



RSA-520-1991 (O & M)

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

RSA-520-1991 (O & M)

Reserved on:22.04.2025

Pronounced on:11.07.2025

JAI BHAGWAN

...APPELLANT

VERSUS

SURESH KUMAR & ORS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Ashish Gupta, Advocate
for the appellant.

Mr. Keshav Pratap Singh, Advocate &
Mr. Nitin Sansanwal, Advocate
for respondents No.1 & 2.

SUVIR SEHGAL, J.

1. Appellant/plaintiff is in second appeal assailing judgment and decree passed by the lower appellate Court whereby an appeal filed by respondents No.1 and 2/defendants No.1 and 2 has been accepted. Judgment as well as decree passed by Trial Court has been set aside and suit has been dismissed.



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2. Facts, in brief, may be noticed.

3. Plaintiff filed a suit for possession by way of pre-emption of sale deed dated 20.05.1986, Mark-A, for land measuring 13 kanals 11 marlas (hereinafter referred to as “suit land”) located in the revenue estate of village Pota, Tehsil and District Mahendergarh, which was sold for a consideration of Rs.49,000/-. It has been averred that defendants No.3 to 5/respondents No.3 to 5, who were owners of the suit land, sold it to defendants No.1 and 2 (for short “contesting defendants”) vide registered sale deed dated 20.05.1986. It has been alleged that actual sale consideration was Rs.39,000/- and an inflated amount has been deliberately shown. Claiming to be a co-sharer in the suit land and alleging that no notice was issued to him, plaintiff filed the suit. Upon being served, suit was opposed by contesting defendants, whereas the other defendants were given up by the plaintiff. Besides taking various preliminary objections, the said defendants have averred that plaintiff was not the adopted son of Sheo Chand. A stand has been taken that the suit land has been partitioned and the right of pre-emption, if any, has since been extinguished. It has been submitted that they have spent Rs.10,000/- on bringing about improvement of the land and in case the suit is decreed, they are also entitled to stamp and registration charges to the tune of Rs.8,000/-. Plaintiff filed a replication re-asserting the claim. On the basis of the pleadings of the parties, Trial Court framed issues. After the parties led evidence and were heard, suit was accepted by the Trial Court vide judgment and decree dated 15.03.1990. Appeal preferred by contesting defendants was accepted by the learned Additional District Judge,



Narnual, vide impugned judgment and decree dated 15.01.1991. Alongwith the instant appeal, plaintiff has filed an application (CM-4144-C-2024) for additional evidence for placing on record two orders passed by the revenue authorities as Annexures A-1 and A-2. This application is being contested by the respondents and alongwith their reply, they have annexed orders, Annexures R-1 to R-5, by the authorities, which according to them, are necessary for the decision of the appeal.

4. Relying upon a Division Bench judgment of this Court in *Amar Singh Vs. Sheo Narain 1993 PLJ 113*, Mr. Ashish Gupta, counsel for the appellant, has argued that the documents sought to be adduced by him by way of additional evidence, are necessary for the Court to pronounce the judgment. He submits that these documents could not be produced despite exercise of due diligence. Assailing the findings recorded by the first appellate Court, it has been contended that plaintiff is a co-sharer in the suit land and as the instrument of partition has neither been prepared nor given effect to, there is no change in his status. It is also his argument that once the partition proceedings have been stayed by the appellate authority, the status of the plaintiff as a co-share continues. Reliance has been placed by him upon *Siri Kishan and another Vs. Surja and others 2007 (2) RCR (Civil) 188* as also on *Lal Chand (Dead) through LRs Vs. Ganga Ram (Dead) through LRs 2005 (2) RCR (Civil) 52*. Countering him, Mr. Keshav Pratap Singh and Mr. Nitin Sansanwal, counsel for contesting defendants, while opposing the application for additional evidence, have urged that order dated 25.04.1989 (Annexure A-1) passed by Assistant Collector was passed during



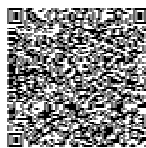
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the pendency of the suit before the Trial Court. However, the appellant neither took any step to produce it during the course of evidence before the Trial Court nor did they seek its adduction in first appeal. Referring to *Ram Kishan and another Vs. Daya Nand (D) through LRs and others 2023 SCC Online SC 1353* and *Jhabbar Singh (Deceased) through legal heirs and others Vs. Jagtar Singh (2023) 14 SCC 199*, they contend that plaintiff has to establish that superior right of pre-emption subsists till the passing of the decree by the Trial Court. It is his assertion that when the Assistant Collector sanctioned naksha-be vide order dated 10.04.1989, Ex.P2, joint status of the parties came to an end.

5. I have heard counsel for the parties and considered their respective submissions besides analysing the requisitioned record.

6. Although, one of the options available before this Court is to remand the matter to the first appellate court with liberty to the parties to seek production of additional evidence as some of the documents being relied upon by them came into being during the pendency of the instant appeal. However, noticing that suit was filed in the year 1987 and instant appeal is pending before this Court for the last more than three decades, this Court is of the view that this mode would further delay the decision of the lis. Instead of opting for this course, this Court has taken into consideration various orders passed by the authorities, which have not been disputed, even though they have not been formally adduced in evidence. This Court has opted for deciding the appeal on merits by taking the documents appended with CM-4144-C-2024 and its reply.



7. Facts as extracted from the documents relied upon by the parties before this Court show that by order dated 07.10.1988, Ex.D-1, Assistant Collector, Mahendergarh, sanctioned a naksha-be produced before him. In appeal, by order dated 16.03.1988, Annexure R-1, matter was remanded to the Assistant Collector to get an amended naksha-be prepared by providing a passage to the land of the plaintiff. This order was further challenged by the plaintiff by filing a revision petition, but by order dated 04.04.1989, Annexure R-3, Commissioner declined to stay the order. Revision was eventually dismissed by the Commissioner vide order dated 19.10.1992, Annexure R-4. In the meanwhile, Assistant Collector accepted the amended naksha-be and confirmed it by order dated 10.04.1989, Ex.P-2. This order was challenged by filing another appeal before the Collector, which was instituted on 05.05.1989, who vide order dated 03.01.1994, Annexure A-2, ordered that as litigation is pending between the parties, partition proceedings be deferred till the decision of the cases by the civil court. Contesting defendants challenged this order by filing a revision petition, which was accepted by the Commissioner vide order dated 13.07.1994, Annexure R-5, and order dated 03.01.1994, Annexure A-2, was set aside. It is, therefore, evident from the above that naksha-be was approved by the Assistant Collector on 07.10.1988, Ex.D-1, and amended naksha-be was confirmed by the revenue authority on 10.04.1989, Ex.P-2.

8. Interpreting the provisions of the Punjab Land Revenue Act, 1887, Supreme Court in *Jhabbar Singh's case (supra)* has observed as under:-



“28. At this juncture, it would be also apt to mention that apart from the fact that the right of pre-emption is very weak right and capable of being defeated by all legitimate methods, the pre-emptor must establish that he had the right to pre-empt on the date of sale, on the date of the filing of the suit and on the date of the passing of the decree by the Court of the first instance. The pre-emptor or the plaintiff-claimant who claims the right to pre-empt the sale on the date of sale, has also to prove that such right continued to subsist till the passing of the decree of the first court. If the plaintiff-claimant loses that right or the vendee improves his right equal or above the right of the claimant before the adjudication of the suit, the suit for pre-emption would fail.

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41. 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 divided 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 121 of the Land Revenue Act 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”

9. Coming to the facts of the case in hand, it cannot be disputed that naksha-be was initially approved by the revenue authorities on 07.10.1988, Ex.D-1, and pursuant to the order, Annexure R-1, passed in appeal, amended naksha-be was confirmed on 10.04.1989, Ex.P-2. Although plaintiff has claimed that order, Ex.P-2, was stayed in appeal, but he has failed to produce a copy of the order. In any case, documents appended with the application (CM-4144-C-2024) and its reply show that even though the appellate authority deferred the conclusion of the partition proceedings, but his order was set aside by the Commissioner vide order dated 13.07.1994, Annexure R-5. The vital date for determining the status of the parties is 15.03.1990, when the suit was decided by the Trial Court. By this date, naksha-be had been sanctioned by revenue authorities and there is no material to show that operation of the order had been stayed by the appellate or revisional authority. In view of the above reproduced observations of the Supreme Court in *Jhabbar Singh's case (supra)*, this Court unhesitatingly comes to the conclusion that the joint status of the parties stood severed when naksha-be was sanctioned and plaintiff did not possess the status of a co-sharer, when the Trial Court passed the decree. Right of pre-emption did not survive when the civil suit was decided by the Trial Court. Judgments



relied upon by the counsel for appellant/plaintiff do not help him. Lower appellate Court has rightly reversed the findings and the judgment as well as decree passed by the Trial Court. There is no illegality or infirmity in the judgment passed by learned Additional District Judge, which is affirmed.

- 10. Appeal sans merit and is dismissed, though with no order as to costs.
- 11. Pending applications, if any, are disposed of.

11.07.2025
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No