



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

**RSA-1283-1991 (O&M)**

**Reserved on :- 22.09.2025**

**Pronounced on :-24.09.2025**

Jeet Ram and Another

... Appellants

Versus

Nihal Singh and Others

... Respondents

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**CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

Argued by :-

Mr. Ashish Aggarwal, Senior Advocate with  
Mr. Vishal Pundir, Advocate and  
Mr. Anmol Rattan Singh Dhillon, Advocate  
for the appellants.

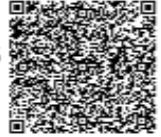
None for the respondents.

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**VIRINDER AGGARWAL, J.**

1. The appellants have preferred this Regular Second Appeal (hereinafter to be referred as "RSA"), challenging the judgments and decrees rendered by both the Courts below. The appeal has been filed with the primary grievance that the findings recorded by the learned Sub-Judge, 1st Class, as well as the learned First Appellate Court, are allegedly contrary to law, based on mis-appreciation of evidence, and result in substantial prejudice to the appellants.

2. The concise facts of the present case are that the respondents-plaintiffs instituted a suit seeking possession of the property by way of preemption of the sale-deed executed in favor of the appellants by defendants No.3 to 5 on 24.07.1986. During the pendency of the suit, the



plaintiffs expressly abandoned their claim against defendants No.3 to 5, as recorded on 24.10.1986. Defendant No.1 actively contested the suit, whereas defendant No.2 initially remained *ex-parte*. However, the *ex-parte* proceedings against defendant No.2 were subsequently set aside, thereby enabling him to participate fully in the litigation.

3. Defendants No.1 and 2 contested the suit by contending that Plaintiff No.3 had prior knowledge of the sale-deed, as evidenced by his earlier suit titled '*Mahender vs. Ganpat*' filed before the Court of Additional District Judge, Narnaul. Defendant No.2 additionally raised preliminary objections, asserting that the sale had occurred with the consent of the plaintiffs and that the suit was barred for partial preemption. Plaintiffs are not entitled to preempt sale as the Khewat of the plaintiffs and the vendors had already been separated, and the plaintiffs were no longer co-sharers in the property.

4. Following a meticulous examination of the pleadings and contentions of the parties, the Court framed the following issues for determination, with a view to thoroughly and effectively adjudicating the disputes between the parties:-

1. Whether the plaintiffs have superior right to pre-empt the sale in question against the vendee-defendants? OPP.
2. Whether the plaintiffs are estopped by the own act and conduct to bring the present suit? OPD.
- 1A Whether the defendant No. 2 carried out any improvement over the suit land after purchasing it if so to what amount, he is entitled on account of expenses incurred on making improvements?OPD2
- 1B Whether the suit is bad being for partial pre-emption? OPD2



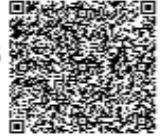
1C Whether the suit has been filed by the plaintiffs at the instance and for benefit of vendor if so its effect? OPD2

3. Relief

5. The parties were afforded ample opportunity to adduce evidence in support of their respective claims and defenses. Upon the conclusion of evidence and after hearing learned counsel at length, the learned Additional Senior Sub-Judge, Rewari, having carefully considered the pleadings, material on record, and submissions advanced, decreed the suit. Aggrieved by this judgment and decree, an appeal was filed before the learned Additional District Judge, Rewari, who partly allowed the appeal: the relief in respect of Khewat No.169, Khatoni No.195 was declined, whereas the preemption claim over the remaining suit land was upheld.

6. Challenging the aforementioned judgment and decree, the appellants filed the present appeal, which was admitted for hearing. Notice was duly issued to the respondents, of whom Nos.1 and 2 initially appeared but later failed to participate and were proceeded against *ex-parte*. The records of the Courts below were requisitioned for careful examination and consideration by this Court.

7. I have heard learned counsel for the appellants at length. His submissions have been considered in the context of the pleadings, evidence on record, and the findings recorded by the Courts below. The record has been meticulously examined to evaluate the rival contentions and to determine whether any legal infirmity, error, or perversity exists in the impugned judgment and decree warranting interference in the present appeal.



8. With regard to the scope of a second appeal, it is now a well-settled proposition of law that, in Punjab and Haryana, second appeals are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918, and not under Section 100 of the Code of Civil Procedure. In this context, reliance may be placed on the judgment of the Supreme Court in **Pankajakshi (Dead) through LRs and Others v. Chandrika and Others, (2016) 6 SCC 157**, followed by **Kirodi (since deceased) through LR v. Ram Parkash and Others, (2019) 11 SCC 317**, and **Satender and Others v. Saroj and Others, 2022 (12) Scale 92**. In view of the legal position established by these decisions, no substantial question of law arises that necessitates framing in the present appeal.

9. Learned counsel for the appellants has challenged the judgments and decrees passed by the Courts below on two primary grounds: first, on the basis of partial preemption, and second, on account of non-joinder of the vendors as defendants. It was contended that the judgment and decree passed by the learned Additional Senior Sub-Judge concerning Khewat No.169 had already been set aside, holding that the respondents-plaintiffs had no right, title, or interest as co-sharers in that Khewat. Consequently, they were not entitled to preempt the sale relating to that Khewat. Learned counsel further argued that this finding by the learned Additional District Judge has attained finality, as the subsequent appeal filed by the respondents-plaintiffs as RSA-1784-1991 was dismissed by a Co-ordinate Bench of this Court.

10. The sale-deed sought to be preempted in this litigation pertains to land comprised of two Khewats, namely Khewat Nos. 169 and 72, situated in village Jabhua. Since it has been held that the respondents-plaintiffs are not entitled to preempt the sale with respect to the land in



Khewat No.169, their right to preempt the sale of the entire property stands extinguished, as partial preemption is not permissible under law.

11. I find force in the contention of learned counsel for the appellants. The Hon'ble Apex Court, in **Ram Sarup v. Munshi and Others, 1963 AIR 553**, has clearly held that partial preemption is impermissible, as preemption entails substitution of the pre-emptor in place of the vendee. Where a decree in favor of the pre-emptor, in respect of the share of the deceased Mehar Singh, has attained finality, allowing the appeal and interfering with the decree concerning appellants Nos.2 to 5 would result in two conflicting decrees. Similarly, this Court, in its Division Bench judgment in **Ganga Singh v. Narinjan Singh, 1971 PLR 763**, reiterated that partial preemption is not permissible. The relevant observation was made as under:-

“In the second place, so far as pre-emption law in the Punjab is concerned, one rule is formally settled that the right of pre-emption is the right of substitution, in other words, the name of the vendee is rubbed from the sale-deed and that of the pre-emptor is introduced therein.”

12. In the present case, the sale-deed in question pertains to land comprised of Khewat Nos.169 and 72. Since it has already been concluded that the respondents-plaintiffs are not entitled to pre-emption with respect to land in Khewat No.169, granting them the right of pre-emption over Khewat No.72 would amount to impermissible partial pre-emption. Such a scenario would prevent the vendees from being fully substituted by the plaintiffs and would result in an anomalous situation where the sale-deed in respect of Khewat No.169 remains in favor of the appellants-defendants, while the



sale-deed for Khewat No.72 is held in favor of the respondents-plaintiffs, which is clearly untenable under law.

12.1. Learned counsel for the appellants further contended that the decrees are vitiated due to non-joinder of necessary parties, namely the vendors, i.e., defendants No.3 to 5, who were abandoned by the plaintiffs and the suit against them was dismissed as withdrawn. Vendors are indispensable parties, as held by a Co-ordinate Bench of this Court in **Ram Singh and Others v. Hari Singh and Another, RSA-1273-1993**, decided on **20.12.2024, Neutral Citation No.2024:PHHC:171700**. In similar circumstances, where the vendor was relinquished by the plaintiff in a suit for pre-emption, it was held that the plaintiff's omission to include the necessary party rendered the suit not maintainable. Paras 16 to 19 of the judgment are reproduced as under:-

“16. Apart from above, the suit was filed on 23.08.1990, wherein vendor-Smt. Misri was impleaded as defendant No.6. However, by way of the statement made on 11.12.1990, plaintiff gave up said defendant No.6 as unnecessary party. It is required to be seen as to what is the effect of non- joining of the vendor-defendant in a suit for pre-emption.

17. The said issue has been considered by the Hon'ble Supreme Court in Jhabbar Singh's case (supra) and it has been held as under:-

13. As held by this Court in [U.P. Awas Evam Vikas Parishad v. Gyan Devi](#) AIR 1995 SC 724, necessary party is one without whom no order can be made effectively, and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and



final decision on the ques"on involved in the proceedings. When a right to pre-empt, the sale was claimed by the plaintiff Jagtar Singh as a co-sharer in the lands along with the owner Jit Singh, alleging that the mandatory provisions contained in Section 19 i.e., for giving notice to the pre-emptor, was not complied with by the owner or seller Jit Singh, his presence as the party defendant was desirable along with the other defendants Jhabbar Singh and Others, to effectively and finally decide the disputes between the par"es. Though, Order 1 Rule 9 states that no suit shall be defeated by reasons of the misjoinder or non-joinder of parties, care must be taken by the court to ensure that all the par"es, be it the plaintiff for the defendant, whose presence is necessary for complete and final adjudication on the issues involved in the suit, are before the court. That is the reason why the courts are empowered to strike out or add par"es, at any stage of the proceedings as per Order 1. Rule 10. [C.P.C.](#)"

18. It is clear from the above-said legal position on explained by Hon'ble Supreme Court that when a right to pre-empt the sale is claimed 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 par"es. Although, as per order I [Rule 9 CPC](#), no suit is to be defeated by reason of mis-joinder or non-joinder of the par"es, but it is required for the Court to ensure that all the par"es, 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.”

13. In the present case, the respondents-plaintiffs abandoned defendants Hari Singh, Ganpat, and Siria, i.e., defendants No.3 to 5, on 24.10.1986 by making an oral statement. Consequently, the suit is also liable to be held bad for non-joinder of necessary parties. In view of the foregoing, the judgments and decrees passed by the Courts below cannot be sustained, being vitiated both by the impermissibility of partial pre-emption and suit being based on account non-joinder of necessary parties. Accordingly, the appeal is allowed, and the impugned judgment and decree are hereby set aside.

14. Since the main matter has been adjudicated and a final decision rendered, all pending miscellaneous applications, if any, connected with or arising out of the main proceedings, stand disposed of accordingly.

**( VIRINDER AGGARWAL )**  
**JUDGE**

**24.09.2025**  
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No