



**RSA-1624-1994 (O&M)**

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

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**Date of decision : 18.03.2025**

Kanha

..... Appellant

versus

Devi Singh & anr.

..... Respondents

**CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN**

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Present :- Mr. R.S.Kundu, Advocate for the appellant.

Mr. Surinder Gandhi, Advocate for the respondents.

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**PANKAJ JAIN, J. (ORAL)**

**CM-9728-C-2024**

This is an application for bringing on record the LRs of appellant namely Kanha who is stated to have unfortunately expired on 07.12.1998.

For the reasons recorded, the application is allowed subject to all just exceptions. Parties mentioned in para No.1 of the application are impleaded as LRs of the deceased-appellant. Amended memo of parties is taken on record.

**Main case**

1 LRs. of defendant are in appeal. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellant as defendant No.1-vendee, respondent No.1 as plaintiff and respondent No.2 as defendant No.2-vendor.

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2 Plaintiff filed suit for possession by way of pre-emption with respect to agricultural land measuring 35 kanals 0 marlas as detailed out in the head note of the plaint. Plaintiff asserted superior right to pre-empt sale deed dated 31.07.1989 for a consideration of Rs.15,500/- executed by defendant No.2 in favour of defendant No.1 asserting his right as a co-sharer. Defendant No.2-vendor was proceeded ex-parte. Defendant No.1 filed written statement resisting the suit filed by the plaintiff claiming that plaintiff has no locus-standi to file the present suit. The suit land is not pre-emptible as defendant No.1 is in possession of the suit land as tenant.

3 Based upon the pleadings following issues were framed :-

- “1 Whether the plaintiff has got a superior right of pre-emption? OPD*
- 2. Whether the vendee defendant is entitled to stamps and registration charges? if so to what extent and to what amount? OPD.*
- 3. Whether the plaintiff has got no locus-standi for cause of action to sue? OPD.*
- 4. Whether the suit is not maintainable as alleged? OPD.*
- 5. Whether the plaintiff is estopped by his own acts and conduct from filing the suit? OPD.*
- 6. Relief.”*

4 The Trial Court while answering issue No.1 held that ejectment petition was filed by original land owner-defendant No.2 against defendant No.1. The same was disposed off on 18.12.1987 in terms of a compromise. As per the terms of the compromise defendant No.1 relinquished his right of tenancy over ½ portion of total land measuring 35 kanals 0 marlas with the condition that the land owner shall execute sale deed in favour of tenant

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regarding  $\frac{1}{2}$  portion of land. In terms of the said compromise the ejectment petition was allowed vide order dated 18.12.1987. Ex.P1 is rapat-roznamcha dated 13.06.1989 to show that possession of the land in dispute has been delivered to land owner Ram Singh in compliance of the order passed by A.C.Ist Grade, Loharu. However, there is no evidence on record to show that sale deed of  $\frac{1}{2}$  share as per the compromise was executed by Ram Singh in favour of Kanha. Trial Court thus held that the status of defendant No.1-vendee Kanha over the suit land was of a tenant. The land under sale was not pre-emptable in terms of Section 17(a) of Punjab Security of Land Tenure Act, 1953 (for short '1953 Act'). Trial Court dismissed the suit filed by the plaintiff.

5 Aggrieved plaintiff approached Lower Appellate Court. Lower Appellate Court reversed the findings recorded by the Trial Court relying upon a rapat-roznamcha No.432 dated 13.06.1989 (Ex.P1). Lower Appellate Court held that ejectment application filed by Ram Singh the vendor against Kanha was allowed in terms of order dated 18.12.1987 Ex. PX. The same was executed vide rapat-roznamcha No.432 dated 13.06.1989 (Ex. P1). The entries in revenue record were changed in favour of Ram Singh. Thus the tenancy rights vested in Kanha having extinguished on the passing of the ejectment order dated 18.12.1987, the vendee Kanha was no more a tenant under sale deed under pre-emption i.e. 31.07.1989.

6 Counsel for the appellant, Mr.R.S.Kundu, Advocate for vendee has assailed the findings recorded by the Lower Appellate Court. He submits that the Lower Appellate Court has reversed well reasoned findings recorded by the Trial Court without affording any reasoning. He submits

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that the Trial Court rightly held that the land was held by Kanha appellant as a tenant. The same being non-pre-emptible under Section 17(a) of the 1953 Act, Lower Appellate Court ought not have reversed the findings recorded by the Trial Court.

7            *Per contra* Mr. Surinder Gandhi, Advocate has drawn attention of this Court to the document Ex.P1 to submit that as per the said rapat-roznamcha the possession of the land in dispute was handed over to Ram Singh after vendee was ejected. In view thereof, no fault can be found with the findings recorded by the Lower Appellate Court. He submits that the observation made by Trial Court in para No.8 was conjectural and cannot be relied upon to non-suit the plaintiff. He thus submits that the Lower Appellate Court has rightly reversed the findings recorded by the Trial Court on issue No.1 and dismissed the suit filed by the plaintiff.

8            I have heard learned counsel for the parties and have gone through records of the case.

9            The fact of appellant-Kanha being in possession of the suit land as tenant is not in dispute. The issues that need to be decided are :

- a) *Whether Kanha can be held to be evicted vide document Ex.PX i.e. order passed by A.C.Ist Grade dated 18.12.1987.*
- b) *The effect of document Ex.P1 i.e. rapat-roznamcha dated 13.06.1989.*

Ex.PX i.e. copy of the order dated 18.12.1987 is order passed by A.C.Ist Grade, Loharu whereby eviction petition filed by Ram Singh against appellant Kanha was disposed off. The order records that after both the parties had led evidence and the arguments had been heard, both the

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parties entered into an oral settlement. It further records that both the parties got their statement recorded as per the compromise. Raghubir Singh S/o Kanha the attorney of Kanha stated that matter has been compromised. As per the same they have agreed to relinquish their tenancy rights in favour of landlord *qua* half portion of the land. In lieu of such relinquishment the landlord has agreed to sell 17 kanal 8 marlas of land in his favour. They shall hand over the possession of half portion of the land and will have no right, title or interest in the said portion after execution of the sale deed which shall be executed within 4 months. In case the sale deed is not registered within 4 months, first party shall be entitled to get possession of the rest of the half portion as well. First party Ram Singh was also present. He in his statement submitted that he has heard the statement of attorney holder of the second party. He undertook that he shall be bound to get the registered sale deed executed in favour of second party within 4 months. After possession of  $\frac{1}{2}$  share of the land is handed over to him he shall have no right, title or interest in the other portion of the land.

10           The Assistant Collector, Ist Grade, Loharu further noticed that both the parties have got their statements recorded and on the basis of the compromise, eviction order was passed with respect to half share of land.

11           There is nothing on record from either of the parties as to whether the compromise was further adhered to or not. Ex.P1 dated 13.06.1989 which is a copy of the rapat-rozنامcha however records that the possession of whole of the land of 35 kanal has been handed over to Ram Singh. It is pertinent to observe here that on the entire rapat-rozنامcha there is no signature/thumb impression of Kanha or his attorney.

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12 In the considered opinion of this Court, the eviction order was passed on the basis of compromise. In order to prove that the eviction order was executed, pre-emptor was required to examine landlord-vendor Ram Singh. In the absence of Ram Singh it cannot be held that passing of the eviction order *qua* ½ portion of the suit land shall have an effect of snapping of relationship between Ram Singh and Kanha. Merely for the reason that a conditional order on the basis of compromise was passed by the revenue authorities it cannot be held that tenant-Kanha lost his tenancy rights. The other issue that needs to be noticed is non-compliance of Section 19 and Section 20 of the Punjab Pre-emption Act, 1913 (for short 1913 Act) . The provisions read as under :-

***“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 of the 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 given if it be stuck up on the chaupal or other public place of the village, town or place in which the land or property is situate.*

***20. Notice by pre-emptor to vendor.***

*The right of pre-emption of any person shall be extinguished unless such person shall within the period of three months from the date on which the notice under Section 19 is*

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*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 amount due on the footing of the mortgage as correct or not and if not, 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.”*

13 The law obligates plaintiff seeking decree of pre-emption to plead and prove compliance of Section 19 & Section 20 of the 1913 Act. In the plaint, the plaintiff pleaded as under :-

*“3. That defendant No.2 Ram Singh never served any notice on the plaintiff expressing his intent to sell the land as required under Punjab Pre-emption Act. Sale deed was executed in clandestine manner.”*

14 The same was responded to by defendant No.1-appellant Kanha as under :-

*“3. That para No.3 of the plaint is wrong hence denied. Plaintiff himself participated in agreement to sell and thus no notice was required. The suit has been filed on the asking of defendant No.2”.*

15 Plaintiff was examined as PW1. The effect of non-compliance of Sections 19 and 20 of the 1913 Act has been elaborately dealt by this Court in the case of ***Smt. Chawli Devi (since deceased) through her LRs***



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*versus Inder Paul and others* passed in RSA-941-1991 decided on 04.11.2024 observing as under :-

*“22. Coming on to the issue of non-impleadment/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 pre-emptor 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*

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*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.”*

16 In view of above, this Court finds that the findings recorded by the Lower Appellate Court cannot be sustained. The same need to be reversed. Suit filed by the plaintiff needs to be dismissed.

17 Appeal stands allowed.

18 As a sequel of the discussion held hereinabove, the judgment and decree passed by the Lower Appellate Court is hereby set aside and the judgment and decree passed by the Trial Court is restored.

19 Pending miscellaneous application, if any, also stands disposed off.

**18.03.2025**  
*Pooja Sharma-I*

**( PANKAJ JAIN )**  
**JUDGE**

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