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

**RSA-2664-1994 (O&M)
Date of decision : 28.01.2025**

BALJINDER SINGH AND OTHERS

....Appellants

Versus

JASDEEP SINGH AND ORS.

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sanjiv Gupta, Advocate
for the appellants.

Mr. Adarsh Jain, Advocate
for respondents No.1 and 2.

PANKAJ JAIN, J. (ORAL)

Present appeal has arisen out of a suit for pre-emption wherein the co-sharers sought decree of possession exercising their right to pre-empt sale deed dated 29.11.1990

2. For convenience and to avoid the confusion, the parties hereinafter are referred to by their original position in the suit i.e. the appellants as defendants No.4 to 6/vendees ; respondents No.1 and 2 as the plaintiffs/pre-emptors and respondents No.3 to 5 as defendants No.1 to 3/vendors.



3. Defendants No.1 to 3 sold suit land in favour of defendants No.4 to 6 vide sale deed dated 29.11.1990. The suit was instituted by the plaintiffs on 29.11.1991 claiming superior right to pre-empt the sale deed in favour of stranger. They claimed their right as co-sharer in joint holding. It was pleaded that the vendors did not serve notice upon them as envisaged under the provisions of Section 19 of the Punjab Pre-emption Act, 1913 (hereinafter referred to as 'the 1913 Act') and thus they are entitled to pre-empt the sale deed. Defendants No.1 to 3 i.e. the vendors were given up by the plaintiffs. Their counsel suffered statement on 22.07.1992. Vendors were struck off from the arraign of parties.

4. Suit was decreed by the Court of First instance.

5. In appeal, the findings recorded by the Trial Court stand affirmed.

6. Mr. Gupta while assailing the impugned judgments and decrees passed by the Courts below has drawn attention of this Court to the fact of the vendors having been deleted from the arraign of parties on the statement made by counsel for the plaintiffs. He further relies upon statement made by Jasdeep Singh plaintiff No.1, who appeared as PW-3. In his cross-examination, he admitted knowledge of agreement to sell in favour of the defendants/appellants and further stated that



despite knowledge, the plaintiffs never approached vendors to purchase the land and rather waited for the land to be transferred by way of sale deed. Only thereafter, they exercised their right to pre-empt. Reliance is being placed upon law laid down in **Jhabbar Singh vs. Jagtar Singh 2023 AIR SC 2074**, **Chander vs. Madan Gopal, 1981 PLJ 310**, **Duni Chand vs. Nagina Singh, 1987 PLJ 598**, **Mala Ram vs. Subhash Chander 1989 PLJ 445** and **Ram Kishan vs. Smt. Sharbati 1972 RLR 188**. He thus submits that it being a case wherein pre-emptor being in knowledge of agreement to sell failed to exercise their right, they cannot be allowed to agitate their right of pre-emption claiming superior right in light of Sections 19 and 20 of the 1913 Act.

7. Per contra, Mr. Jain submits that the giving up of vendors will not make any difference to the merits of the case. There was a specific plea raised in the plaint w.r.t. absence of notice under Section 19 of the 1913 Act. He further submits that Jasdeep Singh PW-3 (plaintiff No.1) in his testimony was explicit in stating that no notice under Section 19 was served upon them by vendors. Even if the statement suffered by Jasdeep Singh in cross-examination as pointed out by Mr. Gupta is taken into consideration, the fact remains that there was no notice under Section 19 and onus was on vendees to prove valid notice to plaintiffs.



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

9. The precise argument raised is regarding pre-emptor having failed to act as per Section 20 of 1913 Act despite having notice of the agreement to sell in favour of defendants No.4 to 6.

10. The precise issue came up before this Court in the case of **Mange Ram and another vs. Shiv Charan and others, RSA No.2458 of 1991**. This Court while interpreting Sections 19 and 20 of the 1913 Act, concluded as under:

“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 preemptor 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.”

(emphasis supplied)

11. The aforesaid view was further followed in **RSA No.741 of 1991** titled as **Smt. Chawli Devi (since deceased) through her LRs vs. Inder Paul and others**, *decided* vide order dated 4th of November, 2024 to hold 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 preemptor 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 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.”



12. Co-ordinate Bench in **RSA No.1273 of 1993** titled as **Ram Singh and others vs. Hari Singh and another**, has also taken similar view to hold as under :

“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 question 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 parties. 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 parties, 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. That is the reason why the courts are empowered to strike out or



add parties, 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 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 parties. Although, as per order I Rule 9 CPC, no suit is to be defeated by reason of mis-joinder or non-joinder of the parties, but it is required for the Court to ensure that all the parties, 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 view of the afore-stated proposition of law, this Court finds that the plaintiffs having themselves given up the vendors in suit were required to examine them to prove that there was no notice served upon the plaintiffs as per Section 19 of the 1913 Act. Argument raised by Mr. Jain cannot be accepted. Section 19 does not prescribe any statutory performatum for notice. The objective is that pre-emptor must be



in knowledge of transaction so that he can also make offer. From the testimony of Jasdeep Singh, PW3 (plaintiff No.1), it is evident that the pre-emptors were in the knowledge of the agreement to sell prior to the execution of the sale deed. They opted to remain fence-sitter despite knowledge. Their inertness proves non-compliance of Section 20 of the 1913 Act.

14. This Court finds the Courts below erred in not returning finding on compliance of Section 20 of 1913 Act and yet decreeing the suit of pre-emption. Though this Court need not intervene in the concurrent findings of the fact recorded by the Trial Court and Appellate Court, yet where the findings are perverse the records or on the basis of misreading of evidence or where question of law is involved, there is no legal impediment in doing so. Regular Second Appeals in the State of Punjab, Haryana and Union Territory, Chandigarh, are regulated by Section 41 of the Punjab Courts Act, 1918, and not by Section 100 of the Code of Civil Procedure, 1908. Reference in this regard can be made to the judgment of the Five Judges Bench in **Pankajakshi vs. Chandrika (2016) 6 SCC 157**. Under Section 41, the High Court need not frame substantial questions of law.



15. In view of the aforesaid facts, this Court is of the considered opinion that the Courts below erred in decreeing the suit without recording any finding w.r.t. compliance of Sections 19 and 20 of the 1913 Act.

16. As a sequence of the discussion held herein-above, the present appeal merits acceptance. Resultantly, the same is ordered to be allowed. Impugned judgments and decrees passed by the Courts below are ordered to be set aside. Suit filed by the plaintiffs is dismissed.

17. Pending application, if any, shall also stand disposed off.

January 28, 2025

(Pankaj Jain)

Dpr

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No