



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

- I. RSA-598-1995 (O&M)**
- Swaran Kaur** **Appellant**
Vs.
Jagdish Ram and Others Respondents
- II. RSA-742-1995**
- Jagdish Ram** **Appellant**
Vs.
Smt. Swaran Kaur Respondent
- III. RSA-599-1995 (O&M)**
- Swaran Kaur** **Appellant**
Vs.
Jagdish Ram and Others Respondents
- IV. RSA-741-1995**
- Jagdish Ram** **Appellant**
Vs.
Smt. Swaran Kaur Respondent
- V. COCP-1396-2017 (O&M)**
- Swaran Kaur** **Appellant**
Vs.
Jagdish Ram and Others Respondents
- VI. COCP-1397-2017 (O&M)**
- Swaran Kaur** **Appellant**
Vs.
Jagdish Ram and Another Respondents



Reserved on: 22.04.2026
Pronounced on: 15.05.2026
Pronounced fully/operative part: Fully

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Sanjay Kaushal, Senior Advocate with
Mr. A.P. Setia, Advocate for the
appellant(s) in RSA Nos.598 and 599 of 1995;
for the petitioner(s) in COCP Nos.1396 and 1397 of 2017;
for the respondent(s) in RSA Nos.741 and 742 of 1995.

Mr. Radhe Shyam Sharma, Advocate for the
appellant(s) in RSA No.741 and 742 of 1995;
for the respondent(s) in RSA Nos.598 and 599 of 1995.

DEEPAK GUPTA, J.

This judgment shall govern and dispose of four Regular Second Appeals, as titled above, along with two Contempt of Court petitions. The four appeals arise out of two civil suits instituted by Smt. Swaran Kaur against Jagdish and others. Each of the parties to the suits has filed two appeals i.e., two by the plaintiff and two by the defendants.

2. In order to maintain clarity and avoid any confusion, the parties in all these appeals are being referred to as per their original status before the learned trial Court. The records of both the suits, as well as the connected appeals, were requisitioned and have been duly perused and considered.

3. The dispute in both suits pertains to agricultural land comprised in the following Khewats:

Khewat/Khatoni No.	Total Area
591/779	211 Kanal 7 Marla
938/1327	89 Kanal 16 Marla
Total Area	301 Kanal 3 Marla



4. Smt. Harnam Kaur, a co-sharer to the extent of one-fourth share in both the aforesaid Khewats, alienated her share measuring 75 Kanal 6 Marla through a registered sale deed dated 01.06.1990 in favour of defendants Jagdish and others, for a stated consideration of ₹1,60,000/-. Similarly, another co-sharer, Piara Singh, sold his one-third share measuring 100 Kanal 7 Marla in the same Khewats to the very same vendees vide sale deed dated 21.07.1990.

5. Aggrieved by the said transactions, Smt. Swaran Kaur, also claiming to be a co-sharer in the suit land, instituted two separate suits seeking possession by way of pre-emption in respect of both sale transactions.

6. In **Civil Suit No. 52 of 1991**, relating to the sale executed by Smt. Harnam Kaur, the plaintiff pleaded that the sale had been effected without notice to her, in contravention of the provisions of the Punjab Pre-emption Act. It was further alleged that the sale consideration mentioned in the sale deed was fictitious and inflated. According to the plaintiff, the actual consideration was only ₹60,000/-, whereas ₹1,60,000/- was fraudulently inserted in collusion with the vendor. Claiming a superior right of pre-emption as a co-sharer, and asserting that the defendants were strangers to the khewat, the plaintiff sought a decree for possession by way of pre-emption of the land measuring 75 Kanal 6 Marla.

7. Similarly, in **Civil Suit No. 57 of 1991**, pertaining to the sale by Piara Singh, the plaintiff challenged the transaction on identical grounds. It was alleged that though the sale deed recorded consideration of ₹1,80,000/-, the actual amount paid was only ₹80,000/-. Reiterating her status as a co-sharer and asserting lack of notice of the sale, the plaintiff sought pre-emption of the land in question.

8.1 The defendants contested both suits by filing written statements raising, inter alia, preliminary objections. It was contended that the plaintiff was not reflected as a co-sharer in the revenue record and had procured a false,



collusive decree to fabricate such status. According to the defendants, the plaintiff had acted in collusion with the vendors to defeat their lawful rights.

8.2 It was specifically pleaded that prior to the impugned sale deeds, the vendors—Smt. Harnam Kaur and Piara Singh, had entered into an agreement to sell dated 09.03.1990 in favour of the defendants for the entire land measuring 175 Kanal 12 Marla for a total consideration of ₹11,41,500/-. The stipulated date for execution of the sale deed was fixed as 15.06.1990. An amount of ₹85,000/- was initially paid as earnest money, followed by a further payment of ₹1,25,000/- on 22.03.1990, which was duly endorsed on the agreement. It was alleged that thereafter, the vendors, in collusion with the plaintiff, engineered a fraudulent decree to defeat the prior contractual rights of the defendants.

9. In the written statement relating to the sale by Smt. Harnam Kaur, the defendants further asserted that the actual consideration paid was ₹4,94,000/-, out of which ₹2,10,000/- had been paid earlier under an agreement to purchase, and the balance at the time of execution of the sale deed. However, a lesser amount of ₹1,60,000/- was shown by the vendor in the sale deed to avoid obtaining income tax clearance. The defendants claimed to be illiterate persons, who were misled by the vendor and her associates. They also denied that the sale had been executed without notice to the plaintiff. Additionally, they claimed reimbursement of expenses incurred towards stamp duty, registration charges, construction of 3–4 rooms for ₹75,000/-, and land levelling expenses of ₹18,000/-, in case the suit was decreed.

10. With respect to the sale by Piara Singh, the defendants pleaded that an earlier agreement to sell dated 20.06.1990 had been executed at the rate of ₹48,600/- per acre, pursuant to which ₹4,00,000/- had been paid. The sale deed was to be executed on 01.08.1990. However, the vendor executed the sale deed prematurely on 21.07.1990. The total sale consideration was stated to be ₹6,09,627/-, out of which ₹4,00,000/- was paid on 20.06.1990, ₹1,80,000/-



before the Sub-Registrar, and ₹29,627/- prior to execution. It was again asserted that only ₹1,80,000/- was reflected in the sale deed by the vendor to evade income tax formalities. Allegations of collusion between the plaintiff and the vendor were reiterated. The defendants also claimed entitlement to reimbursement of expenses including stamp duty, registration charges, petition-writer's fee, construction expenses of ₹50,000/-, and land improvement costs of ₹20,000/-.

11. The plaintiff filed replications to both written statements, denying the assertions made therein and reiterating her claims.

12. On the basis of the pleadings, the trial Court framed necessary issues in both suits, and the parties led evidence in support of their respective cases.

13. The learned trial Court, vide judgment dated 04.11.1992, decreed **Civil Suit No. 52 of 1991** relating to the sale effected by Smt. Harnam Kaur, thereby granting a decree for possession by way of pre-emption in favour of the plaintiff, Smt. Swaran Kaur. While doing so, the trial Court held that the defendants had incurred an expenditure of ₹75,000/- after the purchase of the land towards construction of three rooms. Consequently, apart from the sale consideration of ₹1,60,000/-, the defendants were held entitled to reimbursement of the said amount, along with ₹20,501.50/- incurred on stamp and registration charges and ₹48.50/- towards scribing of the sale deed. Accordingly, the suit was decreed subject to payment of a total amount of ₹2,55,550/- by the plaintiff, after adjusting the one-fifth pre-emption money already deposited.

14. The aforesaid judgment led to filing of the appeal before the learned District Judge, Sirsa by the defendants. The first Appellate Court, vide judgment dated 21.12.1994, concurred with the findings of the trial Court insofar as the plaintiff's right of pre-emption was concerned. However, the decree was modified on the question of consideration and consequential payments.



The suit was ultimately decreed subject to payment of ₹4,98,700/- in total, comprising ₹4,60,000/- as the actual sale consideration, ₹18,000/- towards improvement expenses, and ₹20,700/- towards stamp and registration charges, after excluding the amount already deposited by the plaintiff.

15. Aggrieved by the modification made by the first Appellate Court, both parties approached this Court by way of separate Regular Second Appeals. **RSA No. 598 of 1995** has been preferred by the plaintiff Smt. Swaran Kaur, challenging the enhancement of sale consideration as determined by the learned District Judge. On the other hand, **RSA No. 742 of 1995** has been filed by the defendants, inter alia, contending that the plaintiff was not a co-sharer in the suit Khewats and that the decree dated 19.04.1990, on the basis of which she claimed such status, was collusive and not binding upon their rights. It is thus contended that the decree for pre-emption has been erroneously granted by the Courts below and that the suit deserves dismissal.

16. Insofar as **Civil Suit No. 57 of 1991**, pertaining to the sale executed by Piara Singh measuring 100 Kanal 7 Marla, is concerned, the learned trial Court, vide judgment dated 23.11.1992, dismissed the suit. The trial Court held that the decree dated 19.04.1990 in favour of the plaintiff was collusive in nature and, therefore, incapable of conferring upon her the status of a co-sharer. Consequently, it was held that the plaintiff did not possess a superior right of pre-emption, leading to dismissal of the suit.

17. The plaintiff preferred Civil Appeal No. 36 of 1992/93 against the said judgment. The learned District Judge, Sirsa, acting as the first Appellate Court, vide judgment dated 21.12.1994, reversed the findings of the trial Court. It was held that the plaintiff was entitled to exercise the right of pre-emption in respect of the sale executed by Piara Singh. Accordingly, the suit was decreed subject to payment of ₹6,03,200/-, after adjusting the amount already deposited by the plaintiff at the time of institution of the suit.



18. This judgment dated 21.12.1994 of the first appellate court has also been challenged by both parties through separate appeals. ***RSA No. 599 of 1995*** has been filed by the plaintiff Smt. Swaran Kaur, assailing the determination of sale consideration, contending that the actual consideration paid was only ₹1,80,000/-. Conversely, ***RSA No. 741 of 1995*** has been preferred by the defendants, who assert that the trial Court had rightly concluded that the decree dated 19.04.1990 in favour of the plaintiff was collusive, and hence, she lacked the status of a co-sharer and the corresponding right of pre-emption. The defendants accordingly pray for setting aside the judgment of the first Appellate Court and restoration of the trial Court's judgment dismissing the suit.

19.1 It may further be noticed that during pendency of RSA No.598 of 1995, ***CM No.4391-C of 2006*** was disposed of by a Co-ordinate Bench of this Court on 14.07.2006, whereby respondents Jagdish and others, who were the vendees, were permitted to alienate the land in dispute in favour of Shiv Shambhu Sharma. Such permission, however, was made subject to the condition that the proposed sale deed would specifically recite that the transfer shall remain subject to the final decision of the appeal. The Court had also directed that a copy of the sale deed be placed on the record of the case. Shiv Shambhu Sharma had, in support of the said application, filed an affidavit stating that he had no objection to incorporation of the aforesaid condition in the sale deed to be executed in his favour.

19.2 A similar order dated 14.07.2006 was passed in ***CM No.4393-C of 2006*** arising out of RSA No.599 of 1995 permitting alienation of the land in favour of the same proposed vendee.

20.1 Subsequently, Smt. Swaran Kaur filed ***COCP No.1396 of 2017*** in RSA No.598 of 1995 under Sections 11 and 12 of the Contempt of Courts Act alleging deliberate and willful disobedience of the order dated 14.07.2006 by Jagdish and others as well as by Shiv Shambhu Sharma. The principal allegation raised in the petition was that even prior to obtaining permission from this



Court, respondents Jagdish and others had already executed a General Power of Attorney dated 18.05.2006 in favour of Shiv Shambhu Sharma in respect of the disputed property, but the said fact was intentionally concealed from the Court while seeking permission to alienate the land.

20.2 It was further alleged that despite the specific conditions imposed by this Court, neither was the GPA suitably amended so as to incorporate the stipulation that the transfer would remain subject to the final outcome of the appeals, nor was any copy of the sale deed placed on the record of the case. According to the petitioner, the conduct of Jagdish and others as well as Shiv Shambhu Sharma amounted to clear violation of the order dated 14.07.2006.

20.3 The petitioner further alleged that Shiv Shambhu Sharma, acting on the strength of the aforesaid GPA, subsequently transferred the disputed property in favour of his wife Smt. Geeta Sharma in the year 2012 in a clandestine manner, again without disclosing the pendency of the appeals or the conditions imposed by this Court. It was pleaded that the petitioner remained unaware of both the GPA and the subsequent transfer in favour of Geeta Sharma until partition proceedings were initiated by Geeta Sharma in the year 2016.

20.4 During the aforesaid proceedings, the petitioner allegedly discovered not only the earlier transactions but also the fact that she had been proceeded against ex parte. An application moved by her for setting aside the ex parte proceedings came to be dismissed on 17.10.2016, where against an appeal was stated to be pending before the Collector.

20.5 On the basis of the aforesaid allegations, prayer was made in COCP No.1396 of 2017 for initiating contempt proceedings against Jagdish and others as well as Shiv Shambhu Sharma for intentional and willful violation of the order dated 14.07.2006 passed by this Court.

21. **COCP No.1397 of 2017** was thereafter filed by Smt. Swaran Kaur in RSA No.599 of 1995 raising substantially similar allegations regarding violation



of the order dated 14.07.2006.

22. Upon notice being issued in the contempt petitions, respondent Jagdish Ram was reported to have expired, whereas the remaining respondents entered appearance through their learned counsel.

23. Both the contempt petitions were thereafter ordered to be heard along with the connected Regular Second Appeals.

24. It may further be noticed that during pendency of COCP No.1396 of 2017, the petitioner moved **CM No.15440-CII of 2019** seeking permission to place on record additional documents Annexures P-6 to P-13, besides **CM No.15441-CII of 2019** under Order I Rule 10 CPC for impleadment of Saroop Singh, Halqa Patwari, Ellenabad; Sanjay Choudhary, Tehsildar, and Rajendra Verma, Tehsildar, as additional respondents in the contempt proceedings.

25.1 In the said applications, while reiterating the allegations already levelled in the contempt petitions, it was further pleaded that the appeal preferred by the petitioner against the order dated 17.10.2016 had been dismissed by the Collector without properly considering her objections. Thereafter, the Halqa Kanungo was directed to accept Naksha 'Bay' and prepare Naksha 'Jim', which was ultimately prepared and presented before the Assistant Collector on 04.08.2017. The same was approved on the very same day and the partition proceedings were accordingly finalized.

25.2 The petitioner further asserted that Shiv Shambhu Sharma had never intended to honour either the undertaking furnished before this Court or the conditions incorporated in the order dated 14.07.2006. According to the petitioner, after securing rights through the General Power of Attorney, Shiv Shambhu Sharma transferred the disputed land in favour of his wife Smt. Geeta Sharma without obtaining any permission from this Court and without disclosing that the property remained subject to the outcome of the pending appeals.



25.3 It was further alleged that despite having knowledge of the pendency of the contempt proceedings, Shiv Shambhu Sharma continued to create third-party rights in the property. Reference was made to sale deeds dated 05.11.2018 and 21.11.2018, whereby portions of the disputed land were allegedly alienated in favour of Smt. Sukhjinder Kaur wife of Jasveer Singh, Smt. Maya Devi wife of Ram Singh, and Smt. Sampatti Devi wife of Satyanarayan, again without disclosing the conditions imposed by this Court in its order dated 14.07.2006.

25.4 The petitioner also levelled allegations against the revenue authorities by asserting that the order dated 14.07.2006 was very much within their knowledge, inasmuch as the same found mention in the Jamabandi for the year 2012-13 as well as in the corresponding Roznamcha entries. Despite this, the said condition was allegedly omitted from the subsequent Jamabandis for the year 2017-18, thereby facilitating further alienation of the disputed property. On that basis, allegations of deliberate connivance and willful disobedience were raised against Swaroop Singh, Halqa Patwari, Ellenabad, Sanjay Choudhary, Tehsildar, and Rajendra Verma, Tehsildar, and a prayer was made for their impleadment and for initiation of contempt proceedings against them as well.

26. The applications and contempt petitions were accompanied by various documents including the order dated 09.09.2004 restraining alienation of the property without permission of this Court; affidavit of Shiv Shambhu Sharma furnished while seeking permission to purchase the property; order dated 14.07.2006 permitting transfer subject to the outcome of the appeals; General Power of Attorney executed in favour of Shiv Shambhu Sharma; subsequent sale deed executed in favour of Smt. Geeta Sharma; orders passed during partition proceedings; certificate of partition; copies of contempt notices; and subsequent sale deeds executed in favour of third parties.

27. Learned counsel for the parties have been heard at length and the entire record has been carefully perused.



28.1 Learned senior counsel appearing on behalf of the appellants in RSA Nos.598 and 599 of 1995, who is also representing the petitioners in COCP Nos.1396 and 1397 of 2017, contended that though the learned first Appellate Court was not justified in enhancing the sale consideration mentioned in the sale deeds executed by Smt. Harnam Kaur and Piara Singh in favour of respondents Jagdish and others, yet the appellants were not seriously pressing the issue of consideration in view of the more substantial grievance regarding deliberate violation of the order dated 14.07.2006 passed by this Court.

28.2 It was argued that Shiv Shambhu Sharma had furnished a specific affidavit before this Court while seeking permission to purchase the disputed property, wherein he had undertaken that the sale in his favour would remain subject to the final outcome of the appeals and that the requisite stipulation would be incorporated in the sale deed. Despite such undertaking and despite the specific directions contained in the order dated 14.07.2006, neither was the condition incorporated in the General Power of Attorney executed earlier in favour of Shiv Shambhu Sharma nor was any copy of the sale deed placed on the record of the case.

28.3 Learned senior counsel further submitted that Shiv Shambhu Sharma thereafter transferred the property in favour of his wife Smt. Geeta Sharma and subsequently both of them created third-party rights by alienating the disputed land in favour of several purchasers, thereby further complicating the matter and rendering the orders passed by this Court ineffective.

28.4 It was further argued that the revenue authorities were equally guilty of deliberate disobedience inasmuch as, despite having full knowledge of the order dated 14.07.2006, they failed to reflect the said condition in the Jama-bandi for the year 2017-18. According to learned counsel, omission of the said condition enabled subsequent purchasers to acquire the property under the impression that it was free from encumbrances and unconnected with pending litigation.



28.5 On these premises, prayer was made for initiating contempt proceedings against Jagdish and others, Shiv Shambhu Sharma and the concerned revenue officials.

29.1 *Per contra*, learned counsel appearing for the respondents-vendees as well as the alleged contemnors argued that both the suits themselves were wholly misconceived and liable to be dismissed. Drawing attention to the pedigree table, learned counsel submitted that vendors Smt. Harnam Kaur and Piara Singh were closely related to the plaintiff Smt. Swaran Kaur, whereas the defendants were complete strangers to the family and village affairs and had no knowledge of the alleged collusive arrangements inter se the plaintiff and the vendors.

29.2 It was argued that both the vendors had entered into an agreement to sell dated 09.03.1990 in favour of the defendants with respect to their entire shares measuring 175 Kanal 12 Marla, with the target date for execution of the sale deed fixed as 15.06.1990. However, after execution of the said agreement and prior to the target date, Mohinder Singh, who was the real brother of Piara Singh and brother-in-law of Smt. Harnam Kaur, intentionally suffered a collusive decree dated 19.04.1990 in favour of his son Karnail Singh and daughter-in-law Smt. Swaran Kaur, thereby creating co-sharership rights in their favour in both the joint Khewats.

29.3 According to learned counsel, it was only by virtue of the said collusive decree that Smt. Swaran Kaur acquired the status of co-sharer and became capable of instituting the present suits for pre-emption. It was further submitted that the decree dated 19.04.1990 was never reflected in the revenue record and the defendants were throughout unaware of such proceedings. In these circumstances, it was contended that the defendants had been defrauded by the plaintiff and her close relatives acting in collusion with each other.



29.4 Learned counsel further argued that the aforesaid circumstances had been rightly appreciated by the learned trial Court while dismissing Civil Suit No.57 of 1991, but both the Courts below in Civil Suit No.52 of 1991 and the learned first Appellate Court in Civil Suit No.57 of 1991 failed to properly appreciate the fraudulent and collusive nature of the decree dated 19.04.1990.

29.5 Another limb of the argument raised on behalf of the respondents was that the plaintiff herself had specifically pleaded in both the suits that she had no notice or knowledge of the impugned sales. However, despite raising such plea, neither of the vendors namely Smt. Harnam Kaur and Piara Singh was impleaded as a party to the suits, nor were they examined as witnesses. Learned counsel submitted that once compliance with Sections 19 to 21 of the Punjab Pre-emption Act was specifically put in issue, non-impleadment of the vendors assumed great significance and materially affected the maintainability of the suits. It was further pointed out that even Karnail Singh, husband of the plaintiff who appeared as PW-2, did not depose that the plaintiff had no notice of the sales.

29.6 On the strength of the above submissions, learned counsel contended that the suits were liable to be dismissed not only on account of collusion but also for non-impleadment of necessary parties, especially keeping in view the settled principle that the right of pre-emption is a weak right and can be defeated by all lawful means. Reliance in this regard was placed upon ***Jhabbar Singh (deceased) through LRs and others v. Jagtar Singh, 2023 (14) SCC 199*** and ***Smt. Chawli Devi (since deceased) thr her LRs v. Inderpal and ors., RSA No.941 of 1991 decided on 04.11.2024.***

30.1 In reply, learned senior counsel for the plaintiff/pre-emptor contended that non-impleadment of the vendors was not fatal to the suits, as the vendors were at best proper parties and not necessary parties. It was argued that an effective decree for pre-emption could still be passed in their absence. Reliance was again placed upon ***Jhabbar Singh (deceased) through LRs and***



others v. Jagtar Singh (supra), as also upon *Mange Ram and anr. v. Shiv Charan and ors.*, **RSA No.2458 of 1991 decided on 23.08.2024.**

30.2 On the basis of the aforesaid submissions, learned senior counsel prayed for dismissal of RSA Nos.741 and 742 of 1995 filed by Jagdish and others, for allowing RSA Nos.598 and 599 of 1995 preferred by the plaintiff, and for initiation of contempt proceedings against the respondents, Shiv Shambhu Sharma and the concerned revenue officials.

31. This Court has thoughtfully considered the rival submissions advanced on behalf of the parties and has carefully gone through the entire record.

32. At the very outset, it deserves notice that there is no dispute with regard to the foundational facts. It stands admitted that prior to execution of the two impugned sale deeds by Smt. Harnam Kaur and Piara Singh in favour of Jagdish and others, both the vendors had already entered into an agreement to sell dated 09.03.1990 in favour of the defendants-vendees. It is equally undisputed that the decree dated 19.04.1990, on the basis whereof the plaintiff claims to have acquired status as a co-sharer, came to be suffered after execution of the aforesaid agreement to sell but before the target date fixed therein for execution of the sale deeds.

33. In these circumstances, the principal question which arises for consideration is whether the decree dated 19.04.1990 was genuinely intended to settle pre-existing rights or whether the same was a collusive arrangement deliberately engineered to create a right of pre-emption in favour of the plaintiff so as to defeat the prior contractual rights of the defendants.

34. The answer to the aforesaid question becomes evident upon examination of the pedigree table and the revenue record produced on the file.

35. The Jamabandi for the year 1982-83 pertaining to both the Khe-



wats reveals that Bagh Singh and his three sons namely Piara Singh, Mohinder Singh and Inder Singh were recorded as co-owners to the extent of one-fourth share each. Subsequently, upon the death of Inder Singh, his share devolved upon his widow Smt. Harnam Kaur and daughter Balwinder Kaur to the extent of one-eighth share each.

36. The aforesaid revenue entries clearly establish that Mohinder Singh was the real brother of vendor Piara Singh and brother-in-law of vendor Smt. Harnam Kaur. The evidence on record further demonstrates that Mohinder Singh was actively participating in the negotiations and transactions with the defendants-vendees. PW-1 Smt. Swaran Kaur, in her testimony, admitted the involvement of Mohinder Singh in the sale transactions. This aspect has also been specifically noticed by the learned trial Court while deciding Civil Suit No.57 of 1991. The significance of this circumstance cannot be overlooked. Once Mohinder Singh himself was closely associated with the vendors and the transactions in favour of the defendants, he could not have independently asserted any superior right so as to defeat the agreement already executed in favour of the defendants. It is in this background that the decree dated 19.04.1990 assumes considerable importance.

37. The record reveals that instead of himself attempting to challenge the proposed transaction, Mohinder Singh suffered a decree in favour of his son Karnail Singh and daughter-in-law Smt. Swaran Kaur. It was only by virtue of the said decree that Smt. Swaran Kaur acquired status as a co-sharer in the joint Khewats and thereby became entitled to institute the present suits for pre-emption.

38. The timing of the decree, therefore, is extremely significant. The decree was suffered after execution of the agreement to sell dated 09.03.1990 and before the stipulated date for execution of the sale deeds. Such sequence of events, coupled with the close familial relationship amongst the parties, leaves little room for doubt that the decree was engineered with the sole object of cre-



ating a right of pre-emption in favour of the plaintiff so as to frustrate the contractual rights already accrued in favour of the defendants.

39. Another circumstance, which strengthens the plea of collusion is that the decree dated 19.04.1990 was never reflected in the revenue record. Had the decree genuinely represented a bona fide settlement of rights, the natural course would have been to get the same sanctioned and incorporated in the revenue entries. The absence of any such mutation or reflection in the revenue record lends considerable support to the contention of the defendants that the decree was merely a device created for purposes of litigation.

40. It also deserves notice that defendants Jagdish and others were not parties to the proceedings culminating in the decree dated 19.04.1990. Consequently, they had no occasion to contest the same or even to become aware of the arrangement allegedly entered into amongst the close family members of the vendors. Nevertheless, the effect of the decree directly prejudiced the rights of the defendants because it was only after obtaining status as a co-sharer through the said decree that the plaintiff instituted the present suits seeking to pre-empt both the sale transactions.

41. In the considered opinion of this Court, the learned trial Court in Civil Suit No.57 of 1991 rightly appreciated the aforesaid circumstances while holding the decree dated 19.04.1990 to be collusive in nature. The learned trial Court had rightly relied upon the Division Bench judgment of the Lahore High Court in ***Shanti Devi and ors. v. Firm Hira Lal Sheo Narain thr Shiv Karan Das and ors., AIR 1941 Lahore 402***, wherein it was held that when a third party seeks protection against the effect of a collusive judgment, such party is entitled to contend that the decree should be treated as void insofar as his rights are concerned, even though it may remain binding inter se the parties to the decree. The Division Bench further observed that in cases involving allegations of collusion, direct evidence of conspiracy is seldom available. A party alleging collusion is not expected to establish that he had overheard the parties conspiring



together or had access to the details of the arrangement. It is sufficient if the surrounding circumstances clearly demonstrate that the natural and inevitable effect of the arrangement was to defeat the legitimate rights of another person and no plausible explanation for such arrangement is forthcoming.

42. The aforesaid principle squarely applies to the facts of the present case. Here, the necessary and inevitable consequence of the decree dated 19.04.1990 was to create co-sharership rights in favour of Smt. Swaran Kaur after execution of the agreement to sell and thereby enable institution of suits for pre-emption against the defendants. No independent or bona fide reason for suffering such decree has been brought on record.

43. Similar principles were reiterated in ***Sewa Singh v. Smt. Chalti and ors., 1988 SLJ 327***, wherein it was held that where surrounding circumstances unmistakably point towards a deliberate attempt to defeat pre-existing rights of a third party, the Court would be justified in drawing an inference of collusion.

44. Applying the aforesaid principles to the facts of the present case, this Court is satisfied that the decree dated 19.04.1990 was not a bona fide adjudication of rights but a collusive arrangement intentionally brought about to defeat the contractual and proprietary interests already created in favour of the defendants-vendees.

45. Having examined the entire matter in the aforesaid perspective, this Court is of the considered opinion that the decree dated 19.04.1990, on the basis whereof Smt. Swaran Kaur claims to have acquired co-sharership rights in the joint Khewats, was not a bona fide transaction intended to recognize any genuine pre-existing right. Rather, the surrounding circumstances unmistakably indicate that the sole object behind suffering the said decree was to create an artificial foundation for instituting suits for pre-emption and thereby defeat the prior contractual rights already created in favour of defendants Jagdish and others through the agreement to sell dated 09.03.1990.



46. The chronology of events assumes great significance. The agreement to sell in favour of the defendants had already come into existence and substantial rights had accrued thereunder. It was only thereafter that Mohinder Singh, who was closely related to both the vendors and the plaintiff, suffered the decree in favour of his son Karnail Singh and daughter-in-law Smt. Swaran Kaur. The timing of the decree, the close familial relationship amongst all concerned, the absence of any reflection of the decree in the revenue record, and the subsequent institution of the present suits for pre-emption immediately after the sale transactions, collectively leave no manner of doubt that the decree was a calculated device intended to defeat the rights of the vendees.

47. In the opinion of this Court, a person who acquires the status of co-sharer through such a collusive arrangement cannot be permitted to invoke the equitable jurisdiction relating to pre-emption so as to unsettle a prior lawful transaction.

48. Apart from the aforesaid aspect, there exists another serious legal infirmity in the plaintiff's case. Under Section 19 of the Punjab Pre-emption Act, a co-sharer becomes entitled to exercise the right of pre-emption only where the intended sale has taken place without notice to such co-sharer. Conversely, where notice of the intended sale has been duly given, the right is required to be exercised within the prescribed period. Thus, the question whether the pre-emptor had notice or knowledge of the transaction assumes considerable importance in adjudication of a suit for pre-emption.

49. In the present case, the specific plea raised by the plaintiff in both the suits was that she had neither any notice nor knowledge of the intended sales. This assertion was specifically denied by the defendants in their written statements. Once such a factual controversy arose, the burden squarely lay upon the plaintiff to establish that the mandatory requirements contemplated under Sections 19 to 21 of the Act had not been complied with.



50. However, despite having raised such plea, the plaintiff neither impleaded the vendors namely Smt. Harnam Kaur and Piara Singh as parties to the respective suits nor chose to examine either of them as witnesses, even though both of them were closely related to her. Significantly, the vendors were the most material witnesses on the issue whether notice regarding the intended sale had or had not been given to the plaintiff. Even Karnail Singh, husband of the plaintiff, who appeared as PW-2, did not specifically depose that the plaintiff had no knowledge of the sale transactions or that no notice had been given to her.

51.1 In these circumstances, non-impleadment of the vendors cannot be treated as a mere technical defect. Rather, it goes to the very root of the matter. The Hon'ble Supreme Court in ***Jhabbar Singh (deceased) through LRs and others v. Jagtar Singh, 2023 (14) SCC 199***, while relying upon ***U.P. Awas Evam Vikas Parishad v. Gyan Devi (dead) by LRs, AIR 1995 SC 724***, drew a distinction between a "necessary party" and a "proper party" and observed that where a suit for pre-emption is founded upon alleged non-compliance with statutory notice requirements, the presence of the vendor becomes highly desirable, if not altogether necessary, for complete and effective adjudication of the dispute.

51.2. The Hon'ble Supreme Court observed as under:-

"As held by this Court in ***U.P. Awas Evam Vikas Parishad v. Gyan Devi (dead) by LRs 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 alleging that the mandatory provisions contained in Section 19 were not complied with by the owner or seller, his presence as party defendant was desirable along with the other defendants to effectively and finally decide the disputes between the parties."



52. The aforesaid principle has also been followed by this Court in ***Ram Singh and ors. v. Hari Singh and anr. (RSA No.1273 of 1993 decided on 20.12.2024).***

53. Thus, although Order I Rule 9 CPC provides that no suit shall ordinarily fail on account of misjoinder or non-joinder of parties, yet the Court is under an obligation to ensure that all persons whose presence is necessary for complete and effective adjudication are before the Court.

54. In the peculiar facts of the present case, where the plaintiff's alleged co-sharership itself arises from a suspicious decree; absence of notice is specifically pleaded; such plea is specifically denied by the defendants; the vendors are close relatives of the plaintiff; and the vendors alone were the best persons to depose regarding compliance or non-compliance of statutory notice, their non-impleadment assumes substantial significance and materially affects the maintainability of the suits.

55. It is also important to keep in mind the settled legal principle that the right of pre-emption is a very weak right and can be defeated by all lawful and legitimate means. As far back as in ***Bishan Singh and others v. Khazan Singh and another, AIR 1958 SC 838***, the Hon'ble Supreme Court explained the nature of the right of pre-emption and held that such right is merely a right of substitution enabling the pre-emptor to step into the shoes of the vendee. The Court further held that preference being the essence of the right, the pre-emptor must establish a superior right and that the right itself, being weak in nature, can be defeated by all legitimate methods.

56. The aforesaid principle has consistently been reiterated by the Hon'ble Supreme Court in ***Barasat Eye Hospital and ors. v. Kaustabh Mondal, (2019) 19 SCC 767; Raghunath (deceased) by LRs v. Radha Mohan (deceased) thr LRs and ors., (2021) 12 SCC 501; and subsequently in Jhabbar Singh (deceased) thr LRs and ors. v. Jagtar Singh, (supra).***



57. Applying the aforesaid principles to the present case, this Court is unable to hold that the plaintiff possessed any legally enforceable superior right of pre-emption.

58. Even assuming for the sake of argument that the plaintiff had acquired co-sharership rights by virtue of the decree dated 19.04.1990, the same being a collusive arrangement intended to defeat the rights of the defendants, cannot form a legitimate foundation for enforcement of the weak right of pre-emption. Furthermore, the suits themselves suffer from a serious defect owing to non-impleadment of the vendors despite the central issue regarding notice under Section 19 of the Act.

59. Consequently, this Court has no hesitation in holding that the plaintiff is not entitled to seek pre-emption of the impugned sale deeds and that both the suits were liable to be dismissed.

60. Insofar as COCP Nos.1396 and 1397 of 2017 are concerned, the principal grievance raised by the petitioner is that despite the conditional permission granted by this Court vide order dated 14.07.2006 permitting alienation of the disputed property in favour of Shiv Shambhu Sharma, the respondents deliberately violated the conditions imposed therein and subsequently created third-party rights in the property. Allegations have also been levelled against the revenue authorities for allegedly facilitating subsequent transfers despite knowledge of the pendency of the appeals and the conditions imposed by this Court.

61. This Court has duly considered the allegations raised in the contempt petitions as well as the material placed on record by the petitioner.

62. There can be no dispute with the settled proposition that orders passed by a Court are required to be obeyed in their letter and spirit and that any deliberate or willful disobedience thereof may invite contempt jurisdiction. At the same time, it is equally well settled that contempt jurisdiction is essentially discretionary in nature and is intended primarily to uphold the majesty



and authority of the Court rather than to adjudicate disputed civil rights between parties.

63. In the present case, the alleged acts constituting contempt arise out of interim orders passed during pendency of the Regular Second Appeals. However, by virtue of the findings recorded hereinabove, this Court has already concluded that the plaintiff herself was not entitled to seek pre-emption of the impugned sale transactions and that both the suits instituted by her were liable to be dismissed.

64. Once the substantive rights asserted by the plaintiff themselves fail, no enforceable equitable claim survives in her favour on the strength of the interim protection granted during pendency of the proceedings. The alleged subsequent alienations or creation of third-party rights may, at best, give rise to questions concerning the validity or legal effect of such transfers inter se the parties concerned, but the same would not justify continuation of contempt proceedings in the peculiar facts and circumstances of the present case.

65. This Court is also of the considered opinion that the allegations levelled against the revenue authorities involve disputed factual issues relating to revenue entries and subsequent transactions, which cannot appropriately be adjudicated in exercise of contempt jurisdiction.

66. Consequently, no sufficient ground is made out for proceeding further in COCP Nos.1396 and 1397 of 2017 or for initiating contempt action against the respondents or the revenue officials sought to be impleaded.

67. As a necessary corollary, CM No.15441-CII of 2019 filed under Order I Rule 10 CPC seeking impleadment of Saroop Singh, Halqa Patwari, Ellenabad, Sanjay Choudhary, Tehsildar, and Rajendra Verma, Tehsildar, as parties to the contempt proceedings also does not survive for consideration and is accordingly dismissed.



68. CM No.15440-CII of 2019 seeking permission to place additional documents on record is allowed and the documents annexed therewith are taken on record, subject to all just exceptions.

69. In view of the entire discussion made hereinabove, RSA Nos.598 and 599 of 1995 filed by Smt. Swaran Kaur are dismissed, whereas RSA Nos.741 and 742 of 1995 filed by Jagdish and others are allowed. The judgments and decrees passed by the learned first Appellate Court decreeing the suits for pre-emption are hereby set aside and, consequently, both the suits instituted by Smt. Swaran Kaur stand dismissed.

70. COCP Nos.1396 and 1397 of 2017 are also dismissed. All pending miscellaneous applications, if any, shall stand disposed of. Parties are left to bear their own costs. Ordered accordingly.

(DEEPAK GUPTA)
JUDGE

15.05.2026
Neetika Tuteja

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No

Uploaded on.: 15.05.2026