



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-243-1990 (O&M)
Reserved on: 10.03.2025
Date of decision: 21.03.2025

KISHORI (DECEASED) THROUGH LRS.

..Appellant

Versus

ISHAK

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Goel, Advocate
for the appellant.

Mr. Akshay Jindal, Advocate
Mr. Vrishank Suri, Advocate
for respondent.

ANIL KSHETARPAL, J.

1. **Brief facts:-**

1.1 The plaintiff assails the correctness of concurrent findings of fact arrived at by the Courts below while dismissing his suit for possession by way of pre-emption with respect to land measuring 26 kanal and 19 and ½ (half) marla.

1.2 In order to comprehend the issues involved in the present case, the relevant facts, in brief are required to be noticed.

1.3 Sh. Tej Bhan son of Sh. Daya Ram was owner of agricultural land comprised in Rectangle No.9, Khasra No.18 (5-19), 23 (8-0), Rectangle No.13, Khasra No.3(8-0), 8(8-0). He sold the aforesaid land measuring 29 kanal and 19 marlas on 17.02.1984 for Rs.36,000/-. The appellant filed suit for possession by way of pre-emption claiming to be tenant at the time of



alleged sale on the ground that he has superior right. The plaintiff claimed that he is exclusively tenant over land comprised in Rectangle No.9, khasra No.23(8-0), Rectangle No.13, Khasra No.3(8-0), 8(8-0), total measuring 24 kanal, whereas, he is joint tenant to the extent of half share in land comprised in Rectangle No.9, Khasra No.18(5-19) along with his brother Sh. Chote Lal. He also claimed that the sale deed has been executed for a sum of Rs.19,000/- and not Rs.36,000/- as reflected and that he is entitled to decree for possession on payment of Rs.17,100/- being proportionate price of 26 kanal and 19 & ½ (half) marla. In the alternative, he also prayed for pre-emption of entire land.

1.4 The defendants contested the suit on the ground that the suit is bad for partial pre-emption. It was also claimed that the plaintiff has no right to pre-empt.

1.5 The plaintiff while filing the replication claimed that his right extends only to half share, whereas, other half share was in possession of Sh. Chote Lal, his brother.

1.6 In order to prove the plaintiff produced jamabandi for the year 1981-1982, wherein, Sh. Kishori and Sh. Chote sons of Sh. Paltu were recorded to be in possession as tenant on payment of 'Batai' at the rate of half share with respect to land comprised in Rectangle No.9, Khasra No.18(5-19). He also produced khasra girdawari and other documents. The plaintiff is required to deposit 1/5th of the pre-emption amount, which is known as 'Zare-Panjam', hence, he deposited Rs.6,492/-.

1.7 Both the Courts found that the suit filed by the plaintiff was bad for partial pre-emption and hence dismissed.

2. Arguments addressed:-

2.1 Learned counsel for the appellant contends that in view of the



Division Bench judgment in *Kartar Singh Vs. Kirpal Singh, RSA-252 of 1963, decided on 21.05.1965*, the tenant is entitled to pre-empt a part of the sale deed because his right extends to the property, which is in his possession as tenant. He submits that in 1960, fourth clause in Section 15(1) of Punjab Pre-emption Act, 1913, was added permitting the tenant to pre-empt the sale deed to the extent the property was in his possession as tenant. In the alternative, he submitted that the plaintiff has already prayed for pre-emption of the entire land.

2.2 Per contra, learned counsel for the respondent has submitted that Sh. Chote Lal also filed suit with respect to 2 kanal and 19 and ½ (half) marla, which was dismissed by the trial Court and affirmed in appeal by the First Appellate Court. Moreover, while relying upon the judgment passed in *Ram Chand Vs. Randhir Singh, (1994) 6 SCC 552 and other connected judgments*, he submits that right of pre-emption extends to entire sale deed and not restricted to the property under the possession of tenant.

3. Discussion:-

3.1 This Bench has heard the learned counsel for the parties and with their able assistance perused the paperbook.

3.2 The Division Bench in *Kartar Singh's case (supra)*, has held as under:-

“So far as the sub-clauses other than fourthly in clause (a) of sub-section (1) of section 15 of the Act are concerned, the right of pre-emption is given to certain persons who are related to the vendor, the idea obviously being that those intimately connected with the vendor should be given a preferential right to have the property sold to them in preference to a complete stranger or a remoter relation. Prior to the amendment of section 15 by Punjab Act 10 of 1960 the right of pre-emption extended to all collaterals in order of right of inheritance. This sort of fetter on the power of alienation of a vendor has been curtailed by the amending Act, and now the right of pre-emption is limited only to the



*relations mentioned in the first three sub-clauses, who are comparatively nearer relations of the vendor. For the first time a right has been given to a tenant also to pre-empt. The general agrarian policy followed by the welfare State is to provide security to the tiller of the soil. By enactment of the Security of Land Tenures Act, 1953 (Punjab Act 10 of 1953), the circumstances under which a tenant can be ejected by the land-lord have considerably been reduced. There is also provision made whereby an old tenant can, under certain circumstances, purchase the land under his continuous tenancy even against the wishes of the landlord. The new provision in the Pre-emption Act giving a right of pre-emption to a tenant, i.e. to pre-empt a sale, obviously is a step in the direction of providing him security. Section 15 only enumerates the persons in whom the right of pre-emption vests and does not deal with the question of the extent to which each of such persons shall have a right. Under clause (b) of sub-section (1) of this section, where the sale is of a share out of joint land and is not made by all the co-sharers jointly, the right vests "in the other co-sharers." There can be a case where the vendor owns property in two or three khatas and he has different co-sharers in these khatas. If 'A' is a cosharer in the first khata, 'B' a cosharer in the second khata and 'C' a cosharer in the third khata, then obviously 'A' being only a cosharer in the first khata can pre-empt the sale to the extent of that khata and no more. Being a cosharer in a part of the property sold, he is qualified to pre-empt and can, therefore, bring a suit for pre-emption of sale, but he can pre-empt only to the extent of the khata in which he is a cosharer. It is well established that where there is a bargain of distinct properties, by a person having preferential rights only to a portion of such bargain, that does not give him a right of pre-emption as regards the other portions simultaneously sold. (See inter alia *P.5.* in this connection P.R. 87 of 1895, P.R.16 of 1905 and P.R.112 of 1907). Similarly, if in a sale of a vendor includes properties in different villages, it will be fantastic to hold that simply because a tenant holds under tenancy of the vendor of some property situated in one village, which forms part of the sale, he would be either entitled to or is bound to pre-empt the whole sale. If the law is interpreted in the manner in which the Courts below have done, the result would be that the very object of the legislature to benefit the tenants and to give them security of tenure of the land held by them may be frustrated. A tenant may be holding tenancy, say over 20 kanals of land, and the vendor sells 100 acres of land, including the 20 kanals so held by the tenants; according to this view of the law the tenant would be bound to pre-empt the entire sale, because otherwise he will be non-*



*suites on account of partial pre-emption. Obviously a tenant holding tenancy over such a small area would be incapable of finding finances to pre-empt the whole sale. Thus if the provision is interpreted in that manner, it may not necessarily, in all cases, work for the benefit of the tenant. Furthermore there may be 100 tenants over this area of 100 acres sold by the vendor. If everyone of the tenants is entitled to pre-empt only the land held by him, the matter will be quite simple. But to hold that everyone of these tenants must necessarily pre-empt the whole sale is likely to lead to fantastic results. In support of his contention the learned counsel for the respondent referred to *Jangli and others v. Lakhmi Chand and others* (Regular Second Appeal No. 1615 of 1960 decided by Gurdev Singh, J., on the 20th of March 1962). That was a case where sons of two out of three vendors filed a suit for pre-emption and the question for consideration was whether those two plaintiffs had a right to pre-empt the entire sale or only the share of their respective fathers, the third vendor being their fathers' uncle. The learned Judge felt that they would be entitled to pre-empt the entire sale, because otherwise it would lead to absurd results. As I have indicated above, the right of pre-emption on the ground of relationship stands on quite a different footing from the right of pre-emption on the ground of holding a share in the property or holding tenancy over a part of it. In one case the relationship extends with regard to the entire property and in the other case the matter which clothes with a superior right is only qua a certain part of the property. This decision, therefore, has no bearing on the point before or.*

Taking into consideration the objection that was apparently in view of the legislature, viz., to afford security of tenancy to the tenants, and in view of the fact that it is well recognised that a person as of right can exercise his right of pre-emption only over that part of the property qua which he has a superior right of pre-emption, I have no hesitation in holding that the only property interpretation of the clause in question is that although a tenant becomes qualified to bring a suit for pre-emption as soon as he can establish that he holds rights of tenancy over any portion of the land which forms part of the sale, his right to pre-empt extends only to the extent of the property over which he has the tenancy rights.”

3.3 On careful perusal of the judgment passed in **Ram Chand's case (supra)**, it is evident that in para 1, the Supreme Court culled out the questions which required answer. For the purpose of this Court, question



No.(ii) is relevant, which is extracted as under:-

“(ii) Whether an agricultural tenant holding under tenancy of the vendor a part of the sold land is entitled to pre-empt the entire sale?”

3.4 The Supreme Court held that the tenant is entitled to decree of pre-emption with respect to entire sale deed even if he is tenant over a part thereof. It may be noted here that the Supreme Court did not declare that if pre-emption is sought by the tenant only with respect to property in possession of the tenant, the same shall be bad for partial pre-emption.

3.5 However, this issue does not require further deliberation because the appellant’s appeal deserves to be dismissed on another ground.

3.6 A perusal of jamabandi for the year 1981-1982 (Ex.P-1) proves that plaintiff Sh. Kishori and his brother Sh. Chote were joint tenant over land comprised in Rectangle No.9, Khasra No.18(5-19). It was a joint tenancy. There could not be any splitting of tenancy between the brothers. The plaintiff deposited Rs.6,492/-, which represents 1/5th of the total pre-emption amount of Rs.32,460/-. He never deposited 1/5th of Rs.36,000/-. Hence, the plaintiff cannot fall back upon his alternative prayer. Moreover, the right of pre-emption has been held to be piratical, archaic and weak in **Atam Prakash Vs. State of Haryana, (1986) 2 SCC 249**. Though, in this case, the right of pre-emption on the basis of consanguinity was examined.

4. Decision:-

4.1 Keeping in view the aforesaid discussion, no ground to interfere is made out.

4.2 Dismissed accordingly.

21st March, 2025

(ANIL KSHETARPAL)
JUDGE

Ayub

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No