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

RSA-1329-1995

OM PARKASH

.....APPELLANTS

VERSUS

RAJ SINGH

....RESPONDENTS

1.	The date when the judgment is reserved	27.05.2026
2.	The date when the judgment is pronounced	15.07.2026
3.	The date when the judgment is uploaded	15.07.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any of the pronouncement of full judgment and reason thereof.	Not applicable

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sanjiv Gupta, Sr. Advocate with
Mr. Aayush Bansal, Advocate
for the appellant.

Mr. Abhinav Sood, Advocate
Mr. Vikram Singh, Advocate for
respondents no. 1 to 3.

<u>SANDEEP MOUDGIL, J</u>

The present appeal arises out of the judgment and decree dated 07.03.1995 passed by the learned Additional District Judge, Karnal, affirming the judgment and decree dated 05.08.1991 passed by the learned Sub Judge Ist Class, Karnal, whereby the suit for possession by way of pre-emption instituted by the plaintiffs was decreed. The vendee-defendants, having remained unsuccessful before both the Courts below, have preferred the present Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908.

The plaintiffs instituted a suit for possession by way of pre-emption in respect of agricultural land measuring 23 Bighas, which had been sold by defendant Nos.4 and 5 in favour of defendant Nos.1 to 3 vide registered sale deed dated 16.05.1988. The claim was founded on the plea that the plaintiffs were co-sharers in the joint khewat by virtue of a registered sale deed dated 05.07.1985 and the mutation sanctioned in their favour on 18.02.1986, thereby entitling them to a preferential right of pre-emption.

It was further pleaded that although the sale deed reflected the consideration as ₹1,66,000/-, the actual sale consideration was only ₹1,10,000/- and the enhanced amount had been incorporated merely to defeat the plaintiffs' right of pre-emption. The plaintiffs accordingly sought possession of the suit land on payment of the actual consideration.

The suit was contested by the vendee-defendants, who pleaded that the plaintiffs had no subsisting right of pre-emption as the joint holding had already been partitioned and the vendors were in exclusive possession pursuant to a prior family partition. It was further alleged that the plaintiffs had actively participated in the transaction, the suit was collusive and barred by limitation, and the sale consideration recorded in the sale deed had been fixed in good faith and actually paid.

On the basis of the pleadings, the learned trial Court framed the necessary issues regarding the plaintiffs' superior right of pre-emption, limitation, estoppel, alleged partition, sale consideration and other ancillary issues. After appreciating the oral and documentary evidence, the trial Court held that the plaintiffs continued to be co-sharers in the joint holding, as they had not been impleaded in the partition proceedings and no legally recognised private partition had been established.

The trial Court further held that the sale was of an undivided share in the joint holding and, therefore, limitation was to be computed from the date of registration of the sale deed. While accepting the sale consideration mentioned in the sale deed as genuine, the suit was decreed for possession by way of pre-emption upon deposit of the sale consideration together with stamp and registration charges.

Aggrieved by the said judgment and decree, the vendee-defendants preferred an appeal before the learned Additional District Judge, Karnal, reiterating the pleas regarding prior partition, limitation and absence of any superior right of pre-emption in favour of the plaintiffs.

The learned first appellate Court dismissed the appeal and affirmed the findings recorded by the trial Court. It held that no valid partition had been proved, the plaintiffs continued to be co-sharers, and the suit having been instituted within one year from the date of registration of the sale deed was within limitation. The appellate Court also noticed that the partition proceedings had subsequently been set aside by the Financial Commissioner, thereby reinforcing the plaintiffs' status as co-sharers.

Still dissatisfied, the vendee-defendants have preferred the present Regular Second Appeal, assailing the concurrent judgments primarily on the grounds that the Courts below erred in ignoring the effect of the alleged partition, wrongly computed limitation, misappreciated the evidence regarding possession and consideration, and failed to apply the amended provisions of Section 15 of the Punjab Pre-emption (Haryana Amendment) Act, 1995 which extinguished the plaintiffs' right of pre-emption during the pendency of the proceedings.

Submissions before this Court:

Learned counsel for the appellants contended that the Courts below failed to appreciate that the plaintiffs had ceased to be co-sharers on account of the prior family partition and the subsequent partition proceedings and, therefore, had no subsisting right of pre-emption. It was further submitted that the vendors were in exclusive possession of the suit land and had validly delivered possession to the vendees under the sale deed.

It was further submitted that the suit was barred by limitation as the period under Article 97 of the Limitation Act commenced from the date of execution of the sale deed and delivery of possession. It was also contended that the sale consideration mentioned in the sale deed was genuine and duly paid.

Lastly, it was argued that by virtue of the Punjab Pre-emption (Haryana Amendment) Act, 1995, the right of pre-emption of a co-sharer stood extinguished and, therefore, the decree passed by the Courts below could not be sustained.

Per contra, learned counsel for the respondents submitted that the plaintiffs had acquired the status of co-sharers through the registered sale deed dated 05.07.1985 and the sanctioned mutation, prior to the initiation of partition proceedings, and continued to retain such status.

It was further contended that no valid partition had been proved in accordance with law and the plaintiffs were never impleaded in the partition proceedings. Since the sale related to an undivided share in the joint holding, limitation was rightly computed from the date of registration of the sale deed, rendering the suit within time.

It was lastly argued that the plaintiffs possessed the requisite right of pre-emption on all the relevant dates and that the 1995 Amendment had no retrospective operation so as to defeat rights which had already crystallised under the decrees of the Courts below.

<u>Substantive Questions of Law</u>

1. ***Whether the plaintiffs continued to possess the status of co-sharers so as to maintain the suit for pre-emption?***
2. ***Whether the amendment to Section 15 of the Punjab Pre-emption Act, 1913, as applicable to the State of Haryana, affects the maintainability of the present suit?***

3. Whether the suit instituted by the plaintiffs was within the period of limitation prescribed under Article 97 of the Limitation Act, 1963?

The substantial questions of law framed hereinabove shall now be adverted to and determined individually in the light of the pleadings, evidence and settled position of law.

Issue no. 1 ***Whether the plaintiffs continued to possess the status of co-sharers so as to maintain the suit for pre-emption?***

The principal contention advanced on behalf of the appellants is that the plaintiffs had ceased to possess the status of co-sharers on account of the alleged private family partition and the subsequent partition proceedings, thereby losing their preferential right to maintain the suit for pre-emption. The submission does not merit acceptance.

The record unequivocally establishes that the plaintiffs acquired 313/4946 share in the joint khewat from Pirthi Singh vide registered sale deed dated 05.07.1985, pursuant whereto Mutation No.1266 (Ex.P1 and Ex.P4) was sanctioned on 18.02.1986. The application for partition was admittedly instituted by the vendor-defendants only on 18.03.1986, i.e. subsequent to the sanction of mutation in favour of the plaintiffs. The documentary evidence, namely, the registered sale deed and the sanctioned mutation, conclusively establishes that the plaintiffs had acquired the status of co-sharers before the initiation of the partition proceedings.

Equally significant is the fact that the plaintiffs were never impleaded in the said proceedings, despite their interest in the joint holding having already been reflected in the revenue record. Moreover, the record shows that Girdawar Halqua never gave any notice to plaintiff about preparation of Naqsha B, therefore, in these circumstances the petitioners cannot be said to have acquired any knowledge of pendency of partition proceedings.

It is also noted that the DW1 Ashok Kumar has also not deposed about any such private partition having taken place. Consequently, any order passed in such proceedings behind their back could not operate to divest them of their proprietary rights or sever their status as co-sharers.

The plea of the appellants that a private family partition had already taken place is equally untenable. Section 123 of the Punjab Land Revenue Act, 1887 contemplates that where a partition has been privately effected, any party thereto may seek its affirmation from the Revenue Officer, who, upon satisfying himself about its genuineness, records the same in the revenue record. Admittedly, no such procedure was ever followed in the present case. On the contrary, the vendors themselves instituted partition proceedings before the Assistant Collector after the plaintiffs had already become co-sharers, which completely belies the plea that the joint status had already stood severed. The burden to establish the alleged partition squarely rested upon the appellants, who failed to produce any cogent documentary evidence in support thereof. It is well settled that mere separate possession or cultivation of a portion of the joint holding does not, by itself, establish partition in the eye of law.

The law is equally well settled that a co-sharer remains owner of every inch of the joint holding until there is a lawful partition recognised by law. Separate enjoyment or exclusive cultivation of a particular portion is merely an arrangement for convenience and does not amount to severance of title. In the absence of a legally recognised partition, the vendors could transfer only their undivided share in the joint holding and the plaintiffs, being co-sharers, continued to enjoy a preferential right of pre-emption. The Supreme Court in ***“Bishan Singh v. Khazan Singh 1958 INSC 62”*** explained that the right of pre-emption is a right of substitution founded upon the existence of a superior right as against the vendee and that such right has to be determined strictly in accordance with the statute. The relevant extract of the same is as under:

> *“7. Before attempting to give a satisfactory answer to the question raised, it would be convenient at the outset to notice and define the material incidents of the right of preemption. A concise but lucid statement of the law is given by Plowden J. in* ***Dhani Nath v. Budhu, 136 Pun Re 1894*** *, at page 511, thus :*
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> *"A preferential right to acquire land, belonging to another person upon the occasion of a transfer by the latter, does not appear to me to be either a right to or a right in that land. It is jus ad rem alienum acquirendum and not a jus in re aliena ....A right to the offer of a thing about to be sold is not identical with a right to the thing itself, and that is the primary right of the pre-emptor. The secondary right is to follow the thing sold, when sold without the proper offer to the pre-emptor, and to acquire it, if he thinks fit, in spite of the sale, made in disregard of his preferential right."*
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> *The aforesaid passage indicates that a pre-emptor has two rights : (1) inherent or primary right i.e. a right to the offer of a thing about to be sold and (2) secondary or remedial right to follow the thing sold.*

8. Mahmood J. in his classic judgment in ***Gobind Dayal v. Inayatullah, ILR 7 Allahabad 775 at p. 809 (FB)*** *, explained the scope of the secondary right in the following terms :*

"It (right of pre-emption) is simply a right of substitution, entitling the pre-emptor, by means of a legal incident to which sale itself was subject, to stand in the shoes of the vendee in respect of all the rights and obligations arising from the sale, under which he derived his title. It is, in effect, as if in a sale deed the vendee's name were rubbed out and preemptor's name inserted in its place."

9. The doctrine adumbrated by the learned Judge, namely, the secondary right of pre-emption is simply a right of substitution in place of the original vendee, has been accepted and followed by subsequent decisions."

The aforesaid conclusion is further fortified by the principle reiterated by the Constitution Bench in "***Shyam Sunder v. Ram Kumar 2001 INSC 323"*** reiterated the settled principle that a pre-emptor must possess the qualifying right on the date of sale, the date of institution of the suit and the date of the decree of the trial Court. The relevant part is here as under:

"11. An analysis of the aforesaid decisions referred to in first category of decisions, the legal principles that emerges are these :

1. The pre-emptor must have 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 by the Court of the first instance only.

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. A pre-emptor who has a right to pre-empt a sale on the date of institution of the suit and on the date of passing of decree, the loss of *such right subsequent to the decree of the first Court would not affect his right or maintainability of the suit for pre-emption.*

4. A pre-emptor who after proving his right on the date of sale, on the date of filing the suit and on the date of passing of the decree by the first court, has obtained a decree for pre-emption by the Court of first instance, such right cannot be taken away by subsequent legislation during pendency of the appeal filed against the decree unless such legislation has retrospective operation."

As noticed hereinabove, the plaintiffs fulfilled all the aforesaid requirements. Furthermore, the learned first appellate Court also noticed that the Financial Commissioner, Haryana, vide order dated 12.10.1992 (Ex.RX), had set aside the earlier partition proceedings and directed a *de novo* partition, thereby lending further assurance to the conclusion that no final or binding partition had ever come into existence earlier.

The findings recorded by the learned trial Court and affirmed by the learned first appellate Court are thus firmly founded upon the registered sale deed, Mutation No.1266 (Ex.P1 and Ex.P4), the revenue record and the admitted chronology of events. Learned counsel for the appellants has failed to demonstrate that the concurrent findings suffer from perversity, are based on no evidence, or are vitiated by any misapplication of law. In the limited jurisdiction of this Court under Section 100 of the Code of Civil Procedure, 1908, no ground is made out to interfere with such concurrent findings of fact. It is, therefore, held that the plaintiffs continued to possess the status of co-sharers so as to maintain the suit for pre-emption. The substantial question of law is answered against the appellants and in favour of the plaintiffs.

<u>Issue no.2</u> ***Whether the amendment to Section 15 of the Punjab Pre-emption Act, 1913, as applicable to the State of Haryana, affects the maintainability of the present suit?***

Another contention advanced on behalf of the appellants is that by virtue of the Punjab Pre-emption (Haryana Amendment) Act, 1995, whereby Section 15 of the Punjab Pre-emption Act, 1913 came to be substituted, the right of pre-emption available to a co-sharer stood extinguished and, therefore, the decree passed in favour of the plaintiffs cannot be sustained merely because the present Regular Second Appeal remained pending on the date the amendment came into force.

The contention, however, does not merit acceptance. It is well settled that in a suit for pre-emption, the claimant is required to possess the qualifying right on three material dates, namely, the date of sale, the date of institution of the suit and the date on which the trial Court passes the decree as held by the Apex Court in ***Shyam Sunder (supra).*** In the present case, the sale in question was effected on 16.05.1988, the suit was instituted on 22.05.1989, and the learned trial Court decreed the suit on 05.08.1991. The said decree was thereafter affirmed by the learned Additional District Judge on 07.03.1995, both much prior to the enforcement of the Amendment in the existing statute, which was only brought in the year 1995. Thus, on all the material dates recognised by law, the plaintiffs possessed the requisite qualification to maintain the suit. Moreover, a careful reading of Section 12 of the Punjab Pre-emption (Haryana Amendment) Act, 1995, which can be referred to as under:

> ***12. The law determining the right of pre-emption.***
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> *In respect of all sales and foreclosures not completed before the commencement of this Act the right of pre-emption shall be determined by the provisions of this Act; but in respect of all sales and foreclosures completed before the commencement of this Act the right of pre-emption shall be determined by the law in force at the time of such completion.*

This provision provides that the right of pre-emption in respect of sales completed after the commencement of the Act shall be determined in accordance with the provisions of the Act, whereas sales completed before its commencement shall be governed by the law in force at the time of such completion of the sale.

The legislative intent underlying the provision is that the rights of the parties are to be determined with reference to the law governing the transaction giving rise to the cause of action. Since the sale in question was completed in favor of the plaintiff-respondents on 16.05.1988, when the unamended provisions of the Act were in force, the rights of the parties fell to be determined in accordance with the law prevailing on the date of the sale. The plaintiffs, having fulfilled all the statutory requirements under the unamended Act, acquired a right which was duly recognised by both the Courts below.

This court is of the considered view that a decree validly passed by the Court of first instance is not ordinarily defeated by subsequent events unless the subsequent legislation expressly or by necessary implication mandates such a consequence. A perusal of the Punjab Pre-emption (Haryana Amendment) Act, 1995 does not disclose any express provision rendering decrees already passed and affirmed before its enforcement liable to be nullified merely because a further appeal remained pending.

Therefore, the findings regarding the plaintiffs' status as co-sharers and their superior right of pre-emption had thus received concurrent judicial affirmation prior to the legislative change. In the absence of a clear statutory mandate giving retrospective operation to the amendment so as to unsettle decrees already passed by the competent Courts, the mere pendency of the present Regular Second Appeal cannot be construed to retrospectively extinguish the rights which had already crystallised in favour of the plaintiffs.

This court is of the considered view that accepting the submission advanced by the appellants would amount to attributing retrospective operation to the amending Act in the absence of express words or necessary implication to that effect. Such an interpretation would run contrary to the settled principle that a statute affecting substantive rights is ordinarily prospective unless the legislature manifests a contrary intention in clear and unequivocal terms.

Consequently, this Court is of the considered opinion that the amendment of the year 1995 as brought to Section 15 of the Punjab Pre-emption Act, 1913, as applicable to the State of Haryana, does not affect the maintainability of the present suit in the peculiar facts and circumstances of the case. The substantial question of law is, accordingly, answered against the appellants and in favour of the plaintiffs.

<u>Issue no.3</u> Whether the suit instituted by the plaintiffs was within the period of limitation prescribed under Article 97 of the Limitation Act, 1963?

The principal contention of the appellants is that the suit instituted by the plaintiffs on 22.05.1989 was barred by limitation inasmuch as the sale deed had been executed on 16.05.1988 and possession of the suit land had also been delivered on the said date. According to the appellants, the limitation prescribed under Article 97 of the Limitation Act, 1963 commenced from the date of execution of the sale deed and, therefore, the suit having been instituted beyond one year was liable to be dismissed as time-barred.

The submission cannot be accepted. Article 97 of the Limitation Act prescribes two different starting points for computing limitation in a suit to enforce a right of pre-emption. Where the subject matter of sale admits of physical possession and possession is delivered under the sale, limitation commences from the date of taking such physical possession. However, where the sale does not admit of physical possession, the period of limitation begins from the date of registration of the sale deed. The determination of the applicable clause, therefore, necessarily depends upon the nature of the property transferred.

As already held while dealing with the first substantial question of law, the appellants have failed to establish that the vendors were exclusive owners in exclusive possession of the suit property. Both the Courts below have concurrently found that no lawful partition had taken place either by virtue of the alleged family settlement or under the provisions of the Punjab Land Revenue Act, 1887. The vendors continued to hold only an undivided share in the joint khewat and, consequently, the sale in favour of the appellants was nothing but a transfer of an undivided share in the joint holding. The mere recital in the sale deed describing specific khasra numbers or recording delivery of possession cannot alter the true legal character of the transaction. In law, a co-sharer cannot convey exclusive possession of any specific portion of the joint property in the absence of a valid partition.

Thus, this court is of the opinion that the lower Courts have rightly concluded that where the transfer relates to an undivided share in joint property, the second limb of Article 97 becomes applicable and limitation is to be reckoned from the date of registration of the sale deed.

Admittedly, although the sale deed was executed on 16.05.1988, it was registered on 25.05.1988 and the present suit came to be instituted on 22.05.1989, i.e. within one year from the date of registration. The concurrent finding that the suit was within limitation is thus founded upon a correct interpretation of Article 97 of the Limitation Act and a proper appreciation of the evidence on record. Accordingly, it is held that the suit instituted by the plaintiffs was well within the period of limitation prescribed under Article 97 of the Limitation Act, 1963, and the substantial question of law is answered against the appellants and in favour of the plaintiffs-respondents.

Conclusion

In view of the discussion made hereinabove, this Court is of the opinion that no material has been placed before this Court to demonstrate that the aforesaid concurrent finding of the lower Courts suffers from any perversity or is contrary to the settled legal position, so as to warrant interference of this Court while exercising jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

Consequently, the Trial Court judgement and decree dated 05.08.1991 and First appellate Court judgement and decree dated 07.03.1995 is upheld.

The present Regular Second appeal is hereby dismissed.

Pending applications, if any, stand disposed off.

(SANDEEP MOUDGIL)
JUDGE

15.07.2026
Meenu

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