



RSA No. 899 of 1992

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 899 of 1992 (O&M)

Reserved on: 26.08.2025

Pronounced on: 10.09.2025

Darshan Singh

...Appellant

Versus

Nand Singh (deceased) through his LRs

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Shiv Kumar Sharma, Advocate
for the appellant.

Mr. Baljinder Singh Sra, Advocate and
Mr. Yagsimant Attri, Advocate
For LRs of respondent.

DEEPAK GUPTA, J.

The defendant has preferred the present regular second appeal against the judgment of reversal, whereby the suit for pre-emption filed by plaintiff Nand Singh was decreed by the First Appellate Court after being dismissed by the Trial Court.

2. For convenience, parties are referred to as per their status before the Trial Court. The record of the Trial Court has been examined with assistance from learned counsel on both sides.

3. The facts are that Surinder Pal Singh and others sold agricultural land measuring 73 kanal 7 marla situated at village Nilianwali, Tehsil Dabwali, District Sirsa, to defendant Darshan Singh vide sale deed dated 25.05.1988 (Ex.D1) for consideration of ₹1,51,500/-. Claiming himself to be a co-sharer in the khewat, plaintiff Nand Singh instituted the present suit for pre-emption on the ground that the vendee was a stranger to the khewat and that no notice was given to him before the sale. He further alleged that the Khasra Girdawari entries for crop 1987 and Rabi 1988 showing possession of vendee defendant were manipulated to

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defeat his pre-emption rights and that the actual sale price was ₹1,41,500/-, inflated in the deed to ₹1,51,500/-.

4. The defendant resisted the suit, contending that the land had already been partitioned and that the plaintiff had no right of pre-emption. He further claimed to be in possession as a tenant on 1/3rd share of *batai* prior to the sale and relied on Section 17-A of the Punjab Security of Land Tenure Act for exemption. It was also his plea that the suit was barred on account of partial pre-emption. Supporting the plea of tenancy, he relied upon Khasra Girdawari entries for crop 1987–Rabi 1988, asserting their correctness.

5. The Trial Court, after framing evidence and appraising evidence produced by parties, vide judgment dated 10.06.1991, dismissed the suit, holding that the defendant was indeed in possession as a tenant on 1/3rd share *batai*; that corrections in the revenue record had been duly made after notice to the landowners in the presence of village officials; and that Roznamcha reports Ex.D-3 and Ex.D-4 supported this position. Reliance was placed on the testimony of revenue officials.

6. On appeal, however, the First Appellate Court, upon re-appraisal of evidence, held that the plea of tenancy was not established. It observed that the sale deed contained no recital of tenancy; that although tenancy for 10 years was claimed, the defendant's name appeared in the revenue record only in 1988, and that even the agreement to sell dated 31.03.1988 did not mention his possession. The entry of April 1988 in the revenue record was thus disbelieved. Consequently, the appeal was allowed vide judgment dated 22.04.1992 and the suit for pre-emption was decreed, subject to payment of ₹1,70,680/- as sale consideration to the vendee-defendant.

7. Challenging this reversal, the defendant has filed the present second appeal.

8. Learned Senior Advocate for the appellant advances the following principal contentions:

i. Pleading and proof of correction in revenue record:

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- The suit for pre-emption was instituted on 18.09.1989 and the plaint was amended on 19.10.1989 to plead, for the first time, that corrections in the Khasra Girdawari took place in April 1989. The Appellate Court, however, went beyond this pleading and treated entries showing possession since April 1988 as founded on forged documents, which is incorrect.
- ii. Evidence of tenancy and applicability of Section 17-A of the Punjab Security of Land Tenure Act:
 - Revenue officials have testified that, after due notice to the owners, entries in the Khasra Girdawari were corrected in favour of the vendee on the basis of his actual possession prior to the sale deed dated 25.05.1988. Those factual findings establish the vendee as a prior tenant and thus, bring the sale within the exemption under Section 17-A of the Punjab Security of Land Tenure Act.
- iii. *Withdrawal of deposit with reliance of Order XX, Rule 14 CPC:*
 - The appeal was filed on 29.04.1992; stay was granted on 04.05.1992 and the appeal admitted on 23.07.1992. Meanwhile, CM No. 2987/1996, moved by the respondent, resulted in withdrawal and utilization of the deposit of ₹1,70,680, which militates against the pre-emptor's remedy. Reliance is placed on ***Bachchan Singh (deceased) through his LRs v. Chuhar Singh, RSA N: 394 Of 1989 decided on 18.04.2022; and Sulle Singh v. Sohan Singh, AIR 1975 SC 1957*** to submit that directions under Order XX, Rule 14 CPC are mandatory and that mere filing of an appeal does not suspend the decree; and the pre-emptor is bound to comply unless the decree is altered by the appellate court.
- iv. *Partition and criminal proceedings:*
 - It is further urged that partition proceedings were initiated on 09.11.1989 with *Naksha Bey* prepared 14.05.1990 and final partition was allowed on 30.01.1992. Criminal proceedings alleging forgery of revenue records were initiated but the appellant was discharged on 11.07.1992; and the subsequent CRR No. 763 of 1994 stood abated.

With these submissions, Ld. Senior Advocate for the appellant urges restoration of the trial court's judgment and dismissal of the suit.

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9. The respondent-plaintiff's counter-submissions may be summarised thus:

i. Absence of recital of tenancy in the sale deed:

- The sale deed contains no recital that the vendee was in prior possession as tenant; on the contrary, it indicates that possession was taken from the vendor, which is inconsistent with a plea of pre-existing tenancy.

ii. Oral and documentary evidence negating tenancy:

- Plaintiff's evidence including PW7 Gurtej Singh, establishes that the suit land was cultivated by others and that the appellant never cultivated or possessed the land as tenant. The entries relied on by the appellant are therefore suspect.

iii. Timing of partition and continuity of co-share status:

- Although a final partition order was passed on 30.01.1992 during the pendency of the appeal, the suit land was not partitioned prior to the trial. Thus, the plaintiff remained a co-sharer until the Trial Court's decree and therefore, retained the right of pre-emption at the relevant times i.e., prior to sale, at sale and at the time of the trial court's decision.

On the above factual and legal matrix, Ld. Counsel for the respondent supports the Appellate Court's reversal and prays for dismissal of the present second appeal.

10. This court has considered submissions of both the sides including written synopsis and have appraised the record.

11. The contention of learned Senior Advocate for the appellant that withdrawal of ₹1,70,680/- by the respondent-plaintiff dis-entitles him to pre-emption under Order XX Rule 14 CPC is without merit. A perusal of order dated 12.09.1996 passed by this Court shows that the said amount was deposited in compliance with the pre-emption decree. However, as execution of the decree stood stayed, the respondent could neither obtain possession of the property nor utilize the amount, which remained idle in Court. Accordingly, by order dated 12.09.1996, permission was granted to withdraw the deposit with liberty to

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redeposit it, if ultimately found entitled to pre-empt. Withdrawal in these terms does not defeat the plaintiff's right to pre-empt, and hence, the objection based on Order XX Rule 14 CPC stands rejected.

12. The further submission that the decree cannot stand since the land was already partitioned is also untenable. In law, the pre-emptor must establish his right on three relevant dates: (i) the date of sale, (ii) the date of institution of the suit, and (iii) the date of decision by the Trial Court. In the present case, the plaintiff was admittedly a co-sharer at all these stages. Though partition proceedings commenced on 09.11.1989 and *Naksha Bey* was prepared on 14.05.1990, but the final order of partition was passed only on 30.01.1992 i.e., after the Trial Court's judgment dated 10.06.1991. Thus, prior to the Trial Court's decision, the land was not partitioned. Therefore, this contention too is rejected.

13. It is, thus, clear that the plaintiff-respondent remained a co-sharer in the suit property at all material times. The appellant-defendant, however, claims tenancy over the suit land prior to the sale and relies on corrected *Khasra Girdawari* entries to seek exemption under Section 17-A of the Punjab Security of Land Tenure Act. The plaintiff asserts that such entries were manipulated in collusion with revenue officials and that the defendant was never a tenant. The Trial Court accepted the defendant's version, but the Appellate Court reversed those findings.

14. The core issue for consideration is whether the defendant was a tenant in possession of the suit land at the time of sale and, if so, whether the sale in his favour is exempt from pre-emption under Section 17-A of the Punjab Security of Land Tenure Act.

15. The record shows that *Khasra Girdawari* entries were corrected in the defendant's favour on 07.04.1988. The suit was filed by Nand Singh on 18.09.1989, without any allegation of manipulation. Only in an amendment application dated 13.06.1989, did he allege manipulation by the defendant in collusion with revenue official, claiming that he came to know of the correction only in June 1989.

16. The oral evidence of plaintiff Nand Singh (PW1) and his witnesses namely PW2 Hargobind, PW3 Jarnail Singh, and PW5 Gurcharan Singh to the

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effect that defendant never remained in possession of the suit land nor he cultivated the same, is falsified by their own evidence. PW5 Gurcharan Singh himself stated that Gurtej and Nand Singh used to cultivate the land under the vendors, which was corroborated by PW6 Gurtej Singh. Yet, neither of their names appears in the revenue entries. This contradiction weakens the plaintiff's plea of manipulation, since correct entries would have reflected their alleged possession.

17. On the other hand, the testimony of the defendant (DW4) is corroborated by DW5 Maghar Singh and further fortified by DW2 Gopal (Patwari) and DW3 Ved Prakash (Patwari at the relevant time), who proved that Girdawari entries were corrected after due notice to the owners and in the presence of village Sarpanch, Numberdar & Chowkidar. The corresponding Roznamcha entries were exhibited and shown to have been verified by the Kanungo. There is no credible evidence to rebut this.

18. In these circumstances, the First Appellate Court erred in disbelieving official records and Patwari's testimony. The absence of reference to the defendant's possession in the sale deed of 25.05.1988 (Ex.D1) does not outweigh the consistent and official revenue record.

19. As such, the First Appellate Court's finding that the Girdawari entries were manipulated is unsustainable. The trial Court rightly held that the defendant was in cultivating possession prior to the sale, and that the correction of entries was proper and duly verified.

20. Consequently, the sale in favour of the defendant squarely falls within the exemption under Section 17-A of the Punjab Security of Land Tenure Act and is not subject to pre-emption by a co-sharer.

21. Further, it also emerges from the evidence that the plaintiff was not only aware of the sale but acted as mediator in finalising the bargain. Both the defendant (DW4) and vendor Iqbal Singh (DW6) testified that the sale was struck through Nand Singh's intervention. DW7 Jwala Singh, attesting witness, confirmed that the plaintiff was present at the execution and facilitated drafting of the sale deed. This belies the plaintiff's claim of ignorance about the transaction.

22. Accordingly, the judgment dated 22.04.1992 passed by the Additional District Judge, Sirsa is hereby set aside. The present appeal is allowed and the

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judgment & decree dated 10.06.1991 of the trial Court, dismissing the suit of Nand Singh, is restored. Ordered accordingly.

(DEEPAK GUPTA)
JUDGE

10.09.2025*Jiten*

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