



**RSA No. 2885 of 1994 (O&M)**      1

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

**RSA No. 2885 of 1994 (O&M)  
Reserved on : 18.08.2025  
Date of Pronouncement :- 21.08.2025**

**Ishwar Chand (since deceased) through LRs      ...Appellants**

**Versus**

**Madan Pal and others      ...Respondents**

**CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

**Present:-** Mr. Rajinder Goel, Advocate for the appellants.

Mr. Aditya Jain, Advocate with Mr. Rajat Singla  
and Mr. Rahul Vohra, Advocates for respondents No. 1 and 2.

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**VIRINDER AGGARWAL, J.**

1. Appellant-plaintiff filed a suit for pre-emption which was decreed by the learned Sub Judge, First Class and in appeal learned Additional District Judge, Jagadhari has reversed the judgment and decree on the grounds that since at the time of agreement to sell dated 30.05.1988, one of the plaintiff Rishi Pal was marginal witness on Ex. D1 so he was aware about the sale deed to be executed in favour of appellants so he is deemed to have waived his right or he has acquiesced in the sale deed so has no right of pre-emption so the findings on issue No. 1 recorded by the learned Sub Judge First Class, Jagadhari were set aside.



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2.            Aggrieved by the judgment and decree so passed, the present appeal has been filed.

3.            Notice of the appeal was served upon the respondents. The record was requisitioned.

4.            Learned counsel for the appellant argued that the learned First Appellate Court has committed serious illegality by recording a finding that one of the appellant-plaintiff has waived the right of pre-emption or has acquiesced in the sale. He pointed out that Rishi Pal was admittedly one of the marginal witness of the agreement to sell Ex. D1 dated 30.05.1988 and at that time none of the appellant-plaintiffs were having any right to pre-emption as they were not co-owners of the suit land at that time. They had purchased part of the property on 07.08.1988 so their right to pre-empt the sale accrued only on 07.08.1988. Learned First Appellate Court has not taken into consideration this fact so the appeal be allowed and judgment and decree of the First Appellate Court be set aside and that of the learned Sub Judge First Class, Jagadhari be restored.

5.            Whereas learned counsel for the respondent has argued that there is no illegality and infirmity in the findings recorded by the learned First Appellate Court and placed reliance upon the judgment of this Court passed in RSA No. 515 of 1994 titled as '***Abhey Singh (since deceased) through LRs versus Prem Singh and others***' decided on 24.06.2024.

6.            I have heard learned counsel for the parties and gone through the record carefully.

7.            As regards the scope of second appeal in Punjab and Haryana, second appeals are preferred under Section 41 of Punjab Courts Act, 1918 and



they are treated as appeals under that provision and not under Section 100 of CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of '**Pankajakshi (Dead) through LRs and others V/s Chandrika and others**', (2016)6 SCC 157, '**Kirodi (since deceased) through his LR V/s Ram Parkash and others**' (2019) 11 SCC 317 and '**Satender and others V/s Saroj and others**', 2022(12) Scale 92. So no question of law is required to be framed while disposing of the second appeal.

8.            The learned First Appellate Court recorded its findings in para No. 9 of the impugned judgment which reads as under :-

*9. This contention has no force, in view of the law laid down in the authority reported as Daya Nand and others Vs. Kaushalya Devi and others, 1985 (1) All India Land Law Reporter 471, that where father of the pre-emptor took active part in negotiations and pre-emption was not a silent spectator, such fact taken together conclusively pointed to an acquiescence. It is further held that if the pre-emptor consents to sale, he will be deemed to have waived his right of pre-emption, and the suit for pre-emption was dismissed. It has also been held by the Hon'ble Supreme Court in Indira Bai Vs. Nand Kishore, AIR 1991 5.0.1055, that right of pre-emption is weak and inequitable right. It can be defeated by estoppel. Estoppel is a rule of equity flowing out of fairness striking on behaviour, deficient in good faith. It operates as a check on spurious conduct by preventing the inducer from taking advantage and assailing for feiture already accomplished. The suit for pre-emption was dismissed. In the authority reported as Smt. Roopi Bai Vs. Mahaveer and others, AIR 1994 Rajasthan 133, it is held that personal presence of the plaintiff at the time of registration of sale deed, creates probability that the plaintiff was actually associated with execution of sale deed. The conduct of the*



*plaintiff was sufficient to estop him from claiming right of pre-emption. Hence, taking into consideration this law, I find that plaintiff Rishi Pal-5-was attesting withe as of the agreement of sale and, therefore, he is estopped from filing the present suit for pre-emption. He is presumed to have waived his right or he has acquiesced in the present sale. He, has, therefore, no right of pre-emption. The finding of the lower wurt on issue no.1, is, therefore, set aside and the issue no.1 is decided in favour of the defendants.”*

9. A perusal of this portion of the impugned judgment clearly show that the learned First Appellate Court has failed to consider that the appellants were not having any right of pre-emption on 30.05.1988 when the agreement to sell Ex.D1 was executed and Rishi Pal one of the appellant-plaintiffs was attesting witness of that agreement to sell. Right of pre-emption accrued in favour of the appellant-plaintiffs for the first time on 07.08.1988 when they purchased part of the suit property and became co-owners of the suit property. The learned First Appellate Court has lost sight of the fact that one cannot give away what he is not having. Since appellant-plaintiffs were not having any right of pre-emption on 30.05.1988 so they were unable to waive their right of pre-emption. Their right of pre-emption accrued only on 07.08.1988 and after that there is no act on the part of the appellant-plaintiffs vide which they could be said to have waived off their right to pre-empt the sale.

10. As such the findings recorded by the learned First Appellate Court are flawed and the judgment cited by counsel for the respondents is not applicable to the facts of the case in hand and appeal filed by the appellant-plaintiffs is allowed. The findings recorded by the learned First

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Appellate Court vide which the findings recorded by learned Sub Judge First Class, Jagadhari on issue No. 1 were reversed are set aside and appeal of the appellant-plaintiffs is allowed. The judgment and decree passed by the First Appellate Court is set aside and that of the Sub Judge First Class, Jagadhari is restored.

11.            Since the main appeal stands decided, the miscellaneous application(s), if any, stand disposed of accordingly.

**(VIRINDER AGGARWAL)**  
**JUDGE**

**21.08.2025**

*P.Singh*

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No