



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

**RSA-1211-1992 (O&M)**

**Date of decision : 23.01.2025**

**Balbir Singh and others**

**...Appellants**

**Vs.**

**Sham Lal(Deceased) through his LRS**

**...Respondent**

**CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Kulbir Singh Dhaliwal, Advocate  
for the appellants.

Mr. Rakesh Nagpal, Advocate  
for the respondent.

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**ANIL KSHETARPAL, J.** (Oral)

1. The defendants assail the correctness of concurrent findings of fact arrived at by the Courts below while decreeing plaintiff's suit for possession by way of superior right of pre-emption being co-sharer.

2. In a joint khata of land there were five co-sharers including Sh. Raj Kumar and Sh. Mangat Ram. Sh. Mangat Ram sold the land measuring 35 kanals to the plaintiff. Subsequently, Sh. Raj Kumar sold the land measuring 35 kanals 15 marlas in favour of the defendants (appellants herein) vide sale deed dated 19.12.1988. The plaintiff-Sh. Sham Lal filed a suit for pre-empting the sale deed dated 19.12.1988 on the ground that he has a superior right being a co-sharer. Both the Courts below decreed the suit.

3. Learned counsel representing the appellants submits that 1/5th amount, which was deposited by the plaintiff has been withdrawn. Hence, the



suit filed by the plaintiff is required to be dismissed. He submits that the amount can not be permitted to be re-deposited. He further submits that as per Section 17 of the Punjab Pre-emption Act, 1913 (hereinafter referred to as ‘the Act’) all the co-sharers were required to be impleaded as party including co-vendors with the plaintiff as well as the vendor of sale deed dated 19.12.1988. Hence, the suit was not maintainable.

4. *Per contra*, learned counsel representing the respondent draws the attention of the Court to order dated 02.12.1992, permitting the plaintiff to withdraw the amount without prejudice to his rights with liberty to deposit the same as and when called upon to do so. He further submits that as per Section 17 of the Act, the remaining co-sharers or the vendor of sale deed dated 19.12.1998 (Sh. Raj Kumar) was not required to be impleaded as party.

5. This Court has considered the submissions made by the learned counsel representing the parties.

6. The order passed on 02.12.1992, reads as under:-

*“A prayer for permission to withdraw Rs.80,438/- has been made by the pre-emptor.*

*Allowed as prayed for without prejudice to his rights. The respondent shall deposit the amount as and when called upon to do so.”*

7. It is evident that pursuant to the decree passed by the trial Court, which was affirmed by the First Appellate Court, the plaintiff deposited the entire amount after adjusting 1/5th pre-emption money, which was deposited while filing the suit. The appeal was admitted for regular hearing on 21.09.1992. Thereafter, the application filed by the plaintiff was allowed. The



plaintiff has withdrawn the amount with the permission of the Court, wherein, it is specifically recorded that it shall be without prejudice to his right. Hence, it would not be appropriate to dismiss plaintiff's suit on this ground.

8. The second argument of learned counsel has no substance because Section 17 of the Act, does not mandate impleadment of remaining co-sharers as party to the suit, which reads as under:-

***“17. Exercise of right of pre-emption where several persons equally entitled.***

*- Where several pre-emptors are found by the Court to be equally entitled to the right of pre-emption, the said right shall be exercised -*

*(a) if they claim as co-sharers, in proportion among themselves to the shares they already hold in the land or property;*

*(b) if they claim as heirs, whether co-sharers or not, in proportion among themselves to the shares in which but for such sale they would inherit the land or property in the event of the vendor's decease without other heirs;*

*(c) [omitted] [Clauses (c) and (d) omitted by Punjab Act 10 of 1960, Section 5.].*

*(d) [omitted] [Clauses (c) and (d) omitted by Punjab Act 10 of 1960, Section 5.].*

*(e) in any other case, by such pre-emptors in equal shares.”*

9. It is evident that Section 17 of the Act is applicable when several co-sharers, who are equally entitled to the right of pre-emption claimed their entitlement. The statutory provision does not mandate impleadment of all the co-sharers or the vendor.

10. In view of the aforesaid fact, no ground to interfere is made out

11. The appeal is dismissed.

12. All the pending miscellaneous applications, if any, are also disposed of.



13. The respondent-pre-emptor shall deposit the amount alongwith interest @ 9% per annum within one month of the preparation of the decree in the trial Court. If the amount is not deposited, the suit of the plaintiff shall stand dismissed.

**23.01.2025**  
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**(ANIL KSHETARPAL)**  
**JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No