



RSA No.545 of 1991 (O&M)

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

RSA No.545 of 1991 (O&M)
Date of decision: April 17th, 2026

Sukhma Devi (since deceased) through LR

.....Appellant

Versus

Hawa Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ashish Gupta and Mr. Gurdeep Singh Bidhan, Advocates
for the appellant.

Mr. Rajiv Sharma, Mr. Vinayak Atre and
Ms. Indu Bala Sharma, Advocates
for respondent No.1.

None for respondent No.2.

VIKAS BAHL, J. (ORAL)

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CHALLENGE IN THE PRESENT APPEAL

1. Defendant No.2 (presently represented by her legal representative) is in second appeal which has been filed under Section 41 of the Punjab Courts Act, 1918.

2. Challenge in the present appeal is to the judgment dated 14.02.1991 of the First Appellate Court vide which the judgment of the trial



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Court dated 16.03.1989 has been set aside and the suit for declaration and possession by way of pre-emption, originally filed by Bhuru and pursued by Hawa Singh (respondent No.1) has been decreed on payment of the requisite amount.

ARGUMENTS ON BEHALF OF THE APPELLANT

3. Learned counsel for the appellant has argued that in the present case, the plaintiff had waived his right of pre-emption. It is submitted that in the written statement in paragraph 4 of the preliminary objections and paragraph 3 of the reply on merits, it was specifically stated that Bhuru, the deceased plaintiff was involved in the sale of the disputed land and he was also present at the time of scribing and completion of the agreement to sell and the registry and thus was aware of the sale of the disputed land. It is argued that a specific issue with respect to the plaintiff having waived his right of pre-emption was framed by the trial Court, which issue was decided in favour of the defendants by the trial Court. It is argued that PW-1, Hawa Singh, in his cross-examination, has admitted the fact that when the deal of sale of the disputed land was being made, he and Bhuru were present and thus, it is apparent that at the time of the agreement to sell dated 30.11.1981, Ex.D2, by Phool Chand defendant no.1 in favour of the present appellant Sukhma the said two persons were present and had knowledge about the said agreement but never objected to the said agreement being entered into, and thereafter, did not even raise any objection with respect to the registered sale deed dated 08.12.1981 and had filed the suit only on 10.11.1982 after the present appellant had fully paid the sale consideration and had also acted upon the said transaction.



4. It is submitted that from the said conduct, respondent No.1 as well as the original plaintiff Bhuru have apparently acquiesced to the transaction and thus waived off their right of pre-emption and were even estopped from filing the suit for the same.

5. In support of his arguments, learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of *Indira Bai vs.Nand Kisore* reported as *1990(4) SCC 668*. It is further submitted that even the further conduct of the plaintiff disentitles him to file the present suit, inasmuch as, the said Phool Chand had also entered into an agreement to sell with the husband of the present appellant i.e., Des Raj on 05.01.1981 and the said agreement to sell has been duly exhibited as Ex.D1 and that the sale deed dated 03.06.1981, Ex.D17 was executed in favour of Des Raj with respect to land measuring 34 kanals and 4 marlas. It is submitted that the plaintiff had filed a suit for pre-emption regarding the said sale deed also against Des Raj and the adopted son of Phool Chand on 10.04.1982 (Ex.D18) and since the plaintiff had not deposited the mandatory amount as ordered by the Court and, thus, the suit was dismissed on 01.06.1982 (Ex.D19) and the plaintiff, thereafter chose, to file the present suit on 10.11.1982. It is submitted that from the above, it is apparent that the plaintiff did not have the necessary funds and was only filing one suit after the other to harass and extract funds from the present appellant.

6. Learned counsel for the appellant has submitted that it is a matter of settled law that the right of pre-emption is a weak and inequitable right. It is argued that the facts of the present case would clearly show that the present appellant was a *bona fide* purchaser for valuable consideration. It



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is submitted that the suit was filed on 10.11.1982 on the basis of the *jamabandi* for the year 1972-73, whereas, the subsequent *jamabandis*, more so, of the years 1977-78 had already been prepared at that time. It is submitted that a perusal of the *jamabandi* for the year 1977-1978 (Ex.D20) would show that Phool Chand was having a separate khewat number i.e., khewat No.14 and was shown to be the owner of specific khasra numbers with respect to land totaling to 108 kanals 11 marlas and it is out of the said khasra numbers that land measuring 32 kanals comprised in specific khasra numbers have been purchased by the appellant vide registered sale deed dated 08.12.1981 (Ex.P1/Ex.D5). It is submitted that even a perusal of *jamabandi* for the year 1982-83 (Ex.D21, Ex.D22 and Ex.D23) would clearly show that the present appellant was having a separate khewat and was shown to be the owner of specific khasra numbers and so was her husband Des Raj and so was Phool Chand. It is submitted that from a perusal of the said three *jamabandis* it is apparent that the land was shown to have been separated and it was only after seeing the said revenue record that the appellant had purchased the property for valuable consideration. It is argued that along with the present appeal, the appellant had filed an application under Order 41 Rule 27 CPC for producing on record additional documents which include the subsequent *jamabandis*. It has been highlighted that a perusal of the said *jamabandis* would show that upto the year 2022-23, the khewat of the present appellant and after her death, the khewat of her legal representative was shown to be separate and both she and her legal representative subsequently, had been shown to be the owner of land comprised in specific khasra numbers.



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7. Learned counsel for the appellant has further referred to *jamabandi* for the year 1977-78 (Annexure A-1 and also its vernacular) to highlight the fact that the original plaintiff-Bhuru, who is the father of Hawa Singh, is also shown to be owner of separate khewat along with Jagtu son of Gehla and even their ownership is shown to be of specific khasra numbers which does not include the suit land and the said entries continued in the subsequent *jamabandis* for the subsequent years. It is submitted that the suit of the plaintiff had been rightly dismissed by the trial Court but the 1st Appellate Court has wrongly reversed the judgment of the trial Court and the judgment of the 1st Appellate Court deserves to be set aside and the suit of the plaintiff deserves to be dismissed. It is further submitted that subsequently LRs of the present appellant have been in possession of the property in question and the Co-ordinate Bench of this Court, while issuing notice, was also pleased to stay dispossession vide order dated 12.03.1991 which interim order was confirmed on 04.02.1993 and has continued till date. It is submitted that the entire sale consideration has been paid and it would be highly inequitable in case the land which the appellant had purchased after seeing the revenue record is taken away from her/her legal representative.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1

8. Learned counsel for the respondent, on the other hand, has submitted that the judgment of the 1st Appellate Court is in accordance with law and deserves to be upheld. It is argued that there is no question of waiver in the present case, inasmuch as, it is the specific case of the plaintiff in the plaint that no notice under Section 19 of the Punjab Pre-emption Act,



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1913 was issued to the plaintiff. It is further submitted that in para 5 of the plaint, it has specifically been stated by the plaintiff that he learnt about the registered sale deed only at the time when defendant No.2 declared about the said aspect in the village that she had already purchased the land measuring 32 kanals. In support of his arguments, learned counsel for respondent No.1 has relied upon the judgment of the coordinate Bench of this Court in the case of “*Mool Chand and another Versus Mani Ram*” reported as *1983 PLJ 482*.

9. It is further submitted that although the present appellant had taken a plea that she is the *bona fide* purchaser but in para 5 of the preliminary objections the plea taken by the present appellant is that, in fact, Des Raj was the owner of the property in question and the present appellant was merely an executant. It is argued that from the said stand itself, the plea raised by the appellant to the effect that she is a *bona fide* purchaser stands demolished. It is further argued that the specific issue with respect to the appellant being the *bona fide* purchaser were framed by the trial Court and the plaintiff had not pressed the said issues. It is submitted that issues No.11 to 18 and issues No.20 to 22 had not been pressed. It is further submitted that even in the present grounds of appeal the appellant has not stated that she is a *bona fide* purchaser. It is argued that although the present appellant produced seven witnesses but the present appellant-Sukhma Devi did not appear in the witness box and thus, adverse inference should be drawn against the said Sukhma Devi for not having appeared as a witness. It is submitted that none of the witnesses examined by defendants including the husband of the appellant i.e. Des Raj who had appeared in the witness box as



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DW-7 has stated that the present petitioner was a bona-fide purchaser. It is submitted that in the present case, there was no partition which has taken place and the land was joint and thus since the plaintiff was a co-sharer in the land in question, he had every right to pre-empt the sale. It is submitted that the judgment of the First Appellate Court is in accordance with law and the suit of the plaintiff has been rightly decreed and the said judgment deserves to be upheld.

ANALYSIS AND FINDINGS

10. This Court has heard learned counsel for the appellant and learned counsel for respondent No.1/plaintiff, who is the contesting respondent and has also perused the trial Court record and the paper book and is of the opinion that the judgment of the First Appellate Court deserves to be set aside and the suit of the plaintiff deserves to be dismissed for the reasons stated hereinafter.

11. It would be relevant to note that respondent No.2 who was the adopted son of the original defendant No.1 and was a co-defendant with the present appellant was duly served and was proceeded against *ex parte* vide order dated 26.07.1996. However, notice was again issued to the respondent No.2 on 17.02.2026 and in spite of service, no one had appeared on behalf of respondent No.2, which fact, was noticed on 17.03.2026 by this Court. Even today no one has appeared on behalf of respondent No.2. Respondents No.3 and 4 have been shown as proforma respondents and were co-defendants with the present appellant and were also *ex parte* before the First Appellate Court and thus their service was dispensed with on 11.09.2025.

12. Bhuru, son of Het Ram, had originally filed the suit. Since the



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said Bhuru had died during the pendency of the suit thus Hawa Singh, son of Bhuru, had pursued the case. As per the amended plaint, the following prayers (the same is true translation of the relevant portion of the plaint, which is in vernacular and has been translated by the Translation Branch of this Court) were made in the suit:

*“Hence a decree for declaration in respect of sale deed bearing deed no. 1640 duly registered on 08/12/1981, pertaining to Khasra no. entered in the title of the suit in respect of land measuring 32 kanals entered in Khewat No. 13/9 Khatauni no. 21-24 as per jamabandi for the year 1972-73 situated in the area of Milakpur, Tehsil Hansi, District Hisar, is absolutely wrong, against law and facts being part of joint Khewat and is ineffective on the rights of plaintiff as well as performa defendants and disputed land Khasra nos. entered in the title of suit mentioned above is joint khewat land of co-sharers and disputed land is in possession of plaintiff. Defendant No.2 can't take possession on the joint disputed land on the specific numbers of under ownership of co-sharers. A suit for permanent prohibitory injunction against defendant No. 2 in respect of the aforesaid land which is joint and in possession of the plaintiff, its forcible execution is wrong and against the law. The registry so executed is null and void document, be permanently restrained from taking possession possibly, without any valid registered deed, under violation of law. **And the suit for possession by way of pre-emption in respect of land entered in above mentioned suit on payment of Rs.45000/- along with rights of every kind, arising out of registered sale deed 08/12/1981. The suit of the plaintiff be decreed against the defendants with cost and any other***



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consequential relief be provided.

Verified:

All the facts and information provided by me are correct and true.”

13. It was the case of the plaintiff that the land was joint and since he was also a co-sharer in the joint land, thus he had a right to pre-empt the sale. In the written statement filed by defendant No.2/present appellant, several preliminary objections were taken, including the objection with respect to the suit being not maintainable and that the plaintiff, in view of his words and deeds, was not entitled to file the said suit and that Bhuru, the deceased plaintiff was involved in the sale of the disputed land and he was present at the time of scribing and entering the agreement to sell and also at the time of the registry in favour of defendant No.2/present appellant and thus the plaintiff had waived off his alleged rights and the suit was liable to be dismissed on the said ground alone. It was further the case of defendant No.2 that a family partition had taken place and thus the property was not joint and the plaintiff had no right to seek pre-emption.

14. The trial Court, vide judgment and decree dated 16.03.1989, dismissed the suit filed by the plaintiff/respondent No.1. Issue Nos.1 to 8 and 10 were decided against the plaintiff. The said issues are reproduced hereinbelow:

“1. Whether the plaintiff is a co-sharer in the land in dispute?

OPP.

2. Whether the plaintiff is in cultivating possession of the suitland, if so, its effect?.OPP.

3. Whether the sale deed is null and void, if so its effect?



OPP.

4. Whether the plaintiff has a superior right of pre-emption in respect of the suit land? OPP.

5. Whether the defendant wants to occupy the suit land forcibly, if so, its affect? OPP.

6. Whether the plaintiff has no locus-standi to file this suit?

OPD.

7. Whether the suit is bad non account of causes of action ?

OPD.

8. Whether the suit is not maintainable in the present form.

OPD

10. Whether the plaintiff has waived his right of pre-emption?

OPD”

15. Importantly, issue No.10 which was on the aspect, as to whether the plaintiff had waived off his right of pre-emption, was decided against the plaintiff and in favour of the defendants. Issue No.3, which was to the effect, as to whether the sale deed in favour of defendant No.2 was null and void or not was also decided against the plaintiff and in favour of the defendant. The issues other than the ones reproduced hereinabove and issue No.19 were however decided in favour of the plaintiff. The trial Court, while dismissing the suit, had also taken into consideration the fact that the plaintiff had earlier filed a suit for pre-emption with respect to land measuring 34 kanals 4 marls which was also situated in Village Milakpur and the said suit was dismissed on 01.06.1982 (Ex.D19) for want of deposit of 1/5th of the pre-emption amount.

16. The plaintiff had filed first appeal which was allowed vide the



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judgment and decree dated 14.02.1991. The First Appellate Court reversed the findings of the trial Court on issue Nos.1, 4, 6, 7, 8 and 10 and decided the said issues in favor of the plaintiff. The finding of the trial Court on issue No.3 which was on the point as to whether the sale deed in favour of defendant No.2 was null and void or not was however affirmed and thus the said sale deed was held to be valid. Similarly, finding of the trial Court on issue No.2 which was with respect to the plaintiff not being in cultivating possession of the suit land and which was decided by the trial Court against the plaintiff was upheld by the First Appellate Court. Even the finding on issue No.5 which was recorded against the plaintiff by the trial Court was upheld by the First Appellate Court. The judgment of the First Appellate Court has been challenged in the present Regular Second Appeal. On 12.03.1991, a coordinate Bench of this Court was pleased to pass the following order:

“Present:- Mr. R.S. Chahar, Advocate.

Notice.

Dis-possession stayed till further orders.

Notice re:stay.

Stay matter to be listed after completion of service.

March 12, 1991.”

17. Thereafter, on 04.02.1993, the stay order was confirmed and the following order was passed by the coordinate Bench:

*“Present:- Mr. R.S. Chahar, Advocate,
for the appellant.*

*Mr. O.P. Sharma, Advocate
for respondent No.1.*



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Stay already granted by this Court is confirmed. However, appeal is directed to be heard within one year.

4.2.1993”

18. The said interim order has continued for all these years and it is stated before this Court that the appellant and subsequently her legal representative has continued to be in possession.

19. The first substantial question of law which arises for consideration before this Court is, **“as to whether the plaintiff has waived his right of pre-emption?”** As has been stated hereinabove, issue No.10 had been specifically framed regarding the same. In the plaint, it was the case of the plaintiff that the sale deed was registered on 08.12.1981 without serving any notice upon the plaintiff and that he had no knowledge of the said transaction and he learnt about the same only when defendant No.2/present appellant declared in the village that she had purchased the suit property measuring 32 kanals. On the other hand, it is the specific case of defendant No.2/present appellant in the written statement that the deceased plaintiff-Bhuru was involved in the sale of the disputed land and was also present at the time of scribing and entering the agreement to sell as well as the sale deed. The true translation of paragraph 4 of the preliminary objections of the written statement filed by defendant No.2 is reproduced hereinbelow:

“4- That the plaintiff through his words and deed is not entitled to file this suit. Since Bhuru, the deceased plaintiff was involved in sale of disputed land and he was



also present at the time of scribing and completion of agreement to sell and registry. Therefore, the plaintiff has already waived off his alleged rights and suit of plaintiff is liable to be dismissed.”

20. Ex.D2 is the agreement to sell dated 30.11.1981 executed by Phool Chand in favour of Sukhma Devi/defendant No.2 with respect to the land measuring 32 kanals comprised in Khasra No.20//25(8-0), 37//2(8-0), 3(8-0), 4(8-0) which is the suit land. A perusal of the said agreement to sell would show that specific khasra numbers were sought to be sold by virtue of the said agreement to sell. Ex.P1 is the registered sale deed dated 08.12.1981 vide which the above-mentioned 32 kanals of land, which is the suit land, has been sold by Phool Chand in favour of Sukhma Devi/defendant No.2/present appellant.

21. PW-1 Hawa Singh, son of Bhuru, has in his cross-examination, specifically admitted that when the deal of sale of the disputed land was being made, he and Bhuru were present. The true translation (done by the Translation Branch of this Court) of the relevant portion of the cross-examination of the said PW-1 Hawa Singh is reproduced hereinbelow:

“When deal of sale of disputed land was being made, I and Bhuru were present but we were not present at the time of registry.”

22. From the above evidence, it is apparent that the plea raised by defendant No.2 in the written statement to the effect that the deceased plaintiff-Bhuru was present at the time of scribing of the agreement to sell



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stands admitted. There is nothing to show that the plaintiff raised any objection to the parties entering into the said agreement to sell or objected to the registration of the said sale deed and it is only on 10.11.1982, after much delay, that the plaintiff filed the present suit. It would also be relevant to note that another agreement to sell dated 05.01.1981 (Ex.D1) was entered into by original defendant No.1 Phool Chand in favor of Des Raj, husband of defendant No.2 with respect to land measuring 34 kanals 4 marals, which was also situated in Village Milakpur, Tehsil Hansi and that in pursuance of the said agreement to sell, the said Phool Chand had executed the sale deed dated 03.06.1981 (Ex.D17) in favour of the said Des Raj. The said agreement and sale deed was also regarding specific khasra numbers and that Hawa Singh (respondent No.1) had filed a suit for pre-emption regarding the said sale deed dated 03.06.1981 on 10.04.1982 and had impleaded Des Raj, husband of the present appellant and Chandi Ram, adopted son of Phool Chand as parties. The plaint in the said suit has been exhibited as Ex.D18. Vide judgment dated 01.06.1982 which has been exhibited as Ex.D19, the said suit was dismissed, as the said Hawa Singh (respondent No.1) had not deposited 1/5th of the pre-emption amount, as ordered by the Court and apparently did not possess the necessary funds. After a period of five months from the dismissal of the said suit, the plaintiff filed the present suit on 10.11.1982 seeking to pre-empt the sale deed dated 08.12.1981 in favour of defendant No.2/present appellant.

23. From the abovesaid facts, it is apparent that, as has been admitted by PW-1, the plaintiff was not only aware about the agreement to sell dated 30.11.1981 (Ex.D2), but was also present at the time of entering



the said agreement to sell in favor of defendant No.2 and there is nothing to suggest that the plaintiff had objected to the said agreement to sell being executed in favour of defendant No.2. It is also apparent from the abovesaid facts that respondent No.1 had even filed suit for pre-emption with respect to sale deed dated 03.06.1981, which was executed in favor of the husband of defendant No.2 i.e. Des Raj, which suit was dismissed on account of non-deposit of the 1/5th of the pre-emption amount, as per the orders of the Court.

24. The Hon'ble Supreme Court in the case of *Indira Bai (supra)* had observed that the right of pre-emption is a very weak right and can be defeated by any legitimate method, one of which could be waiver i.e. giving up of such right which could either be express or implied. In the said case, although no notice of the sale was given to the pre-emptor but it was observed that since the pre-emptor knew about the sale and had assisted the same and, thereafter, filed a suit claiming pre-emption, which conduct, was highly inequitable and it was observed that the Courts in our country which are primarily the Courts of equity, justice and good conscience would not permit a person to defeat the right of the purchaser in the said circumstances to invoke a right of pre-emption, which was a weak and an inequitable right. It was observed that the statute did not provide that in case no notice was given, then the transaction of sale would be void and the entire objective to give notice to the pre-emptor was to inform him about the sale in respect of which he might be interested in exercising his right of pre-emption and the said right could be waived off either expressly or impliedly. The relevant portion of the said judgment is reproduced hereinbelow:

“In the Privy Council decision, referred earlier, the Court was



concerned with Oudh Laws Act (18 of 1876) which too had an identical provision for giving notice by seller. No notice was given but since pre-emptor knew that the property was for sale and he had even obtained details of lots he was precluded from basing his claim on pre-emption.”

XXX XXX XXX

*“In **Bishen Singh v. Khazan Singh**, AIR 1958 SC 838 this Court while approving the classic judgment of Mahmood, J. in **Gobind Dayal v. Inayatullah**, (1885) ILR 7 Allahabad 775 (FB). 'that the right of pre-emption was simply a right of substitution' observed that, 'courts have not looked upon this right with great favour, presumably, for the reason that it operated as a clog on the right of the owner to alienate his property. In **Radha Kishan v. Shridhar**, AIR 1960 Supreme Court 1368, this Court again while repelling the claim that the vendor and vendee by accepting price and transferring possession without registration of sale deed adopted subterfuge to defeat the right of pre-emption observed that, 'there were no equities in favour of a pre-emptor, whose sole object is to disturb a valid transaction by virtue of the rights created in him by statute. To defeat the law of pre-emption by any legitimate means is not fraud on the part of either the vendor or the vendee and a person is entitled to steer clear of the law of pre-emption*



by all lawful means'. Such being the nature of right it is harsh to claim that its extinction by conduct would amount to statutory illegality or would be opposed to public policy. The distinction between validity and illegality or the transaction being void is clear and well known. The former can be waived by express or implied agreement or conduct. But not the latter. The provision in the Act requiring a vendor to serve the notice on persons having right of pre-emption is condition of validity of transfer, and therefore a pre-emptor could waive it. Failure to serve notice as required under the Act does not render the sale made by vendor in favour of vendee ultra vires. The test to determine the nature of interest, namely, private or public is whether the right which is renounced is the right of party alone or of the public also in the sense that the general welfare of the society is involved. If the answer is latter then it may be difficult to put estoppel as a defence. But if it is right of party alone then it is capable of being abnegated either in writing or by conduct. The Act does not provide that in case no notice is given the transaction shall be void. The objective is to intimate the pre-emptor who may be interested in getting himself substituted. The Act does not debar the pre-emptor from giving up this right. Rather in case of its non-exercise within two months, may be for



the financial reasons. the right stands extinguished. It does not pass on to anyone. No social disturbance is caused. It settles in purchaser. Giving up such right expressly or impliedly cannot therefore be said to involve any interest of community or public welfare so as to be in mischief of public policy.”

The abovesaid judgment applies on all fours in the present case. The plaintiff had the knowledge of the transaction in favour of defendant No.2 and was even present at the time when the agreement to sell dated 30.11.1981 was entered into and did not raise any objection and filed the suit for pre-emption after much delay i.e. on 10.11.1982. As has been detailed hereinabove, in interregnum, respondent No.1 even tried his luck by filing a suit for pre-emption on 10.04.1982 with respect to the sale deed dated 03.06.1981 which was dismissed vide judgment dated 01.06.1982 on account of non-deposit of 1/5th of the pre-emption amount. The said act and conduct when considered in the light of the abovesaid judgment of the Hon'ble Supreme Court, in the opinion of this Court, amounts to waiver by the plaintiff of his right of pre-emption.

25. Further a coordinate Bench of this Court in the case of ***Prem Chand and others Versus Harpal Singh and others 2011 (5) R.C.R. (Civil)*** has observed that the plaintiff, who was the pre-emptor, had by attesting the sale deed as a witness, consented to the sale transaction and thereafter could not seek pre-emption of the same. It was observed that for the plaintiff to succeed in a suit for pre-emption, he has to establish his superior right of pre-emption at all the three stages i.e. at the time of the sale deed, at the time



of the filing of the pre-emption suit and also at the time of the decree of the trial Court. The judgment of the coordinate Bench of this Court in the case of *Mool Chand and another (supra)* relied upon by learned counsel for respondent No.1-plaintiff is on different facts, inasmuch as, in the said case, the suit for pre-emption was filed by a tenant and it was observed by the coordinate Bench that although the right of pre-emption is said to be a piratical right but in the case of tenants, the same cannot be said to be true and whenever the tenant's claim for pre-emption is to be considered, the considerations are always different and once he is able to prove his tenancy, then he cannot be deprived of his right of pre-emption without there being a very cogent and reliable evidence on the question of waiver. Admittedly the present case is not a case of tenant seeking pre-emption. Moreover, besides the aforementioned, the said judgment is of this Court and was rendered in the year 1983 whereas the judgment in the case of *Indira Bai (supra)* is of the Hon'ble Supreme Court of the year 1990 and it is the said judgment of the Hon'ble Supreme Court which would have binding force. The said judgment applies on all fours in the present case.

26. Thus, in view of the law laid down in the abovesaid judgment, this Court holds that the plaintiff had waived his right of pre-emption and thus issue No.10 is decided in favor of the defendant No.2/present appellant and against the plaintiff and the question of law which had been framed is also decided in favour of the present appellant/defendant No.2 and against the plaintiff. On the said short ground alone, the suit of the plaintiff deserves to be dismissed.

27. Additionally, it would be relevant to mention that the plaintiff



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has filed a suit on 10.11.1982 by relying upon the *jamabandi* for the year 1972-73, whereas *jamabandi* for the year 1977-78 had already been prepared at the time of filing of the said suit. The *jamabandi* for the year 1977-78 has been exhibited as Ex.D20 and a perusal of the same would show that Phool Chand, the vendor of defendant No.2, has been stated to be the owner of a separate khewat and is also further shown to be the owner of land measuring 108 kanals 11 marlas comprised in specific khasra numbers, which also include the specific khasra numbers which are of the suit land measuring 32 kanals and which have been purchased by defendant No.2/present appellant for valuable consideration. A further perusal of Ex.D21, D22 and D23, which are *jamabandis* for the year 1982-83, would show that Phool Chand is shown to be the owner of specific khasra numbers to the extent of 18 kanals, 7 marlas, after having sold his substantial share of land and is also shown to be having a separate khewat (Ex.D21). Similarly, defendant No.2/appellant is also shown to be having a separate khewat and also shown to be the owner of specific khasra numbers, which are the khasra numbers of the suit land measuring 32 kanals (Ex.D23). Even Des Raj, husband of defendant No.2 is also shown to be the owner of specific khasra numbers and has a separate khewat as duly reflected in Ex.D22. Issue No.2 which was to the effect as to whether the plaintiff is in cultivating possession of the suit land or not was decided against the plaintiff and the finding on the said issue has been upheld by the First Appellate Court. Similarly, issue No.3 which was with respect to the fact as to whether the sale deed in favour of defendant No.2 was null and void was also held against the plaintiff, which finding has been upheld by the First Appellate Court. Finding on issue No.5 is also



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concurrently in favour of the defendant. It is thus apparent that defendant No.2 had purchased the suit property after seeing the revenue record which duly reflected that Phool Chand was the owner of the specific khasra numbers of the land which was being purchased by defendant No.2 and the said sale dated 08.12.1981 in favour of defendant No.2 was for a valuable consideration and has not been held to be illegal, null and void.

28. It is also reiterated that the dispossession of the present appellant was stayed on 12.03.1991, which stay order was confirmed on 04.02.1993 and the said stay order has continued till date. Thus on one hand are the rights of defendant No.2 who had purchased the property for a valuable consideration and on the other hand is the right of the plaintiff to pre-empt the sale which is a very weak and an inequitable right and which right the plaintiff has waived off by his act and conduct, which aspect has been detailed hereinabove. In the said circumstances, this Court is of the view that the rights of the present appellant should be protected.

29. An application under Order 41 Rule 27 CPC has been filed by the appellant i.e. CM-15787-C-2025 for placing on record Annexures A-1 to A-8 as additional evidence. Notice in the said application was issued on 23.12.2025 and the same was to be taken up on the date already fixed in the main case. No reply to the said application under Order 41 Rule 27 CPC was filed by the respondents. The said documents which are sought to be placed on record include the copies of the *jamabandis* from the year 1977-78 to 2022-23. The same have been annexed to highlight the fact that even till the year 2022-23, defendant No.2 now deceased, represented through her son Vijay Singh is shown to be the exclusive owner of the specific khasra



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numbers which is the suit land. Further, a perusal of *jamabandi* for the year 1977-78 which has been annexed as Annexure A-1 would show that original plaintiff-Bhuru along with Jagtu son of Gehli are shown to be owner of a separate khewat and even their ownership is shown to be of separate khasra numbers which does not include the suit land. The documents sought to be placed on record are the documents which are a part of the revenue record and are per-se admissible and are necessary for the proper and final adjudication of the case. Thus CM-15787-C-2025 is allowed and the documents i.e. Annexures A-1 to A-8 are taken on record as additional evidence. The said documents further fortify the case of the appellant.

30. It would be relevant to note that the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of CPC and that in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon'ble Supreme Court in the case of *Pankajakshi (dead) through legal representatives and others Vs. Chandrika and others and other connected matters* reported as *(2016) 6 Supreme Court Cases 157*, it was observed that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Section 41 of the Punjab Courts Act provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds mentioned therein and one such ground, i.e., ground No.(a) is when the decision is contrary to law or to some custom or usage having the force of law. The findings of the First Appellate Court, as has been discussed hereinabove, have been found to be



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contrary to settled law and thus, deserve to be set aside.

31. Keeping in view the abovesaid facts and circumstances, the present appeal being meritorious is allowed and the judgment and decree of the First Appellate Court dated 14.02.1991 is set aside and the judgment of the trial Court dated 16.03.1989 is upheld and the suit of the plaintiff is dismissed.

32. Pending applications, if any, stand disposed of.

April 17th, 2026

Puneet/naresh.k/davinder kumar

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes