IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA-295-1996 (O&M)
Date of decision: 27.07.2026

HAWA SINGH **....Appellant**

Versus

RAGHBIR SINGH **...Respondent**

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. Mani Ram Verma, Advocate and
Mr. Nipun Verma, Advocate for the appellant.

Mr. Surinder Garg, Advocate for the respondent.

YASHVIR SINGH RATHOR. J.(Oral)

1. This Regular Second Appeal is instituted against the judgment and decree dated 19.10.1995 passed by learned District Judge, Bhiwani, whereby the judgment and decree dated 03.10.1994 passed by Sub Judge First Class, Charkhi Dadri, in a suit for pre-emption instituted by the appellant (**hereinafter referred to as plaintiff**) has been set aside and the suit has been ordered to be dismissed.

2. Plaintiff sought a decree for possession by way of pre-emption on payment of Rs.54,000/- on the ground that one Paharu Singh was a co-sharer in Khewat No.443, who sold the suit land in favour of defendants vide sale deed No.96 dated 29.07.1991 for a total sale consideration of Rs.54,000/-. It was alleged that plaintiff being a co-sharer in the suit land has got a preferential right to pre-empt the sale and since defendants refused to admit its claim, it necessitated the suit.

3. Notice of the suit was issued to the defendants. Defendant No.1 in his

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written statement refuted the contents of the plaint. However, it was admitted that defendants have purchased the suit land for a sale consideration of Rs.54,000/- from their vendor Paharu Singh but it was alleged that they have purchased specific killa numbers which were in the possession of their vendor, Paharu Singh, by way of family settlement/partition. It was denied that plaintiff is a co-sharer in the joint holding and dismissal of the suit was sought.

4. Defendant No.1 did not appear and was proceeded ex parte vide order dated 03.08.1993.

5. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff has got superior right to pre-empt the sale of the suit land? OPP

2. Whether the plaintiff has no cause of action to file the present suit?OPD.

3. Whether the plaintiff has waived his right to pre-empt the sale? OPD.

4. Relief.

6. Thereafter, the parties led evidence in support of their case.

7. Under issue No.1, the trial Court held that plaintiff as well as vendor of defendants were co-sharers in the suit land and as such, plaintiff had a preferential right to pre-empt the sale and issue No.1 was decided in favour of plaintiff, while issues No.2 and 3 were decided against defendants and the suit was decreed and a decree of possession of the suit land by way of pre-emption was passed in favour of plaintiff on payment of sale consideration of Rs.54,000/-, less 1/5th pre-emption money already deposited, besides stamp charges and registration fees within two months, failing which the suit shall stand dismissed.

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8. Defendants preferred an appeal and learned Appellate Court while relying upon 1995 PLJ 323, ***Suresh Kumar Vs. Chanchal Singh and Another***, held that during pendency of appeal the right of a co-sharer to preempt a sale has been taken away by way of an amendment in the State of Haryana and therefore, such an amendment will be applicable in the case in hand, which has taken away the right of pre-emption and the appeal was accepted and the judgment and decree passed by the trial Court was set aside.

9. Feeling aggrieved, the appeal in hand has been preferred. The material on file has been perused and parties have been heard.

10. A Full bench decision of the Hon'ble Supreme Court in 2001(3) RCR (Civil) 754 ***Shyam Sunder and Another Vs. Ram Kumar and Another*** has held that a preemptor has to prove continuation of subsistence of his right till passing of the decree by the first Court. Loss of his right to pre-emption by an act, conduct or subsequent amendment/enforcement of law during appeal will not affect the decree or his right to pre-empt which was existing on the date of decree of the Court of first instance. It was further held that Section 15 as introduced by Haryana Amendment Act, 1995, in the absence of anything in it to show that it is retrospective, does not effect the right of the parties accrued to them prior to that and subsisted till the date of decree of the Court of first instance. As such, in view of law laid down by Hon'ble Supreme Court in ***Shyam Sunder's case (supra),*** the rights of the parties are to be seen on the date of passing of decree by the first Court. In the present case, the amendment has admittedly come into existence after passing of the decree by the trial Court and as such, the amendment cannot be applied retrospectively and it will not affect the right of the present plaintiff

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which accrued to him prior to that and subsisted till the date of decree dated 03.10.1994 passed by the trial Court. In these circumstances, the impugned judgment and decree passed by the learned Appellate Court is contrary to law and is thus not sustainable and is liable to be set aside.

11. As a result of the afore-said discussion, appeal in hand is accepted with costs and judgment and decree dated 19.10.1995 passed by the First Appellate Court is set aside and that of the trial Court dated 03.10.1994 is restored.

12. It is pertinent to mention that during pendency of the present appeal, appellant-plaintiff has withdrawn the amount deposited by him, except 1/5th pre-emption money/zare-e-panjam vide order dated 08.07.1997 passed in this appeal. Accordingly, appellant-plaintiff is permitted to deposit the balance sale consideration alongwith other incidental charges i.e. stamp and registration charges within two months from today, so that the sale deed can be executed in his favour. On his failure to do so, the appeal in hand shall stand dismissed.

(YASHVIR SINGH RATHOR)
JUDGE

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

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