

2025:PHHC:078219



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

RSA-2394-1991 (O&M)

Decided on:-02.07.2025

Bharat Singh and another

..Appellants...

vs.

Amrit Sinigh (since deceased) thr. LRs

...Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Keshav Pratap Singh, Advocate,
for the appellants.

Mr.M.L. Sarin, Senior Advocate with
Ms.Hemani Sarin, Advocate,
for the respondent.

HARKESH MANUJA J. (Oral)

1. By way of present appeal challenge has been laid to the judgments and decrees dated 11.06.1991 and 12.11.1991 passed by the Courts below, whereby a suit for possession by way of pre-emption, filed at the instance of respondent No.1-plaintiff being co-sharer came to be decreed by both the Courts below.

2. Briefly stating, respondent No.1-plaintiff having purchased 02 kanals 13 marlas of land forming part of Khewat No.647/658/1, Khatauni No.797, Khasra No.141/7 situated within the revenue estate of Village Kalyana, Tehsil Charkhi Dadri, vide registered sale deed dated 10.08.1989, filed a suit for possession by way of pre-emption qua the suit land measuring

31 kanals 3 marlas being 2/3rd share in Khewat No.647/658/1 Khatauni No.797, Khasras Nos.141/2(8-0); 3(8-0); 4(8-0); 7 (8-0); 8 (8-0); 9/1(6-15); out of total land measuring 46 kanals and 15 marlas, which was sold by his co-sharers vide registered sale deed dated 18.08.1989 in favour of appellants-defendants No.1 & 2.

3. Upon notice, suit was primarily contested by the appellants-defendants No.1 and 2 while submitting that respondent No.1-plaintiff was never a co-sharer in khewat No.647 as he had purchased 02 kanals 13 marlas of land exclusively out of khasra No.141/7 and thus, he was not having any preferential right to pre-empt the sale deed dated 18.08.1989.

4. On the basis of the pleadings of the parties, the learned trial Court framed the following issues:-

- “1. *Whether the plaintiff has superior right to pre-empt the sale in question? OPP*
2. *Whether the sale consideration of Rs.1,20,000/- was fixed and paid in good faith? OPD*
3. *If not, what was the market price at the time of sale? OPP*
4. *In case suit of the plaintiff is decreed to what amount the defendants are entitled as charges for stamps and registration and scribe etc.? OPD.*
5. *Relief.”*

5. The trial Court vide its judgment and decree dated 11.06.1991 decreed the suit in favour of respondent No.1-plaintiff. Aggrieved thereof, first appeal came to be filed at the instance of appellants-defendants No.1 and 2, which was dismissed by the Court of learned District Judge, Bhiwani vide judgment and decree dated 12.11.1991. Hence, the present second appeal.

6. Reiterating the plea taken before the Courts below, learned counsel for appellants-defendants No.1 and 2 submits that as per the sale deed dated 10.08.1989 (Ex. P-1), respondent No.1-plaintiff purchased 02 kanals 13 marlas of land exclusively forming part of khasra No.141/7 and thus, never became co-sharer in khewat No.647/658/1 and as such, he was having no preferential right to pre-empt qua the sale deed dated 18.08.1989 (Ex.D-1) executed by the other co-sharers in favour of respondent No.1-plaintiff regarding 31 kanals 3 marlas of land. Learned counsel, thus, submits that the suit filed by respondent No.1-plaintiff was liable to be dismissed and resultantly, the present appeal was to be allowed.

7. On the other hand, learned Senior counsel representing respondent No.1-plaintiff submits that even if respondent No.1-plaintiff had purchased 02 kanals 13 marlas of land forming part of khasra No.141/7, in the absence of any partition having taken place between the co-sharers of Khewat No.647/658/1, he still remained a co-sharers of the said joint khewat to the extent of the land purchased by him vide sale deed dated 10.08.1989 and thus, the plea raised at the instance of appellants-defendant No.1 & 2 was legally not sustainable and as such, prayer that the appeal in hand was liable to be dismissed.

8. I have heard learned counsel for the parties and gone through the paper-book.

9. Admittedly and undisputedly, respondent No.1-plaintiff purchased 02 kanals 13 marlas of land forming part of khasra No.141/7 in Khewat No.647/658/1 and thus, became co-sharer to the extent of land purchased by him in the entire khewat. Mere fact that the sale deed related to a specific khasra number from the joint khewat, it would not mean that the

respondent No.1-plaintiff became exclusive owner to the extent of 02 kanals 13 marlas of land forming part of khasra No.141/7. It is settled law that out of joint khewat even sale of specific portion of land described by specific khasra number by a co-sharer will be deemed to be sale of share only.

10. Accordingly, in view of the aforesaid discussion, finding no illegality or perversity in the concurrent findings of facts and law, recorded by the Courts below; there being no misreading or misinterpretation of pleadings and the evidence available on records, the present appeal being devoid of merits is thus, dismissed.

11. At this stage, it may be relevant to note here that during pendency of present appeal vide order dated 14.02.1992, respondent No.1-plaintiff was permitted to withdraw the pre-emption money with liberty to re-deposit the same, in case, the present appeal is dismissed.

12. In view of the preceding part of the judgment as the appeal filed at the instance of appellants-defendants No.1 and 2 stands dismissed, respondent No.1-plaintiff is afforded an opportunity to re-deposit the pre-emption amount before the trial Court within two months from the date of receipt of copy of this order. However, it is made clear that in case the respondent No.1-plaintiff fails to re-deposit the pre-emption money before the Trial Court within the aforesaid time, his suit shall stand dismissed.

13. Pending application, if any, also stands disposed of.

02.07.2025

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/ No