

**112 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA No.1586 of 2022 (O&M)
Date of Decision: May 14, 2025****Joga Singh****. . . . Appellant**

Vs.

Kailash Nath and others

. . . . RESPONDENTS**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA****Present:-** Ms. Rupinder Kaur Thind, Advocate for the appellant.**DEEPAK GUPTA, J.**

Suit for symbolic possession by way of pre-emption filed by plaintiff - Joga Singh (appellant herein) was dismissed by the trial Court on 18.12.2018 and in the appeal as filed by the plaintiff was dismissed by the First Appellate Court on 27.02.2020.

2. Against the concurrent findings, the plaintiff has approached this Court by way of present regular second appeal.

3. Learned counsel for the appellant submits that the Courts below went in error as pre-emption was sought by the plaintiff on the ground of his tenancy on the suit land, which was well proved on record and so the suit should have been decreed.

4. A perusal of the paper book would reveal that pre-emption was sought in respect of sale deed Nos.6187 dated 13.10.2011; and 6206 dated 14.10.2011, whereby suit land was sold by defendant No.1; and defendant Nos.2 to 6 in favour of defendant No.7. Plaintiff had claimed tenancy over the land so sold.

5. It has been found by the Courts below that plaintiff has been blowing hot and cold in the same breath, inasmuch as when the petition for

ejectment was filed against him, the plaintiff denied himself to be tenant. His written statement to that effect was proved on record as Ex.D4, wherein he had claimed to have been owner by way of adverse possession. As per the stand taken by him in that previous litigation, he was in possession of the suit land as a prospective vendee. Although his plea was not accepted by the revenue officer and he was directed to pay the rent, which he deposited under protest. The Courts below further found that the contention raised by counsel for the appellant that claim of adverse possession was erroneously made, was absolutely not believable as he had never withdrawn it and rather he had been reiterating the said claim throughout. It was further found that even in the present suit, plaintiff nowhere pleaded that the stand taken by him in the previous litigation was erroneous or had been made in ignorance.

6. This Court concurs with the view taken by the Courts below to the effect that a right of pre-emption is a piratical right and defendant has every right to defeat it by any lawful means. For seeking a decree on the ground of pre-emption, plaintiff is required to establish that his right to pre-empt exist not only on the date of sale deed, but also on the date of filing of the suit and also on the date of passing of the decree and in case there is any intervening break at any stage, he loses the said right.

7. In the present litigation as has been found by the Courts below, plaintiff in the earlier litigation had denied his tenancy and had taken the plea to have become owner of the suit land by way of adverse possession.

8. In the aforesaid facts and circumstances, the Courts below did not commit any error in dismissing the suit for pre-emption. As such, this Court does not find any ground to disturb the concurrent findings of facts as recorded by the Courts below. Holding the present appeal to be devoid of any merit, the same is hereby dismissed.

May 14, 2025
Sarita

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No