation to enforce such right expires. He places reliance upon Section 28-A of 1913 Act as interpreted by Supreme Court in the case of Prema (Dead) Thr. LRs. vs. Surat Singh and others reported as 2003(3) SCC 46 and ratio of law laid down by this Court in Maya Devi vs. Rameshwar reported as 1992 PLJ 579. He further relies upon law laid down by this Court in Prema vs. Surat Singh reported as 1993 PLJ 695 to submit that where a vendee improves his status by his voluntary efforts during pendency of pre-emption suits or earlier to compete with intending preemptors, he cannot get any benefit as long as his inchoate right of preemption remains defeasible and does not mature into absolute right by efflux of time of limitation.*

15. *I have heard counsel for the parties and have carefully gone through the records of the case*

16. *The dates pertinent to decide upon the present lis are tabulated here as above:-*

S.No	*Date*	*Event*
1.	*10.07.1986*	*Sale deed was executed by Kalanwati in favour of Chawli Devi, Raja Ram, Om Parkash and Bhag Chand. (Ex.D-1)*
2.	*02.01.1987*	*Remaining land measuring 53 kanal 5 marlas was sold by Kalanwati in favour of Raja Ramappellant No.2 and Bhag Chandappellant No.5 (Ex.D-19)*
3.	*16.07.1987*	*Civil Suit No.330 of 1987 was filed by the plaintiffs to preempt sale deed dated 10.07.1986 (Ex.D1)*
4.	*10.09.1987*	*Bhag Chand-appellant No.5 transferred his*

		entire share to Om Parkash s/o Chawli Devi i.e. appellant No.3 and Sharda Rani daughter of Chawli Devi-appellant No.4.
5.	*21.12.1987*	*Second civil suit bearing No.604 of 1987 was filed by the plaintifffs to preempt second sale deed dated 02.01.1987 (Ex.D-19)*

17. The issues that arise for consideration before this Court is: (i) Whether sale deed dated 02.01.1987 and judgment and decree dated 10.09.1987 can raise the status of the vendees to that of a co-sharer to resist the suit filed by pre-emptors on 16.07.1987?

(ii) What is the effect of non-impleadment/nonexamination of Kalanwati in the suit?

18. Section 10, 21A and 28A of the Preemption Act, 1913 read as under:-

"10. Party to alienation cannot claim pre-emption. In the case of a sale by joint-owners, no party to such sale shall be permitted to claim a right of preemption.

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 preemptor plaintiff in such suit.

***28A. Postponement of decision of pre-emption suits in certain cases**. - If in any suit for pre-emption any person bases a claim or plea on a right of preemption derived from the ownership of agricultural land or other immovable property, and the title to such land or property is liable to be defeated by the enforcement of a right of pre-emption with respect to it, the Court shall not decide the claim or plea until the period of limitation for the enforcement of such right of pre-emption has expired and the suits for preemption (if any) instituted with respect to the land or property during the period have been finally decided."*

Section 28A *deals with the situation in which right to title of pre-emptor is under cloud. It is a provision that mandates for postponement of right of pre-emptor and not of a vendee who is defending his right acquired by way*

of sale deed sought to be preempted. Thus, Section 28A does not help the cause of the respondents/plaintiffs. 19. Section 21A deals with improvement in the status of vendee otherwise than through inheritance or succession after the institution of a suit for pre-emption. In the present case, the improvement in the status of the vendees is not after the institution of the suit, but prior thereto. The other issue that needs to be decided is whether Section 21-A comes in the way of the vendees to resist the suit filed by the pre-emptors. It has come on record that all the vendees but for Sharda Rani, daughter of Chawli Devi i.e. appellant No.4 became co-sharer prior to institution of suit on 16.07.1987. Sharda Rani-appellant No.4 however acquired status of co-sharer, not by way of sale deed dated 02.01.1987, but by way of judgment and decree dated 10.09.1987 which is during the pendency of the first suit filed on 16.07.1987. Meaning thereby that on the date of filing of the civil suit No.330 of 1987 i.e. 16.01.1987, Sharda Rani was stranger to the property in question. Thus, any right acquired by her but by way of inheritance or succession after filing of the suit, will not have an effect of improving her status and shall not affect the suit filed by the pre-emptor. Meaning thereby, under 1913 Act Sharda Rani remained stranger to the suit property dehors decree dated 10.09.1987 in her favour. A fortiori, amongst the vendees there was one stranger. The issue of joining of a stranger and the status of co-sharers is no more res integra and the same has been answered by Full Bench of this Court in Garib Singh's case (supra) holding as under:-

> *"19. As will be seen from the decisions referred to above, prior to the introduction of Section 21-A there was an unhealthy race going on the part of vendee do defeat the right of pre-emption by making improvement in his position by voluntary and volitional efforts up to the date of getting decree. By introducing this new provision the scope of the race to improve his status on the part of the vendee was circumscribed up to the date of institution of the suit and not thereafter*

except where the improvement in the status of the vendee is not a result of his effort or volition but because of inheritance or succession. This section was added to counter-act the view taken in ILR 1942 Lahore 155 and ILR 1942 Lahore 190 and 473 that the vendee was entitled to defeat the pre-emptor's right by improving his status at any time up to the adjudication of the suit by the trial Court. This is quite apparent from the statement of objects and reasons of the amending Act 1 of 1944, wherein it is stated:-

"Section 21-A is being added to the Punjab Preemption Act to restore the status quo in the case of pre-emption suits, wherein the vendee seeks to improve his position by means of a voluntary acquisition of right of property made after the institution of the suit."

20. So far as this Court is concerned, this provision, section 21-A of the Punjab Pre-emption Act came up for consideration in Tehoo Ram and others v. Dalip Singh and another, AIR 1953 Punj 128 where Harnam Singh, J., relying upon an earlier decision of this Court in Tej Ram v. Puran Chand, ruled that the improvement made in the status of some of the vendees after the institution of the suit for pre-emption cannot affect the right of the pre-emptors in that suit. In that case one of the six vendees was a stranger, and the question arose whether the other vendees who had the right of pre-emption equal to that of the pre-emptor could be permitted to improve their status by the sale made in their favour by their covendee during the pendency of the suit. In recording the above opinion, Harnam Singh, J. relied upon Section21-A of the Punjab Pre-emption Act. A contrary view has, however, been taken by Harbans Singh J. (my Lord the Chief Justice as he then was) recently in Hari Singh v. Damodar and others, 1966 PLR 45, and it was ruled that a tenant, who was losing his right of resistance to a suit for pre-emption as provided under Section 17-A of the Punjab Security of Land Tenures Act simply because of the existence of a stranger, can

be restored to his right if he gets rid of the stranger before the passing of a final decree in the pre-emption suit instituted against the vendees. The decisions of the Lahore High Court in Ali Mohd.'s case, Hayat Baksh's case Jas Raj Juniwal's case and Thakur Madho Singh's case, and the Supreme Court decision in AIR 1958 SC 838 were considered and in support of the view taken by his Lordship it was said:

> *"The learned counsel for the respondent then urged that Section 21-A of the Punjab Pre-emption Act specifically prohibits any improvement of the status of the vendee during the pendency of the suit. The word 'status' may have a different meaning in different context, but I feel that in the context of this case it has the meaning of the 'position occupied by the vendee'. In the present case, it must refer to his position as a tenant. No improvement has taken place in the status of the tenant because he was a tenant to begin with, and he continued to be a tenant thereafter. He has only been able to remove the impediment in his way for claiming the protection given to him as such."*

21. *In that case the tenant who had originally purchased the property along with a stranger later, during the pendency of the suit got rid of the stranger by purchasing his interest. Unfortunately, neither the decision of Harnam Singh, J. in Tehoo Ram and others v. Dalip Singh and others, (supra) nor the Division Bench judgment in Tej Ram v. Puran chand, was brought to his Lordship's notice. By the latter judgment in Tej Ram's case, the Letters Patent Bench had affirmed the decision of S. R. Das, C. J. in Tej Ram and others v. Puran.*

22. *It cannot be disputed that because of the amendment of the Punjab Pre-emption Act by introduction of Section 21-A, the authorities in which it had been ruled that a vendee by voluntary acquisition can improve his position even after the institution of*

the suit are no longer good law. Section 21-A specifically prohibits such voluntary improvements after the suit, and as has been noticed earlier, it was enacted to nullify the effect of those authorities. This proposition has not been contested before us. All that has been urged on behalf of the pre-emptor is that the case before us does not come within the mischief of Section 21-A as by purchasing the interests of his wife, who had no right to resist the plaintiff's claim and was a stranger, Gharib Singh had not in any way improved his status. Thus, the answer to the question, which we are considering, would depend upon the interpretation of the word "improvement" as used in Section 21-A of the Punjab Pre-emption Act. The argument, in brief, raised on behalf of the pre-emptor that Gharib Singh was a co-sharer at the time of the sale and related to the vendor being his uncle, and though by purchasing the interest of his wife in the suit-property he had no doubt acquired the right of ownership to the entire property, yet he had not in any way improved his status either as a co-sharer or as a relation of the vendor. In such circumstances, it is argued, the resale in his favour by his wife has not resulted in improvement of his status. In considering what is meant by 'status' my Lord the Chief Justice in Hari Singh's case has observed that it means the same thing as 'position'. It is true that by purchasing his wife's interest Gharib Singh had in no way improved upon his status as a cosharer or as a relation of the vendor, but his position vis-a-vis the pre-emptor has been materially altered to his advantage. In accordance with the principle which is now well-settled by recent decisions and catena of authority, a vendee who associates with himself in the sale of stranger cannot resist the claim for pre-emption on the basis of his own qualifications or

status. It is settled law that where the sale is in favour of several persons, it is the status of the lowest of the vendees that has to be taken into account in determining whether the pre-emptor has a preferential right. Had not Gharib Singh obtained the share of his wife by gift in his favour, surely he could not have resisted the pre-emptor's claim. Now by purchasing his wife's share he claims to have got rid of that disability and sets up his own status as co-sharer and relationship with the vendor as defence to defeat the pre-emptor's claim. In my opinion, there can be no doubt that by getting rid of the stranger he has attempted to improve his position."

20. Thus, the issue with respect to the vendees having become co-sharer prior to the date of the filing of the suit and thus entitled to resist the right of the pre-emptors is decided in favour of the plaintiff and against the defendants.

21. Coming on to the issue of non-mpleadment / non examination of vendor, this Court has already dealt with the issue in RSA-2458-1991, titled as Mange Ram and another vs. Shiv Charan and others. Interpreting Sections 19 and 20 of the 1913 Act, this Court concluded that:-

"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 preemption, 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 preemptor 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."*

23. *In view of above, the vender Kalanwati may not be a necessary, but only a proper party to the lis. This Court however finds that non-examination of Kalanwati has a bearing on the suit. Plaintiffs were required to prove that they had no notice of the sale as provided under Section 19. Apart from bald pleadings raised in para 4 of the plaint, that no notice with respect to sale deed was served upon them, plaintiffs have not led any evidence to come out of the mischief of Sections 19 and 20 of the Act of 1913. Though Kalanwati was not required to be impleaded as a necessary party in view of the settled law, still plaintiffs ought to have examined her to prove that statutory notice was not served upon them. Lower Court below has totally ignored the aforesaid fact and has held plaintiffs entitled to preempt the sale deed without returning any finding on the statutory notice. In view thereof, this Court finds that without discharging onus to prove that there was no notice upon the plaintiffs under Section 19 of the Act of 1913, the suit of the plaintiffs cannot succeed.*

24. *As a sequel of discussion held hereinabove, the present appeals are disposed off. Suit filed by the plaintiffs is ordered to be dismissed."*

20. Secondly, it is respectfully submitted that both the Courts below have committed a manifest error of law. In order to succeed in her claim, the plaintiff was required, as a matter of law, to establish on record that the vendors had failed to serve the statutory notice upon her, as mandated under Section 19 of the Punjab Pre-emption Act, 1913. Compliance with the provisions of Sections 19 and 20 of the Punjab Pre-emption Act, 1913 is a precondition for asserting a right of pre-emption, and the said sections are reproduced below for ready reference and clarity:-

> ***"19. Notice to pre-emptors.****-When any person proposes to sell any agricultural land or village immovable property or urban immovable property or to foreclose the right to redeem any village immovable property or urban immovable property, in respect of which any persons have a right of pre-.emption, he may give notice to all such persons of the price at which he is willing to sell such land or property or ofthe amount due in respect of the mortgage, as the case may be.*
>
> *Such notice shall be given through any-Court within the local limits of whose jurisdiction such land-or property or any part thereof is situate, and shall be deemed sufficiently giyen if it be stuck up on the chaupaI or-other public place of the viIiage, town or place in which the laqd ,or property is situate.*
>
> ***20. Notice by pre-emptor to vendor.****- Thee right of pre-emption of any person shall be extinguished unless such person shall, within the period of three months from the date- bn which the notice under section 19 is duly given or within such further period, not exceeding one year from such date, as the Court may allow, present to the Court a notice for service on the vendor or mortgagee of his intention to*

> *enforce his right of pre-emption. Such notice shall state whether the pre-emptor accepts the price or mount due on the footing of the mortgage as correct or not, and ifnot, what sum he is willing to pay.*
>
> *When the Court is satisfied that the said notice has been duly served on the vendor or mortgagee, the proceedings shall be filed."*

21. A careful reading of these statutory provisions unequivocally demonstrates that it is incumbent upon a pre-emptor to establish, on record, that the vendor has failed to serve the requisite notice specifying the price at which the vendor is willing to sell the land. The obligation to prove the non-service of such notice is a fundamental precondition for invoking the right of pre-emption under the Punjab Pre-emption Act, 1913, and cannot be dispensed with.

21.1. Failure to discharge this statutory burden renders the claim of pre-emption legally unsustainable, and any decree passed in the absence of such proof cannot be sustained in law. It is, therefore, submitted that the Courts below erred in law by decreeing the suit without requiring the plaintiff to establish compliance with this essential statutory requirement.

22. In the present case, it is evident that the plaintiff, Smt. Niadri Devi, has led no oral evidence and has not made any statement before the Court asserting that no notice was served upon her by the vendors. Learned counsel for the respondent contended that the onus to prove service of notice lay upon the defendants, on the basis that a negative cannot be proved by the plaintiff. This contention, however, is wholly devoid of merit. It is a well-settled principle of law that the burden of proof rests upon the party whose cause would fail in the absence of such proof.

22.1 In terms of the express provisions of Section 19 of the Punjab Pre-emption Act, 1913, it is the pre-emptor who is obliged to establish that she had no notice of the price at which the vendors were willing to sell the property, which constitutes the subject matter of the pre-emption. This principle has been authoritatively settled by this Court in ***Basti vs. Jain Chand, ILR (1962) 2 Punjab 290***, wherein the Court held as under:-

> *"It certainly does not by any means relieve the plaintiff of the initial burden of bringing himself within the essential terms of the statute on which he relies for his title or preferential claim to the property sold. The obligation to make out his title or a preferential right to purchase the property would have to be discharged by him even if the negative is to be proved for establishing the right claimed. It would, therefore, in my opinion, be incumbent on the plaintiff-pre- emptor also to prove the basic fact which is the foundation of his right, that the sale is of such land as is dealt with in Section 17 and in respect of which he had been given a right to oust the vendee and to claim title to the property in his place. This basic fact is not self evident and, therefore, has to be established by the person who would otherwise fail."*

23. It is, therefore, respectfully submitted that the onus to prove service, or in the present case, non-service, of notice under Section 19 of the Punjab Pre-emption Act, 1913, squarely rested upon the plaintiff. In the instant case, the plaintiff has conspicuously failed to discharge this burden and has led no evidence to establish that any notice, as mandated under Section 19, was not served upon her by the vendors.

23.1. Further, it is noteworthy that during the pendency of the suit, the vendors were deliberately given up as unnecessary parties by the

respondent–plaintiff. This is a serious legal infirmity, as it is now settled law that the vendors constitute necessary parties in a suit for pre-emption. The this Court has consistently held this position, including in ***Ram Singh and Others vs. Hari Singh and Another, 2024: PHHC 171700***, wherein it was observed as follows:-

> *"18. It is clear from the above-said legal position explained by Hon'ble Supreme Court that when a right to pre-empt the sale is daimed by the plaintiff, the presence of the owner as a party defendant is desirable alongwith other defendants to effectively and finally decide the dispute between the parties. Although, as per order I Rule 9 CPC, no suit is to be defeated by reason of mis-joinder or non-joinder of the parties, but it is required for the Court to ensure that all the parties, be it the plaintiff or the defendant, whose presence is necessary for complete and final adjudication on the issues involved in the suit are before the Court.*
>
> *19. In the present case, it was specifically pleaded by the plaintiff - pre-emptor that prior to sale, the vendor-defendant N: 6 had not given him any prior notice. Still, the vendor-defendant – Smt. Misri had been given up by the plaintiff. As such, the suit becomes bad for non-joinder of the necessary party, as in the absence of the vendor, the suit cannot be effectively and finally decided."*

24. In the present case, it is evident that the vendors were deliberately given up as parties by Smt. Niadri Devi during the pendency of the suit. Further, the plaintiff has led no evidence on record to establish that the vendors failed to serve the requisite notice under Section 19 of the Punjab Pre-emption Act, 1913. Consequently, the suit of the plaintiff is barred for non-joinder of necessary parties and is, therefore, clearly

unsustainable in law. Both the Courts below erred in failing to take this crucial aspect into account.

24.1. Moreover, having regard to the undisputed facts on record, it is manifest that the co-sharer relationship between Smt. Niadri Devi and the vendors of the appellants had already ceased well before the execution of the sale-deed in favour of the appellants. In addition, the pre-emptor has failed to prove compliance with the mandatory requirements under Sections 19 and 20 of the Punjab Pre-emption Act, 1913. The combined effect of these legal and factual infirmities renders the suit wholly unsustainable.

24.2. In these circumstances, the judgments and decrees passed by the learned Courts below cannot be sustained. Accordingly, the appeal filed by the appellants is allowed. The judgments and decrees of the learned Trial Court and the learned First Appellate Court are hereby set aside. The suit of the respondent–plaintiff is dismissed in its entirety, with costs.

25. Since the principal appeal has now been finally adjudicated and disposed of on its merits, it is clarified that all ancillary, interlocutory, or pending application(s), if any, appearing on record, shall, by necessary implication, stand disposed of. In view of the definitive conclusions reached herein, no separate or independent orders are required in respect of such applications, as their determination has become wholly academic and infructuous.

(VIRINDER AGGARWAL)
JUDGE

21.01.2026
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No