



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

(103)

RSA-971-1993 (O&M)
Date of Decision:-**20.08.2025**

SUNDA RAM

... Appellant

Versus

RISHAL SINGH

... Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. B.R. Rana, Advocate
for the appellant.

Mr. Gulshan Nandwani, Advocate
for the respondent.

VIRINDER AGGARWAL, J. (Oral)

1. The appellant/plaintiff filed a suit for possession by way of pre-emption, asserting that he is a co-sharer in the suit land and, on that basis, claimed a right to pre-empt the sale deed dated 25.05.1988, which was executed by Smt. Daya Kaur in favor of the respondent/defendant, Rishal Singh.
2. The suit was contested by defendant No.1- Rishal Singh on the grounds that appellant/plaintiff is not a co-sharer, suit land was not cultivable prior to the sale and answering defendant has made the same cultivable. Whereas suit against defendant No.2-Smt. Daya Kaur was given up.
3. From the pleading of the parties following issues were framed:-



1. Whether the plaintiff is a co-sharers in the joint Khewat of the suit land, if so, to what effect? OPP.
2. Whether the suit is time barred? OPD.
3. Whether the land in dispute was not cultivable at the time of sale, if so, to what effect? OPD.
4. Whether Gian Singh was lessee in possession of the suit land, if so, to what effect? OPD.
5. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD.
6. Whether the 1/5th pre-emption money has not been deposited within time? OPD.
7. Relief

4. Learned Sub-Judge 1st Class, Rewari decreed the suit by recording a finding that sale in favour of Rishal Singh was not of specific Khasra numbers rather, it was a share of sale only as Daya Kaur was not in exclusive possession of Khasra Nos.12/2, 14/3, 17, 18 and 19/1, accordingly the suit was decreed.

5. The learned First Appellate Court set aside the judgment and decree passed by the learned Sub-Judge 1st Class, by recording a finding that in the sale deed it was specifically mentioned that possession of Khasra No.16/12/2, 14/3, 17, 18 and 19/1 was given to the vendee and as per revenue record the same is shown to be '*gair mumkin bhatta or gadha*' and that suit land does not fall withing the definition of agricultural land.

6. Aggrieved by the judgment and decree so passed, present appeal was filed. Notice was served upon the respondent and record was requisitioned.



7. I have heard the learned counsel for the parties and have gone through the record minutely.

8. The learned counsel for the appellant/plaintiff assailed the judgment merely on the ground that sale by co-sharer of undivided share out of joint land would be deemed to be sale of share only and even if possession has been delivered over specific portion then also the same would amount to sale of share and relied upon judgment of Hon'ble Apex Court in case titled as "**Jai Singh and Others v. Gurmej Singh, 2009(15) SCC 747**" wherein it was held as under:-

"Sale of subsequent portion of the land out of the joint holding by one of the co-owners is nothing but a sale of a share out of the joint holding and is pre-emptible under Section 15(1)(b) of the Act. It is to be noted that the judgment in Bhartu's case (supra) had the seal of approval of this Court in Pokhar (dead) by LRs and Ors. v. Ram Singh, 2002(3) RCR(Civil) 600, Civil Appeal No.4418 of 1986 disposed of on August 14, 2001."

9. Learned counsel for the respondent/defendant contested the case on the grounds that since appellant/plaintiff has given up vendor, who is a necessary party, so the suit of the appellant/plaintiff is ineffective and no relief can be granted to the appellant/plaintiff and relied upon law laid down by Co-ordinate Bench of this Court in "**Ram Singh and Others vs. Hari Singh and Others 2024 NCPHHC 171700**" where the proposition has been discussed in Para No.17 to 19, which are 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. Awam 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.

10. In “*Vidhya Devi (Since Deceased) Through Her LRs vs. Banwari Lal (Since Deceased) Through His LRs, RSA-1921-1992, decided on 25.04.2025*” is also to the effect that vendor is necessary party in a suit for pre-emption and in para No.8, it was held that “*failure to implead vendor is fatal to the suit*”.

11. Taking into account that the appellant/plaintiff, after initially impleading Smt. Daya Kaur (the vendor), later chose to abandon the claim against her despite her being a necessary and proper party in a suit for pre-emption, the suit suffers from a serious defect due to the non-joinder of a necessary party. In a pre-emption suit, the presence of the vendor is essential for the effective adjudication of the matter. By excluding her from the array of parties, the plaintiff undermined the very foundation of the claim. As a result, the learned First Appellate Court rightly declined to grant relief. Upon consideration, this Court finds no merit in the present appeal, which accordingly stands dismissed.

12. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

(**VIRINDER AGGARWAL**)
JUDGE

20.08.2025
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No