

1[The Punjab] Pre-emption Act, 1913

(Punjab Act 1 of 1913)

[14th March, 1913]

No.	Year	Short title	Whether repealed or otherwise affected by legislation
1	1913	The Punjab Pre-emption Act, 1913	<p>Amended by Punjab Act, II of 1928³</p> <p>Amended, Government of India (Adaptation of Indian Laws) Order, 1937.</p> <p>Amended by Punjab Act I of 1944.</p> <p>Amended by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948 (G.G.O.40).</p> <p>Amended by Adaptation of Laws Order, 1950.</p> <p>Amended by Adaptation of Laws (Third Amendment) Order, 1951³</p> <p>Extended to the territories which, immediately before the 1st November, 1956, were comprised in the State of Patiala and East Punjab States Union by Punjab Act No. 23 of 1957³</p> <p>Amended by Punjab Act 10 of 1960⁴</p>

1. For Statement of Objects and Reasons see Punjab Gazette; 1912, Part V, Page 189, from Report of the Select Committee. see *ibid.* 1912, Part V, Page 332, and for proceedings in council, see Punjab Gazette, 1912, Part.. V. Pages 215-17 and *ibid.* 1913, page 23.

. For Statement of Objects and Reasons, see Punjab Gazette, 1928, Part V, page 189, . It came- into force on 1st December, 1920, vide Punjab Government notification No. 5489, dated 16th November, 1928.

3. For Statement of Objects and Reasons, see Punjab Gazette, (Extra. ordinary), 1957, page 689.

4. For Statement of Objects and Reasons, see. Punjab Gazette, (Extra ordinary), dated 27th June, 1959, page 993.

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1	1913	The Punjab Pre-emption Act, 1913	Amended by Punjab Act, I3 of 1964 ¹ Haryana Adaptation of Laws State and Concurrent States Order, 1968. ²

An Act to amend the Law relating to pre-emption

In the ³[Haryana]

Whereas it is expedient to amend the law relating to pre-emption in ³[Haryana].

It is hereby enacted as follows:-

Statement of objects and reasons.-“The experience gained since the passing of the Punjab Pre-emption Act of 1905 has shown that several alterations and amendment are necessary.

In the Punjab the law of pre-emption must march hand in hand with the law governing the alienation of land. And although the proposal to amend the Act of 1905 originated in the necessity for removing certain ambiguities and defects of drafting and for rendering more precise the application of section 8, one of the main changes now introduced to wit the change in section 14, is designed to bring the law of pre-emption more closely into line with the Land Alienation Act. The statutory agriculturist has disappeared from the later Act, and it is felt that the only differentiating restrictions now required are in respect of agricultural land sold by a member of an agricultural tribe, and in respect of such land the right of pre-emption has been limited to persons who are members of an agricultural tribe in the same group as the vendor. For all other lands the membership of an agricultural tribe in itself creates no preferential right .

Another main change is in section 8. In the Act of 1905 section 8 (2) was introduced mainly to protect from pre-emption land required for commercial and industrial purposes, but in its present form it has been found inadequate to accomplish this object without the issue of separate Notification by the Local Government in the case of each plot concerned. It has there-fore, been amplified so as to allow a general Notification exempting all

1. For Statement of Object and Reasons, see *Punjab Gazette*,(Extra-ordinary). 1964, page 680.
2. For Statement of Object and Reasons, see *Punjab Gazette*,(Extra-ordinary). Dated 29th October, 1968.
3. Substituted for the word “Punjab” by the Haryana Adaptation of Laws Order. 1968.

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agricultural land sold in good faith for industrial, commercial or residential objects.

The other changes are mainly concerned with alterations in drafting and the removal of ambiguities.” (Punjab Gazette, 1912, Part V, page 332.)

It is a right of substitution and not of e-purchase. The pre-emptor takes the entire bargain and steps in the shoes of the original vendee. It is a right to acquire the whole of the property sold and not a share of the property sold. Preference being the essence of the right, the pre-emptor must have a superior right to that of the vendee or the person substituted in his place. The right being a very weak one, it can be defeated by all legitimate methods such as the vendee allowing the claimant of a superior of equal right being substituted in his place. *Bishan sing v. Khazan Singh*. AIR 1958n SC 838=ILR 1958 Punj 2225.

As the right of pre-emption is a right of substitution it cannot be said that successful pre-emptor is a representative of, or claims under, the original vendee. He cannot thus be bound by a decree against the vendee. *Sharif Hussain v. Nur Shah* AIR 1929 Lah. 589.

The right of pre-emption is a right of substitution. A pre-emptor has the right to be substituted for the vendee, subject to all the rights and liabilities created by the terms of the sale-deed. *Chedda Ali v. Basdeo Sahai*. 14.I.C.266.

Right of pre-emption.- Right of substitution- The right of pre-emption is a sort of clog on the transfer of immovable property. The pre-emptor has a right to be substituted for original vendee and a right, as it were, to insist that the transfer should be made to him and not to the person who originally purchased the [property. **Jet Ram v Molar**. AIR 1945 Lah. 104=PLR 35.

Right of pre-emption is indivisible.- Sale made to three persons and the share of each is specified in the sale-deed itself, the transaction of sale is indivisible inspite the fact that the fractional share of each of the purchasers is specified in the deed. The specification is merely an arrangement between the purchasers inter se and does not affect the oneness of the transaction so far as he vendor is concerned. *Hayat Baksh v. Mansabdar Khan*. AIR 1935 Lah 529=ILR 16 Lah. 921.

Exercise of right of pre-emption.- In the case of a suit such right is deemed to have been exercised only when the price has been paid by the pre-emptor into the court in compliance with the terms of the decree passed by the court. *Mohd. Sadiq v. Ghasi Ram*. AIR 1946 Lah 322.

Pre-emption is not a right of re-purchase.- The right of pre-emption is not equal to a right of re-purchase. It is no more than a right of substitution in place of the vendee which puts him in his shoes. It does not make him a transferee from the vendee. A pre-emptor who succeeds in his suit stands distinctly differently from a purchaser of the vendee's right out of court in which case there is a regular sale and execution of deed of conveyance,. *Bishan Singh v. Khazan Singh*. AIR 1954 Pepsu 59=ILR 1953 Pepsu 401.

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The right of pre-emption is not a right of re-purchase either from the vendor or the vendee in the original sale. The pre-emptor is not only entitled to but is bound to take over the bargain in its entirety. *Mohammad Shah v. Allah Din*. AIR 1934 Lah. 42=35 PLR 513=153=153 I.C.128.

The right of pre-emption is not a right of repurchase either from the vendor or from the vendee, involving any new contract of sale. It is simply right of substitution. By reason of legal incident to which the sale itself was subject pre-emptor stands in the shoes of the vendee in respect of all rights and obligations arising from the sale under which he has derived his title. It is in effect as if in a sale deed the vendee's name were rubbed out and the name of the pre-emptor inserted in its place. *Lal v. Milkhi*. AIR 1918 Lah 240.

Interpretation.- Since the law of pre-emption is not founded on any equitable considerations the court had to ascertain the meaning of the statute. *Jhanda c. Dharam Dass*. 71 PLR D 91.

The law of pre-emption is a practical law and, as repeatedly held, it has to be strictly construed and if two interpretations are possible, the one, which restricts its operation, is to be preferred rather than the interpretations which widens its operation. (*Surjan Singh v. Harcharan Singh*. AIR 1968 Punj 137= 1967 PLR 325=1967 Cur. LJ 275.

Interpretation of the Act.- It is now well settled that the law of pre-emption is an aggressive right. It operates as a clog on the rights of the owner to sell his property to a person of his choice. It must, therefore, be strictly construed. There is no question or any hardship or any occasion of equitable consideration in favour of the pre-emptor in construing the law of pre-emption Prima facie any restriction on a citizen's right to dispose of his property is unconstitutional; and can be upheld only on the ground of reasonable restriction as contained in Article 19 of the Constitution. Therefore such restrictions must not be interpreted more widely than the circumstances and object of the legislature justify. *Mota Singh v. Prem Prakash Kaur*. ILR (1962) 2 Punj 614.

The right of pre-emption is fatal on the right to hold the property and as such it must be strictly construed *Chandrup Singh and another v. Data Ram and others*, 1983 Land Laws Reporter 341.

The right of pre-emption being piratical in nature must be strictly construed so as not to confer in any person a right of pre-emption which is otherwise destructive of the fundamental right of property which has not been conferred specifically on the intended pre-emptor by the legislature. *Jai Singh v. Mughta* 1967 PLR 475.

Liability to pay registration charges.- Decree for pre-emption passed. The amount spent on registration charges and stamp duty has to be paid to the vendees. *Smt. Viran Bai v. Smt. Natrho etc.* 1980 Land Laws Reporter 48.

Suit for possession.- Sale deed executed on 1st December, 1975 but got registered on 4th December, 1975. Part possession delivered on 1st December 1975, before the execution of sale deed- Suit has to be filed within one year from the date of the execution and not of date of registration. (*Sardar Singh v. Smt. Dalip Kaur & others*).

1981 land Law Reporter 574).

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Suit for pre-emption.-Real owner applying for being impleaded as defendant-Benami sale-section 281-A of Income Tax-Not a bar to the impleading of real owner as a party in the pre-emption suit. 1979 RLR127.

Pre-emption suit by tenant:-Dath of tenant- The legal representatives of a tenant pre-emptor can be impleaded as parties to the appeal. Joginder Singh v. Smt. Kartar Kaur. 1970 Cur. LJ 436.

Pre-emption decree- Decretal amount deposited.- The onus of proving that there was no mistake on her part but it was a mistake committed by an official of the court was upon the appellant herself. She did not even have the courage to go into the witness-box to disclose how the mistake occurred, and there is nothing on the record to support her contention that in making the short deposit she was misled by any order of the court or any of its officials. Smt. Ghammo v. Chahat. 1969 Cur. LJ 779.

Limitation.- The period of limitation against father for this suit is governed by article 113 of the Limitation Act and the plaintiffs had three years period of limitation against him. (Moman Ram v. Hanuman. 75 PLR 889=1973 Rev. LR 694=1973 PLJ 730.

Death of pre-emptor.- When the pre-emptor dies during the pendency of a suit for pre-emption, his sons can continue the same only if they have independent right of pre-emption. They cannot continue the suit if they did not have an independent right to pre-empt. Mohinder Singh v. Mohinder Kaur. 68 PLR 839=1966 Cur. LJ 91.

Suit for improvement of the status of donee.- It is now well settled that it is open to the donees, by any legitimate method to improve his status and make it equivalent to or better than the likely pre-emptors. Mohinder Singh v. Jiwa Singh. 71 PLR 400.

Collusive suit for pre-emption.- It is for the vendors to establish that the plaintiff's suit was collusive. Unless the contrary was clearly established it was presumed that the plaintiff was suing for his own benefit. The onus lay very heavily on the vendees to establish that the suit had been instituted for the vendors benefit. The mere fact that the plaintiff was a minor and the son of one of the vendors did not show that the suit was for the benefit of the vendors. Sukhnanda Singh v. Jamiat Singh. 70 PLR 253 Punj.

Existence of right of possession on the date of sale.- It is a settled rule that in order to succeed the pre-emptor must possess the right of pre-emption at the date of sale, at the date of the suit and at the date of decree. Prabh Dayal v. Jhabar Dass. 68 PLR (S.N.) 26.

Right of pre-emption –Waiver.- It was not necessary for the vendor's son to serve any notice on his father or the prospective buyer not to sell or purchase the property. This statutory right has gained such notoriety that all intending buyers can be taken to have constructive notice of its existence in States in which the Punjab Pre-emption Act, 1913 is in force. Madho Singh v. Mukhtiar Singh. 74 PLR 216.

Right of pre-emption –Whether personal- It is not correct to say that the right of pre-emption is a personal right on the part of the pre-emptor to get the retransfer of the property from the vendee who has already become the owner of the same. It is true that the right of pre-emption becomes enforceable only when there is a sale but the right exists antecedently to the sale, foundation of the right being the avoidance of the inconveniences and disturbances which would arise from the introduction of a stranger into the land. The correct legal position is that the statutory law of pre-emption imposes a limitation or disability upon the ownership of a property to the extent that it restricts the owner's right of sale and compels him to sell the property to the person entitled to pre-emption under the statute. In other words, the statutory right of pre-emption though not amounting to an interest in the land is a right which attaches to the land which can be enforced against a purchaser by the person entitled to pre-empt. *Hazari v. Neki (dead)*. 70 PLR 823=AIR 1968 SC 1205=1968 Cur. LJ 703.

Pre-emptor steps in the shoes of vendee.- No doubt a pre-emptor stands in the shoes of the vendee and is bound by all the conditions and obligations by which the vendee is bound. However these conditions and obligations must be found in the deed of sale and cannot be looked for any subsequent document which does not create any interest in the land sold. *Ali Baksh V. Ghulam Muhammad*. AIR 1924 Lah 221.

Right to sue. – The rights of persons to bring a suit for pre-emption are governed entirely by the Pre-emption Act and not by any question of Hindu law. *Quadi Baksh v. Unjagar Singh*. 153 IC 398=AIR 1934 Pesh 103.

This right constitutes an invasion of the principle of free contract and the party who comes into court must be careful to comply strictly with the requirements of law. A pre-emptor must establish his right to the property because the right is of a piratical nature. It is not necessary for the vendee to prove this case equally convincingly. *Kamu v. Ganda Ram*. AIR 1947 Lah 352=1947 PLR 74.

Retrospect effect of Act.- The Act is not retrospective in nature. It applies to the sales effected after the enforcement of the Act during the pendency of the suit. *Ram Singh v. Jit Ram*. AIR 1984 H.P. 20.

Resale.- A claim to pre-emption cannot be defeated by resale of the property to the original vendor even though the resale takes place before the institution of the suit for pre-emption. *Imami v. Allah Diya*. AIR 1918 Lah 220 (2).

Pre-emption Act not ultra vires the Constitution.- Article 31 (5) of the Constitution is very wide in its scope and nothing in clause (2) provided expressly or impliedly can affect the provisions of any existing law. The Punjab Pre-emption Act does not fall under clause (6) of Article 31 and as such is an existing law within the meaning of clause (5) and, therefore, the Act does not offend the provisions of clause (2) of Article 31 of the Constitution. *Bhag Singh v. Kartara*. AIR 1954 Pepsu 180=ILR 1954 Pepsu 545.

CHAPTER I

Preliminary

1. Short title and local extent.-(1) This Act may be called the Punjab Pre-emption Act, 1913.

(2) It extends to 1[Haryana].

2. Repeal of certain enactments.- (1) The Punjab Pre-emption Act, 1905, is hereby repealed.

(2) Nothing in this Act shall effect the provisions of Order 21, rule 88, of the Code of Civil Procedure 1908 (V of 1908) or sections 53 and 54 of the Punjab Tenancy Act, 1887 (XVI of 1887).

(3) Notwithstanding anything to the contrary in section 4 of the Punjab General Clauses Act, 1898, the Courts shall in all suits, appeals and proceedings pending at the commencement of this Act give effect, so far as may be, to the procedure prescribed by this Act.

3. Definitions.- In this Act, unless a different intention appears from the subject or context,-

- (1) 'agricultural land' shall mean land as defined in ²Punjab Alienation of Land Act, 1900 (XIII of 1900) (as amended by Act, 1 of 1907), but shall not include the rights of a mortgage, whether usufructuary or not in such land :
- (2) 'village immoveable property' shall mean immoveable property within the limits of a village, other than agricultural land :
- (3) 'urban immovable property' shall mean immoveable property within the limits of town, other than agricultural land. For the purposes of this Act a specified place shall be deemed to be a town (a)

1. Substituted for the words by "Punjab" Haryana Adaptation of Laws Order, 1968.

2. Repealed by the Adaptation of Laws (Third Amendment), Order, 1951.

if so declared by the [State] Government by notification in the Official Gazette or (b) if so found by the Courts;

- (4) 'member of an agricultural tribe' 'and group of agricultural tribes' shall have the meanings assigned to them, respectively, under the ²Punjab Alienation of Land Act, 1900 [XII of 1900];
- (5) Sale shall not include-
 - (c) a sale in execution of a decree for money or of an order of a Civil, Criminal or Revenue Court or of a Revenue Officer;
 - (c) the creation of a occupancy tenancy by a land-lord, whether for consideration or otherwise;
 - (c) any expression which is defined by section 3 of the Punjab Land Revenue Act, 1887 (XVII of 1887) shall, subject to the provisions of this Act, have the meaning assigned to it in the said section.

CASE LAW

Meaning of Agricultural Land.- The expression 'agricultural land' has not been defined in the Act. For the purpose of this Act, agricultural land has the same meaning as defined in the Punjab Alienation of Land Act, 1900 except the rights of mortgagee. S. 2(3) of the Punjab Alienation of Land Act defines 'land' as under :

“S. 2(3)

The expression 'land' means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture and includes-

- (a) the sites of buildings or other structures on such land ;
- (b) a share in the profits of an estate or holding ;
- (c) any dues or any fixed percentage of the land revenue payable by an inferior land-owner to a superior land-owner ;
- (d) a right to receive rent ;
- (e) any right to water enjoyed by the owner or occupier of land as such;

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1. Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.
 2. Repealed by the Adaptation of Laws (Third Amendment) Order, 1951.

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- (f) any right of occupancy ; and
- (g) all trees standing on such land”.

Evidence showing that land was actually let to a tenant for agricultural purposes, it was held that it was fully covered by the definition of ‘agricultural land’. The circumstance that it was not actually under cultivation does not negative the fact that it had been let to him for cultivation for there could have been no sense in making a statement to have the revenue authorities that the tenant was to pay one-third batai. *Madan Lal v. Dhan Raj*. 1964 Cur. LJ 343.

In determining whether the land which is the subject matter of a pre-emption suit is whether an agricultural land or not its nature as on the date of the sale is to be seen. Where the property had been entirely diverted from its original agricultural use to the use of a battha (klin), the land ceased to agricultural land. (*Balwant Singh v. Dato Ram*. 1959 PLR 716).

Originally agricultural land which was purchased by ‘A’. Later on the purchaser built a small hut for his own residence on a small portion of the land and planted a fruit garden on the rest of the land. After some years ‘A’ sold the land to ‘B’. He never used the hut for his residential purposes and used the land for the purposes of fruit cultivation of vegetable and fodder, it was held that the primary use to which the land was being put was agricultural. *Jaimal Din v. Mohammad Aslam*. AIR 1948 Lah. 107.

Land lying waste and not used for any specific purpose. It is proved that such land is used for grazing purposes or that the grass grown on it has been regularly cut and sold for profit, it was held that such a land is not agricultural land within the meaning of the definition as given in section 3(1) of the act. *Hardit Singh v. Mohinder Singh*. AIR 1937 Lah. 755.

Agricultural land. –Definition of the expression “agricultural land”, as given in the Act, does not exclude land which is subject to mortgage. There is nothing in the scheme of the Act to indicate that the sale of agricultural land which is subject to mortgage is exempt from the right of pre-emption, or that it ceases to be agricultural land. (*Gurbachan Singh v. Bhag Singh*. 74 PLR 836=1972 Cur. LJ 685).

What is not agricultural land :

Rights of the mortgagee specifically excluded by section 3(1) of the Punjab Pre-emption Act.

Water rights sold independantly of land. (199 I.C. 329).

When land has not been used for the purpose or agriculture for more than six years preceding the sale it is not agricultural land. (AIR 1924 Lah. 657).

Waste land used for no specific purpose though some grass is grown thereon. (AIR 1937 Lah 755=40 PLR 500).

Small track of land situated in an industrial area and recorded as banjor qadim though bajra kharaba was grown on it occasionally when sold for a building . ILR (1963) 2 Pb. 52.

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Agricultural land converted into working brick kiln for over a year before the date of sale. 61 PLR 869.

Village immovable property : - A bare perusal of the the definition of the village immovable property makes it clear that any land situated within the limits of a village which is not an agricultural land, is to be considered village immovable property. The words within the limits of a village” are not synonymous to the expression “within the abadi deh”. (Asa Nand v. Swantantar Paul Singh. Punj 72 PLR 922 =ILR 9(1972) 2 Punj 151.

Village Immovable Property :

Expression ‘village’ has not defined in the Act. In common parlance it connotes as areas occupied by a body of men mainly dependent on agriculture or on occupations subservient thereto. Village has been defined in the Punjab Gram Panchayat Act, 1952, as follows :

“Village” means any local area, recorded as a revenue estate in the revenue records of the district in which it is situated”.

Expression Immovable Property has also not been defined in the Act. This term has been defined in the Punjab General Clauses Act, 1898.

For the purpose of the Punjab Pre-emption Act, Immovable Property would therefore, mean, immovable property as defined in the Punjab General Clauses Act excluding agricultural land in a village.

Small pieces of land situated in industrial area and sold for purposes of construction of factories are not agricultural land for the purposes of the operation of the law of pre-emption though described as *banjar qadim* and though bajra kharaba is grown on it occasionally. They do not form villages immovable property. Vir Vikram Prakash v. Chitru Jal Singh. ILR (1963) 2 Punj 52.

Muqurrirdari rights in a factory. (AIR 1944 Lah. 181 FB.)

Decree - Where an appeal by the pre-emptor is dismissed having been preferred beyond limitation, the decree so passed is not a decree within the meaning and scope of section 3 of the Punjab Pre-emption (Repeal) Act. In such a case the Court declines to entertain the appeal and decide it on merits ; the passing of such a decree is not barred under Section 3 of the said Act. Vashno dass v. Diwan Chand. 1974 Rev. LR 177 = 1974 PLJ 69.

Perpetual lease holds rights – Sale of – Sale not to receive rent – Purchaser of lease hold right not only to receive rent – Not covered by the definition of land – Cannot be pre-empted. Taro v. Smt Shanti Bai. 1978 PLJ 353.

Town – In deciding whether a place is town or not the fact that a place has been described in a Census Report is of very great importance. Allah Bakhsh v. Topan Ram. AIR 1920 Lah. 113.

The question whether a particular place is a town for the purposes of Punjab Pre-emption Act, 1913, is a question of fact and cannot be raised in second appeal. Diwan chand v. Nizam din. AIR 1923, Lah. 443.

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A notification issued by the State Govt. - under Section 3 (3) of Act only implies that the a particular place is a town for the purpose of pre-emption Act, it does not mean that the custom prevails in that town. It has to be independently established. *Kishan Chand v. Nand Lal*. 39 PLR 881=AIR 1938 Lah. 64.

Sale. - Expression 'sale' has not been defined in the Act. Term sale as defined in the Transfer of Property Act reads as follows:

"S. 54,

"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

For the purposes of this Act,- section 3 (5) has restricted the meaning of sale by excluding certain categories of transactions from the purview of 'sale' The main characteristics of sale is permanent transfer for consideration. (6 PLR 1924).

A transaction in which ownership is not transferred is not a sale. (130 PR of 1870).

Property taken under an indemnity clause is not a sale within the meaning of clause 5 of section 3 of the Punjab Pre-emption Act. There is no right of pre-emption in such a case. *Chanan Singh v. Khem Singh*. AIR 1952 Punj. ,297.

Sale in Execution of a decree.-Cannot be interpreted in the narrow technical sense as used in C.P.C. It simply means 'in obedience to.' in 'compliance with' or 'in accordance with'. *Mithan Lal v. Chuni Lal*. 50 PLR 126=AIR 1949 EP 22.

Property taken under indemnity clause is not a sale within the meaning of sec3(5) of the Punjab Pre-emption Act, 1913. There is no. right of pre-emption in such a case. *Chanan Singh v. Khem Singh*: AIR 1952 Punj. 297.

A suit by the son to avoid an alienation of land and for possession was compromised The compromise was that the suit for possession would be decreed if a certain sum was paid. If the amount was not paid within two months, the suit would be dismissed. The plaintiffs filed a suit for pre-emption. It was held that the suit in which the compromise was arrived at was a suit to avoid an alienation and not a suit based on contract for transfer of property. The right claimed by the plaintiffs in the suit which was recognised by the compromise was not a right of re-conveyance but it was a right to avoid an unauthorised transfer and the nature of the compromise was such that it could not be held to be a sale. *Amar Singh v. Om Parkash*.] 961 PLR 345.

The right of pre-emption can be enforced without the intervention of the Court. Thus where a vendee, in recognition of the pre-emptor's right, convey his bargain to the pre-emptor he is not really effecting a fresh sale but is merely substituting the pre-emptor for himself. Such a resale or re-conveyance does not give rise to pre-emption. *Fazl Mohd. v. Mohd. Ismail*. AIR 1924 Lah. 651.

A transaction cannot be considered to be a sale for the purposes of the Pre-emption Act unless the consideration for it consists mainly, if not wholly, of cash. When the real consideration for a transaction is services rendered, the transaction cannot be considered a sale. *Ali Akbar Singh v. Ghogar Shah*. AIR 1930 Lah. 141=120IC 688=1934,PLR338

CHAPTER II

General Provisions

4. Right of pre-emption application of-The right of pre-emption shall mean the right of a person to acquire agricultural land or village immoveable property or urban immoveable property in preference to other persons, "and it arises in respect of such land only in the case of sales and in respect of such property only in the case of -sales or of foreclosures of the right to redeem such property.

Nothing in this section shall prevent a Court from holding that an alienation purporting to be other than a sale is in effect a sale.

CASE LAW

Partial Pre-emption.-Suit filed for the pre-emption of agricultural land. Plaintiff failing to mention in the plaint right of water and *khal*. His failure to include this right in the plaint will not result in' partial pre-emption. *Jai Singh v. Mohinder Singh*. 74 PLR 499=1971 Rev. LR 510=1971 PLJ 612.

In a suit for pre-emption, plaintiff failed to mention in the plaint a small portion of the property sold. Suit whether for partial redemption. *Banta Singh v. Smt. Harbhajan Kaur*. 1969 PLR 862=1969 Cur. L.J. 707.

It is a well established principle of the law of pre-emption that a preemptor has the right to obtain possession of that part of the property sold by a third person to which his right of pre-emption extends, on payment of the proportionate price. *Sarwan Singh v. Tarsem Lal*. AIR 1972 Pb. 315. =1972 Cur. LJ 931 = 1972 Rev. LR 97.

Omission to pre-empt sale of rights in canal water and tube-well water. Claim can be made by amending the suit as these rights are appurtenant to the land and are automatically pre-empted. *Butta Singh v. Gurmukh Singh and others*. 1979 Land Laws Reporter 259

Whether pre-emptor can Sue for pre-emption of part of property on payment of entire .sale consideration? Substitution of pre-emptor for vendee in the pre-emption. No transfer of property. Right of pre-emption being right of substitution. Very basis of right destroyed if partial pre-emption is allowed. *Ganga Singh v. Narinjan Singh*. AIR 1972 Pb. 24= 1971 Cur. LJ 766.

Nature of right of pre-emption- The pre-emptive right is primary as ,well as secondary in nature. It is a primary right which exists before the sale and a secondary right which arises when the sale has been effected. *Uitam Singh v. Kartar-Singh*.' 55 PLR 500=AIR 1954 Punj. 55.

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Sale-Rights of subsequent vendee-If after the sale the vendees sold a portion of the land purchased by them to a third party within one year, and that party had no right of pre-emption. with the result that it was not in exercise of his right of pre-emption that the said transfer was made to him. then the subsequent vendee would have only such defences open to him in a suit for pre-emption. which were available to the vendees of the sale, which was being actually pre-empted. (*Brahm Singh v. Tatsem Singh*). 1972 PLJ 629.

- Sale which is invalid is not pre-emptible. Sale which is not capable of passing any interest to vendee. Vendee can raise the question of invalidity of sale in the suit for pre-emption. *Ajmer Singh v Mukhtiar Singh*. 74 PLR 1047=AIR 1973 Pb. 266=1972 Cur. LJ 957=1972 PLJ 596=1972 Rev. LR 665.

Lease deed.-Pre emptor must accept the sale with all conditions stipulated in the sale-deed to which the vendee has agreed. Sale the subject matter of registered lease deed executed a year before the sale-vendee accepting the sale subject to lease. Pre-emptor has to accept the sale as it is. Preemptor cannot contend that lease is a bogus transaction or that. it was never acted upon or was entered into with a view to defeat the right of pre-emption. *Tara Singh v. Smt. Giano and others*. 1983 Land Laws Reporter 87.

Lease. - Lease mentioned in the sale-deed challenged by the pre-emptor. Pre-emptor is not entitled to challenge the validity of the lease. *Tara Singh v. Sm! Giano* 1983 Land Laws Reporter 87.

Lease hold rights are not pre-emptible. *Santa Singh v. Basanta Singh*. AIR 1973 punj 30=1973 PLJ 140=1973 Rev LR 247.

Execution of decree.-Pre-emption decree. Decree holder making sale of the land. The subsequent vendees from the decree holder are entitled to execute the decree. *Zilu Singh and others v. Hazar; and others*. 1979 LLR 299.

Benefit of reclamation of land.- Vendee reclaiming the land after purchasing the same. Benefit is to go to vendee even where the reclamation was made upto date of appeal. *Sumair Chand v. Ismail and another*. 1983 Land .Laws Reporter 77.

Pre-emption suit.-Collusive or *benami*-Where Pre-emptor plaintiffs are minor sons of vendors. They have independent right of claiming possession of property sold by their father. Some body can make arrangement for spending upon litigation and can claim reimbursement of expenses. ~Right of pre-emption should not be lost to a minor because he has not money of his own with him. *Ram Lal v. Mehar Singh*. 1978 RLR 282= 1978 PLJ 99.

Court competent to determine the legal effect of a document whether a sale deed or an exchange deed. Valid sale is essential for the exercise of right of pre-emption. Property transferred in recognition of some other rights. Transfer in fact would be a right in nature of chose in action. Transferred property would not be amenable to a suit for pre. emption. 1979 RLR 236

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Right of Pre-emption.-Is a statutory right. It does not amount to an interest in the land. Right attached to the land can be enforced against a purchaser by the person entitled to pre-empt. Decree in a pre-emption suit is not a personal decree. Pre-emption can be assigned. 1979 RLR (SC) 407.

Right of pre-emption is a personal right.-The right of pre-emption is personal to the pre-emptor, because it is he alone who has the prior right of purchasing the property on the date of sale. This right is not transferable. The pre-emptor himself alone must exercise his right. If he acts *benami* then his suit must be dismissed on that ground. When it is said that a person files a suit *benami*, it means that he is not the real plaintiff and it is some body else who is using his name and if the suit either fails or is decreed, it will be the other person who will suffer or gain thereby. If the pre-emptor has no funds with him, he is entitled to borrow the same from any quarter and on any terms and fight out the litigation. If he either takes the financial assistance of somebody else or help in the day, today proceedings in the court, it could not be said that there was any legal prohibition in his doing so. Such a suit cannot be termed *benami* meriting dismissal. When a person either before or after the filing of the pre-emption suit, transfers his right in the property in favour of another person in that contingency, it would be held that he was acting *benami* for the transferee. (*Jagat Singh v. Jai Dev*). 1968 Cur. L.J. 126.

Plaint.-The right on which *the* pre-emption is claimed must be specifically stated in the plaint. It is nowhere required by the law of pre-emption that the meticulous description of the subject matter of pre-emption should be stated in the plaint. It matters not whether the subject matter is agricultural land or village immovable property. The only difference between the two is in regard to court-fee. (*Aziz Uddin v. Ram Chander*. 1970 PLR134)

Pre-emption suit on behalf of minor.-Where a next friend who was a stranger to the family, filed a pre-emption suit for his own benefit and not for the benefit of the minor, the suit deserved dismissal. *Hai Singh v. Surinder Kumar*. 1969 PLR 27 (S.N.)

Co-sharer.-Partition of land during pendency of pre-emption suit. Pre-emptor ceases to be co-sharer. He is not entitled to pre-empt. *Ramjas v. Smt. Hardevi*. 1973 PLJ 28-1. Pre-emption sought on the ground of being co-sharers Appeal pending against order of partition. Pre-emptor ceases to be co-sharers from the date of partition. They are not entitled to pre-empt being not co-sharers on the date of decree. *Hardevi v. Ramjas*. 1974 PLJ 345.

Suit for pre-emption.-Waiver-Pre-emptor giving up his right of preemption. It is for the vendee that the pre-emptor has waived his right of pre-emption. Court can not hold that waiver has been proved on general inferences. *Kundan Singh v. Arjan Singh*. 1971 PLJ 300=.AIR 1971 Punj 431.

Right of pre-emption- Waiver of.- Where there was an agreement of

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sale in favour of pre-emptor and land sold in two parcels to two different persons. Agreement of sale was cancelled on pre-emptor accepting damages" and refund of earnest money. It amounts to waiver of right of pre-emption. *Sadhu v. Smt. Piari*. 1971 PLJ 643.

Nature of transaction-Jurisdiction of court-A pre-emptor is not debarred that a transaction which, on the face of it is an exchange is in reality a sale. *Gu/Mohammad v. Sabz Ali Khan* 104 PR 1918.

Court is not prevented from holding that an alienation purporting to be other than a sale is in fact a sale. *Shea Nand v. Sunheri*. 1962 PLR 165.

The proposition that a transaction cannot be considered to be a sale for the purpose of the Pre-emption Act unless the consideration consist mainly, if not wholly, of cash, is not a correct proposition of law. It is a question If fact for the court to consider in each case whether or not there has been a sale and the nature of the consideration is only one of the several factors to be considered in arriving at that conclusion of fact.

Where there is evidence that no money was received from the alleged transferee but he had only to pay some subscription, it was held the transaction was a gift and not a sale. *Bakhshi Ram v. Dewat Ram*. AIR 1954 Punj 116.

5. No right of pre-emption in certain cases.-No right of pre-emption shall exist in respect of

- (a) the sale of or foreclosure of right to redeem
 - (i) a shop, serai or katra ;
 - ii) a dharamshala mosque or other similar building
or
- (b) the sale of agricultural land being waste land reclaimed by the vendee.

Explanation.-For the the purposes of this section the expression "waste land" means land recorded as *ban jar* of any kind in revenue records' and such *ghair mumkin* lands as are reclaimable.

CASE LAW

Pre-emption right-Stage at which can be defeated- As: amended by Act X of 1960, Section 31 is retrospective. Right of agricultural waste land can be defeated by the vendee by reclamation of land till date of passing of appellate decree. *Karnail Singh v. Josbir Singh*. AIR 1975 (P&H) 93_

1. Sections 5 and 6 substituted by Punjab Act 10 of 1960, section 2 and 3.

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Reclamation.-Of waste land-The reclamation of waste land meant to make it cultivable or fit for agricultural purposes and the constructions of house over it cannot amount. by any stretch of imagination to be the reclamation of the said land. *Asa Nand v. Swatantar Paul Singh*. 1970 Rev LR 621=ILR (1972) 2 Punj 151.

(Section 5 as extended to Delhi) Building whether a shop or a residential house? Where the ground floor of the building comprised of shops and the first floor was partly being used for commercial purposes and partly for residence; *it* was held that the building itself had the character of shops and the whole house will be exempt from pre-emption, in view of section 5 of the Act. *Mithan La/ v. Sultan Siugh*. ILR 1974 (2) Delhi 375.

Banjar land-Fall within the *ambit* of village immovable property. *Bachan Singh v. Smt. Ramel Kaur*. 1970 Rev LR 799=1970 PLJ 279. .

Section 5(b) creates a bar only if it is shown that the vendees had reclaimed the waste land. Where the Khasra Girdawaris continue to show the land to be “Banjar” the suit for pre-emption is not barred. *Banta singh v. phuman singh*. 1971 PLR 1042.

Section 5 (b) as amended by Punjab Act No. 10 of 1960 – Reclamation As up to the date of the suit there had been no cultivation for agricultural purpose on the land in suit, the pre-emption suit cannot be defeated on the ground that any waste land had been reclaimed that the word ‘reclaimed’ does not include land to be reclaimed. *Tek chand v. Sain Dass*. 1967 Cur. LJ 824.

Reclamation of land- In view of the provisions of section 31 of the Act the applicability of section 5 (b) of the Act has to be seen at the date of the ultimate decision of the case and not at the date of the institution of the suit. 'Under section 5 (b), no time limit is fixed up to which the waste land can be reclaimed by the vendee to defeat the suit of the pre-emptor Further section 5 (b) does not say that no right of pre-emption shall exist in respect of agricultural land being waste land if it is reclaimed by the vendee before the institution of the suit for pre-emption or till the date of decree passed by the trial court or by the appellate court The vendee, therefore, can defeat the suit of the pre-emptor by reclaiming the land even after the institution of the suit till the date of the decree passed by the trial court or by the appellate court. *Karnail Singh v. Jabir Singh*. 1974 PLR 482=AIR 1973 Punj 93=ILR (1974) 2 Punj 156= 1974 Rev LR 588.

6. Exists in agricultural land and village immoveable property. - A right of pre-emption shall exist in respect of village immovable property, and subject to the provisions of clause (b) of section 5, in respect of agricultural land, but every such right shall be subject to all the provisions and limitations in this Act contained

7. Exists under certain conditions in urban immoveable property. -Subject to the provisions of section 5 a right of pre-emption shall exist in respect of urban immoveable

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property in any town or sub-division of a town when custom of pre-emption is proved to have been in existence in such town or sub-division at the time of the commencement of this Act, and not otherwise.

CASE LAW

Pre-emption -- Custom--When in a pre-emption suit the existence of the custom of pre-emption in a particular locality is definitely in dispute, the court cannot refuse to frame an issue on that point merely on the ground that the custom of pre-emption in that locality was common knowledge- *Abdul Hakim v. Mohammad Ali Khan*. AIR 1942 Pesh 737.

A tenant claiming right of pre-emption to urban property must further prove the existence of custom as to pre-emption in the town or the subdivision of the town in which the property ought to be pre-empted is situated. *Shadi Lal v. Surinder Kumar*. AIR 1973 Punj 241=1972 PLJ 471

A custom of pre-emption must be presumed to exist in a town founded by the Moghuls. *Karim Ahmed v. Rahmat Ilahi*. AIR 1946 Lah 432=48 PLR 156.

Where tenant was in possession of property, it was not enough to claim right of pre-emption. He has to prove custom of pre-emption. *Smt. Chanan Devi v. Kundan Lat.* 1966 Cur. L.J. 222.

In order to prove his case the plaintiff has to show either that the custom prevailed generally in the town or in the particular sub-division where the property in dispute is situated. *Sat Pal Bhandari v. M ehar Singh*.

Where the custom of pre-emption prevailed in a particular town and the same town expands in the ordinary course of things, the custom of pre-emption would also be enforceable in the extended boundaries of the original town where the custom had prevailed. *Miran Baksh v. Mohammad Akram* AIR 1946 Lah 167=164 IC 610.

The question whether a certain place is a town for the purpose of the Punjab Pre-emption Act is a question of fact and cannot be raised in second appeal. *Dewan Chand v. Nizam Din*. AIR 1923 Lah 443.

Land purchased by Scheduled- Castes.- Land purchased by members of Scheduled Castes, cannot be pre-empted. *Parsana Ram and another v. Jeet Ram and others*. 1981 Land Laws Reporter 379

Sale in favor of a member of Scheduled Caste.-By virtue of the notification issued by the State Government under section 8 of the Punjab Pre-emption Act. in the Government Gazette, dated 16th February, 1962, no right of pre-emption exists with respect to sales of urban and village immovable property as well as agricultural land when purchased by any member of the Scheduled Castes mentioned in Part X of the Schedule to the Constitution (Scheduled Castes) Order, 1950. The list in Part X of the Schedule is exhaustive. These are the only castes, races or tribes or parts of or groups

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within. castes or tribes which are recognised as Scheduled Castes. No body

Is permitted to prove any evidence that his caste, though not mention in the relevant entry is a part of a group within the case mentioned in the said e ntry. A Chamarwa Brahaman does not figure in entry 0 of Part X of Schedule. A sale in his favor is not exempt fro, pre-emption. *Koju v. Kumbha Ram*. 70 PLR 198 = 1968 Cur LJ 196.

8. State Government may exclude areas from pre-emption – (1) Except as may otherwise be declared in the Government no right of pre-emption shall exist within any cantonment. (2) the [State] Government may declare by notification that in any local area or with respect to any land or property or class of land or property of with respect to any sale or class of sales no right of pre-emption or only such limited right as the [State] Government may specify, shall exist.

CASE LAW

Validity of- A notification issued III 1916 by the then provincial Government under section 8 (2) of .the said Act limiting the right of pre-emption in the District of Kangra did not contravene Article 14 of the Constitution It was also that the exercise of power of the applicability .of the provision of a statute does not amount to repealing a statute. *Bakhshi Ram v. Durga Dass.* ILR 1970 Delhi 21 '7.

The law of pre-emption is an exception to the ordinary law of the land by which any person is at liberty to purchase land. The prohibitions in the ere-emption Act provides an exception and give a preferential right of taking over sales against the wishes of the purchasers and in such a case it is only proper that the State Government be given power in appropriate cases to exempt certain sales from the provisions of the Act. The result is that so far as the exempted sale *is* concerned, the law applicable is the ordinary law of the land. Guidance for the exercise of powers under section 8 (2) of the Punjab ~re emption Act, 1913, j~ available from the preamble and the operative provisions ,of the Act. Moreover such exercise of power does not amount to legislation. Therefore this' section is not ultra vires the Constitution. *Bakkar Singh v. JJagga Singh*. ILR (1966) 2 Punj 926.

Section 8 of the Punjab Pre-emption Act applies only to a cantonment and not to any area which in fact is not cantonment but is, for certain purposes, subjected only to restrictions which arc .applied in the neighbouring cantonment. The mere fact that the rules and bye-laws framed under the Cantonment Act as also many of the provisions of the Cantonment Act are extended to an area beyond the limits of a cantonment under section 288 of the Act win not have the effect of converting that area into a cantonment. *Raja Singh v. Khazan Singh*. AIR 1939 Lah 59=ILR 1939 Lah 159.

1. Substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

9. Exclusion of pre-emption in respect of certain alienation.- Notwithstanding anything in this Act, a right of pre-emption shall not exist in respect of any sale made by or to [Government] or by or to any local authority or to any company under the provisions of Part VII of the Land Acquisition Act, 1894, (I of 1894), or in respect of any sale sanctioned by the Deputy Commissioner under section 3 (2) of the ² Punjab, Alienation of Land Act, 1900 (XIII of 1900).

10. Party to allocation cannot claim pre-emption. -In the case of a sale by joint-owners, no party, to such sale shall be permitted to claim a right of pre-emption.

11. Sum deposited by pre-emptor not to be attached- No sum deposited in or paid into Court by a pre-emptor under the provisions of this Act of the Code of Civil Procedure (V of 1908) shall, while it is in the custody of the Court, be, liable to attachment in execution of a decree, or order of a Civil, Criminal or Revenue Court or of a Revenue Officer:.

CASE LAW

Money deposited by a pre-emptor under the provisions of the Act of the Civil Procedure Code is not liable to be attached at all. The protection is available against a deposit made by the pre-emptor . in a pre-emption suit' even after the- dismissal of the suit. *Maharaj Kishan v Tara Singh*.ILR 1964 1 Punj 256 {FB} =AIR 1964 Punj. 171

CHAPTER III

Persons in whom the right of pre-emption vests.

12. The law determining the right of pre-emption-In respect of all sales and foreclosures not completed before the commencement of this Act the right of pre-emption shall be determined by the provisions of this Act .; but in respect of all sales and foreclosures completed before the commencement of this Act the right of pre-emption shall be determined by the law in force at the time of such completion.

CASE LAW

Sale-Indivisibility-The principle accepted by the Punjab Chief Court is that a sale is to be regarded as indivisible in those cases where the purchase.

- I. Substituted for the word "Crown" by the Adaptation of Laws Order 1950
2. Repealed by the Adaptation of Laws (Third Amendment) Order, 1951.

money is paid in a lump sum without specifying the amounts paid by the various vendees and that the mere fact that the shares to be taken by the vendees respectively are specified in the sale deed does not alter the nature of the transaction. The case is however, different when there is a specification not only of the shares to be taken by the vendees but also of the amount to be respectively paid by the latter. *Maghi v. Narain*. AIR 1914 Lah 128.

In order that a sale may be regarded as divisible amongst the vendees, the shares of the vendees as well as the price paid by each must be specified in the sale deed. If a consolidated price is mentioned in the sale deed, the sale is to be regarded as one and indivisible. *Tehoo v. Dalip Singh*. 64 PLR 175.

Right of pre-emption-Subsistence of - The right of pre-emption must subsist not only the date of the sale but also on the date when the suit is brought' and finally on 'the date when the decree is passed. *Ram Lal v. Ramji Ram*. 1960 PLR 291=1966 Cur. L.J. 53.

The plaintiff must show that the right of pre-emption existed on the date of sale and continued thereafter till passing of the last court's decree. Unlike the vendee the vendor cannot be allowed to improve his position after the date of sale. *Raja Ram v. Arjan Singh*. AIR 1953 Punj 98

Benami pre-emption. -It is perhaps correct that a *benami* pre-emption is an inadmissible notion and a pre-emptor acquire property by pre-emption for another. The right of pre-emption is personal and is exercise able only for the pre-emptor's own benefit. The plea, therefore, must be established by the strictest evidence. . And a pre-emptor in a pre-emption suit cannot be held disentitled to a decree merely because in order to raise funds for the litigation he has entered into an agreement with another person as to what he would do with the property when he, gets it. Any subsequent transfer by the successful pre-emptor after he has obtained the decree may give rise to a fresh cause of action to another pre-emptor. The court is not at all concerned with the question as to how the plaintiff has raised funds for the prosecution of the suit. *Bachan Singh v. Bhopal Singh*. AIR 1966 Punj 36= 1965 Cur. L.J 538.

13. Joint right of pre-emption how exercised.- Whenever according to the provisions of this Act a right of pre-emption vests in any class or group of persons the right may be exercised by all the members of such class or group jointly, and if not exercised by them all jointly by any two or more of them jointly and, if not exercised by any two or more of them jointly, by them severally.

CASE LAW

Section 13 of the Punjab Pre-emption Act, 1913 has always been constructed to mean that a pre-emptor is entitled to pre-empt in case of Joint sale the share of the vendor or vendors through whom he claims the right and not the sale in its entirety. *Moti Ram v. Bakhwan Singh*. ILR 1968 Punj. 104 : AIR 1966 punj 141 (FB).

Superiority of pre-emption right- The use of the word "or" in section 15 (1) (b) Thirdly means "or" and does not mean "and". The use of word "or" in this clause creates various alternatives and fixes a preferential order among the persons grouped under a particular class. The words "class" or "group" as used in section 13 of the Act in reference to section 15 (1) (b) Thirdly means "father's brother" as one class and "father's brother's son" as another class. The father's brother has superior right of pre-emption over the father's brother's son of the vendor. 1968 *PLR* 571 dissented *Inder Singh v. Gulzaha Singh*. 1961 *PLR* (D) 33.

14. Limit of exercise of right in respect of land sold by the member of an agricultural tribe.- No person other than a person who was at the date of sale a member of an agricultural tribe in the same group of agricultural tribes as the vendor shall have a right of pre-emption in respect of agricultural land sold by a member of an agricultural tribe

1[15. Persons in whom right of pre-emption vests in respect of sales of agricultural land and village immovable property .(1) The right of pre-emption in respect of agricultural land and village immovable property shall vest-

(a) where the sale is by sole owner-.

First, in the son or daughter or son's son or daughter's son of the vendor;

Secondly, *in* the brother or brother's son of the vendor;

Thirdly, in the father's brother or father's brother's son of the vendor;

Fourthly, in the tenant who holds under tenancy of vendor the land or property sold or apart there of.

(b) Where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly -

First, in the sons or daughters or sons' sons or daughters' sons of the vendor or vendors;

Secondly, in the brothers or brother's sons of the vendor or vendors;

1. Sections 15-and 16 substituted by Punjab Act 10 of 1960 section 4.

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Thirdly, in the father's brother or father's brother's sons of the vendor or vendor's;

Fourthly, in the other co-shares;

Fifthly, in the tenants who hold under tenancy of the vendor or vendor the land or property sold or a part thereof;

(c) where the sale is of land or property owned jointly and is made by all the co-shares jointly –

First, in the sons or daughters or son's sons or daughter's sons of the vendors;

Secondly, in the brothers or brother's sons of the vendors;

Thirdly, in the father's brother's or father's brother's sons of vendors;

Fourthly, in the tenants who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof.

(2) Notwithstanding anything contained in sub-section (1) :-

(a) where the sale is by a female of land or property to which she has succeeded through her father or brother or the sale in respect of such land or property is by the son daughter of such female after inheritance, the right of pre-emption shall vest :-

(i) if the sale is by such female in her brother or brother's son ;

(ii) if the sale is by the son or daughter of such female in the mother's brother or the mother's brother's son of the vendor or vendors ;

b. where the sale is by a female of land or property to which she has succeeded through her husband, or through her son in case the son has inherited the land or property sold from his father, the right or pre-emption shall vest –

First, in the son or daughter of such ¹[husband of

the] female;

Secondly, in the husband's brother or husband's brother's son of such female.

CASE LAW

Object. - The language of Section 21 of the Act admits of no doubt that a suit for pre-emption would lie if the sale of property sought to be preempted has been completed. AIR 1961 SC 1747 relied upon (*Thakar Singh v. Ram Singh* 1971 Rev. LR 604= 1971 PLJ 563)

Interpretation of pre-emption Law.-Dual interpretation of a document. The Interpretation which defeats the right of a pre-emptor is to be accepted. 1978 RLR 99 (FB).

Rights of an unborn child. - An unborn child has no right to pre-empt a sale although begotten. Doctrine of Hindu Law is not applicable. (*Smt. Dhanpati v. Ratiq.* 1973 PLR 215=1973 PLJ. 239.)

Provision is an independent and self-contained. It is not a proviso to section 15 (1). *Kalwa v. Vasakha Singh.* 1983 Land Laws Reporter 156.

Non-obstante clauses-Even though section 15(2) begins with a non obstante clause yet there is no warrant for considering this clause as a mere proviso. Section 15(2) is by way of exception to the general provisions of section 15(i). 1983 Land Laws Reporter 156.

Scope.-Sub-sec. (2). of Section 15 starts with a non obstante clause, and therefore, the provisions of sub-section (1) have to be read subject to sub-section (2). If a case falls within both the sub-sections, it is sub-section (2) which would apply to it irrespective of the fact that it could also be averred by sub-section (1). *Jai Singh v. Mughla* 14 (1967) Punj. 658.

Tenant a go-sharer has no right of pre-emption when a case falls within the purview of section 15(2)-Majority view. *Kalwa v. Vasakha Sing.* 1983 Land Laws Reporter 156.

Sub-section 2 of Section 15 is in the nature of *nonobstante* clause and is a exception to the rule laid down in sub section (1) Where sub-section (2) applies, the provisions of sub-section (1) do not operate. . (*Mohinder Singh v. Balbir Kaur.* AIR 1968 Punj. 545= 1968 PLR 752.)

Section 15(2) whether prevail over the provisions of Section 15(1)? Agricultural land sold" by the persons inheriting it directly from their natural grandfather. The mother died during the lifetime of the father. Whether covered by section 15 (2) (a). Brother and brother's son of the vendor's mother alone. Whether they have the right to pre-empt such sale? *Birjee v. Pirthi*, etc. 1975(1) ILR 267.

The Right of Pre-emption not heritable. -The purely statutory right of pre-emption resting wholly on blood relationship alone under Section 15 (1) of the Punjab Pre-emption Act, is not heritable right and does not devolve on the heirs on the death of the plaintiff pre-emptor before the grant of the decree in the suit.

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A right which is rooted entirely in the blood relationship of the parties is a right personal to each particular relation because of the inter se competing right of the pre-emptors. If the preferential pre-emptor does not choose to sue, the right passes on the next preferential pre-emptor as spelt out by the statute seriatim as First, Secondly, Thirdly, Fourthly etc. It does not pass on- or vest in the heirs of the preferential pre-emptor who refuses or fails to exercise his right of pre-emption. In the presence of the other preferential pre-emptors the heirs of the one who does not sue, do not come into the picture at all. Thus, the statutory right of pre-emption based on blood relationship is in essence a purely personal right and as such would normally not be heritable. The question of any of the heirs continuing the suit on the basis of an independent right of pre-emption does not at all arise. *Chandrup and another v. Data Ram and others*. Land Laws Reporter 341.

(The old concept as enunciated in 1965 PLR 1158, AIR 1971 Punj. & Har. 416 and 1979 PLR 636 has been done away with by the Full Bench referred to supra).

Expression "has succeeded through"-Meaning of.-Word 'through' in section 15 (2) means 'medium', 'agency', 'instrument', 'by means of', 'by the action of', 'by, the instrumentality of etc. It also means 'on account of' 'owing to', 'from and by reason of. The word cannot be read in any other sense. (*Mohinder Singh v. Balbir Kaur*. AIR 1968 Punj. 545), 1968 (Punj.) PLR 752.

The expression "has succeeded through her father or brother" in section 15 (2) (a) covers not only a case where a female directly succeeds on the death of her father or brother but also a case where she succeeds on the death of some other relative on account of her relationship with her father or brother. (*Chandu v. Shri Hans Raj*. ILR (1970), 2 Delhi 47).

Right to pre-empt sale-The pre-emptor who claims the right to preempt the sale on the date of the sale, must continue to be *in* the possession of that right till the date of decree. If he loses that right before the passing of the decree, decree for pre-emption cannot be granted even though he may have such a right on the date of the suit. *Rikhi Ram v. Ram Kumar*. 1975 PLJ 331 (SC).

Uncle or a grandmother-Section 15 (1) (c) confers a right of preemption on daughters and no right of pre-emption is bestowed upon a niece or grand daughter. *Banta Singh v. Smt. Harbhajan Kaur*. 1969 Cur. LJ 707= 1969 PLR 862.

Tenant's right of pre-emption. -Is a statutory creation does not advance ignatic theory of succession. *Kalwa v. Vasakha Singh and another*. 1983 Land Laws Reporter 156.

Despite the fact that tenant described as tenant under the mortgagee by reason of the mortgage, he is deemed to continue as a tenant under the mortgagor-vendor and he is entitled to pre-empt the sale effected. The right of the tenant to pre-empt sale is not lost by order of rejection after decree in his favor. *Dharam Vir v. Wazir*. 1978 Cur. LJ (C) 144=1978 RLR 12 I.

Tenants right to pre-empt. - Extends to only that property over which

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He has tenancy rights. *Sultan and another v. Shyam Lal and another*.
1982 Land Laws Reporter 185.

Suit filed for possession in the exercise of right of pre-emption on the ground of tenancy under the vendor on the date of sale, Vendor instituted." suit for ejection under the Punjab, Security of Land Tenures Act. Application. seeking a prayer for restraining the vendors from proceeding with ejection proceedings is not maintainable. *Madan Lal and others v. Dil Singh*., .1982 Land Laws Reporter .113.

Owner inducing tenant and subsequently mortgaged land. Owner mortgagor later on sold the land. From the date of creation of mortgage tenant of owner (mortgagor) by fiction of law treated as tenant or mortgagee but does not cease to tenant of owner (mortgagor) So long as owner (mortgagor) has some interest including 'equity of redemption in his favor, tenancy rights of tenant under owner (mortgagor) would continue Tenant's tenancy rights would come to an end by creation of mortgage- Entitled to pre-empt. 1981 PLJ 476.

Improvement in status. of vendee. - Must be prior to the institution of the suit. Although S. 21-A of the Punjab Pre-emption Act which was added thereto. in 1944, no longer permits. any improvement., otherwise than by inheritance or succession made in the status .of a vendee after the institution of suit for pre-emption to affect the right of the pre. emptor in such a suit. , the proposition of law that the vendee can successfully resist such a suit by 'improving his status prior to its institution so as to acquire a qualification - equal to or better than that which is the basis of the pre-emptor's claim, is undisputed. *Ram Kishaa v. Smt. Sharbati*. 1972 PLJ.54= 1972 Rev.. L.R. 188.

Vendee can improve his status and improvement can be through the very transaction by which sale is sought to be pre-empted or can be by a separate transaction Improvement made by vendee in his status can defeat the rights of pre-emptor. *Chander v.. Madan Gopal*. 1981 Land Laws Reporter 550..

By the disputed sale deed which itself can be taken into consideration, for holding that he had become such a .co sharer which could defeat the right pf the plaintiffs. *Anup Singh v. Alam Chand*. 1978 RLR 588 = 1978 PLJ 328.

Right to continue the suit.- The son- of a deceased plaintiff in: a pre-emption suit can continue the suit, if at the date of the sale, he had an independent right to pre-empt. *Smt. Joginder Kaur v. Josbir Singh*. 1965 PLR 1158.

Death of pre emptor during the pendency of suit. His legal representatives brought on record. .claim is. based, on relationship. Right of pre-emption runs with land. Heirs are competent to continue suit *Gurdev Kaur v ChananKaur*. AIR 1971. Punj. 416=1971 Rev. LR 632=191.1PLR 899.

Right of pre-emption-conditions for .-Party is a pre-emption suit must plead the facts. Mere pleading a right under S. 15 not sufficient. *Dalip Singh v. Uttam Singh*. 1~70 Cur. LJ 908.

Pre-emption suit by tenant.- Tenant filing pre-emption suit. Sale of

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land under mortgage with possession-There is a dispute over tenancy Tenant holds land under mortgagee and not under vendor (Mortgagor) tenant is not entitled to pre-empt. 1981 PLJ 592.

Pre-emption suit.-Continuous allotment of Evacuee Property by the custodian. Tenant of erstwhile allottee not becoming tenant under subsequent allottee. Tenancy coming to an end on termination of one allotment. Subsequent allottee deriving title from Custodian and not from original allottee. Tenant of original allottee has no right of pre-emption quavend of subsequent, allottee. *Raghu Nath Singh and another v. Kamla Devi and another*. 1975 ILR (HP) 38.

Suit by tenant. -He must prove that he was in possession on the date of sale. 1965 PLR 25 (Short Notes); 1967 PLR 414 and 1968 PLR 553 relied). *Bhag Singh v. Bhajan Singh.* (Punj) 1968 PLR 1046

Right to pre-emption-Suit Claim of pre-emption by tenant. Evidence brought on the record was not considered. Finding recorded by the courts below set aside with a direction to, redecide the matter. *Wadhawa Singh through L.R.s v. Gurumukh Dass ors.* 1982 Land Laws Reporter 482.

Adopted son gets transplanted into the family of adoptor. It is not an appointment of an heir. He can maintain a suit for pre-emption. *Amar Singh v. Tej Ram* 1982 Land Laws Reporter 436.

Suit for pre-emption.-Vendee entitled to take plea with a view to defeat plaintiff's right of pre-emption. Such a right becoming available during the pendency of the suit. Defendant can be permitted to amend his written statement. *Ram Charan v. Shanti Sarup.*
1982 Land Laws Reporter 357.

Son of the vendor filing a pre-emption suit. Second vendee replacing first vendee before the institution of the suit. Second vendee holding the status of a tenant on the land in dispute on the date when the first sale was effected by the vendor in favour of first vendee and continue to hold such - status on the date when second sale effected by the first vendee. Would stand substituted in place of first vendee. Pre-emptor has to meet the case of second vendee Doctrine */is pendente* not applicable. *Banwari and ors. v. Mohan Singh and ors.* 1982 Land Laws Reporter 231.

Co-sharer. - Co-sharer has a right of pre-emption if the sale is made out of joint *khewut* by another co-sharer. *Madan Lal and others v. Dil Singh.* 1982. Land Laws Reporter 113.

Status of. The purchaser of a share of specified killa numbers in specified rectangles will not succeed in obtaining a decree by way of preemption when a specified share in another rectangle is sold subsequently in which rectangle the original purchaser has no right. He does not become co-sharer in the other rectangles. *Lachhman Singh v. Pritam Chand* AIR 1970 Punj. 304 = 1970 Cur. 269.

Joint sale by- male and females.-Sale would fall within the purview of section 15(2) and not section 15(1) as regards share of female. Vendees on purchase of land of female prior to the institution of suit becoming a co-sharer. Tenant loses his right of pre-emption. *Chander and others v. Chao*

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Khan and others 1979 Land Laws Reporter 455.

Sale of land by male and females - Suit -of -pre emption filed by the tenant. Mother inheriting 1/4th share on the death of her husband. Vendee becomes co-sharer of 1/4th sharer of the land which belonged to the female. Purchase of 3/4th share belonging to the sons is not pre-emptible. *Chander v. Madan Gopal* 1981 Land Laws Reporter 550.'

Adoptive Father & Adoptive son:-The words 'father' and 'son,' include adoptive father and adoptive son. The right of pre. emption conferred by section 15 (I) (a), Thirdly, on the father's brothers or father's brother's son of the vendor is available even if the relationship is created by adoption or appointment or an heir. (*Inder Singh v. Kartar Singh* AIR 1966 Punj.251 =PLR (1966) 1 Punj. 680).

The adopted Son has the same status vis-a-vis his adoptive parents as a natural born son. *Sohan Singh v. Gurtej Singh* AIR 1972 Punj. 152=1971 PLJ 636=1971 Cur. LJ 942

Decree.-Death of plaintiff pre-emptor during pendency of suit. Legal representatives ,are entitled to continue the suit. Decree can be passed in favour of the legal representatives.. 1979 RLR 537.

Sale of joint land. - Sale of land by one co-sharer out of joint *khewat*. Right of pre-emption cannot be defeated by describing the and purchased in terms of specific khasra numbers instead of fractional sharer. *Bhartu v/s Ram Sarup* 1981 Land Laws Reporter 356. .

Sale of specific portion of hind by a co-owner out of the joint *khewat*, is sale of share out of joint land. It can be pre-empted under section 15 (1) (g). *Bhartu v. Ram Salup* 1981 Land .Laws Reports 356.

Particular khasra numbers sold-Such sale whether a share out of joint land? Purchaser whether become a co-sharer? *Bakhshish Singh v. Gurbachan Singh* 1975 PLR (I) Pb. 352.,

Punjab Security of land Tenures Act, 1953, section 17 A-Sale of land to a tenant holding land jointly with other. Whether pre emptible ? *Malkiat Singh v Santa Singh*. 1975 (I) ILR 490.

Some of the co-sharers selling a share out joint land. Such sale is covered by section 15 (1) (b). *Inder Singh etc. v. Kqrnail Singh etc.* 1975 PLJ 436.

Tenant Pre-emptor- What the law contemplates is that the plaintiff preemtor who has based his right to pre-empt the sale on the provision made in section 15(1)(c) must be holding the land under tenancy of the vendor at the *time* of the sale and continued to hold it on the basis of the same right up to the date of the decree. (*Baru Raj v. Manjit Ram* 1967 PLR 608.

Tenant-holding under tenancy of the vendor and a part of land sold. He cannot pre-empt the entire sale but only land of his tenancy. (*Tikam Ram v. Mangtu* AIR 1970 Delhi 224=~LR 1970 (Delhi) 732.)

Tenant-of a mortgagee in Possession- The plaintiff appellant. being a tenant of the mortgagee in possession has got no right to pre-empt the sale under section 15(1)(c) Fourthly of the Punjab Pre-emption Act,. (*Darshan Singh v. Bohar Singh* 1973 PL1341=1973 Cur. LJ 369.)

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Pre-emptor as witness taking a different stand.-- - Where a contention is raised that the pre-emptor took a different stand in the witness box by saying that she was a tenant and then said she was an owner, one has to look to the revenue record to find out her status. *Shrimati Ram Dei v. Hazar*; 1972 PLJ 743= 1972 Rev: LR 658.

Suit for possession by pre-emption-Court competent to inquire into the nature of transaction-To prove that a particular transaction is a sale, and evidence can be adduced. 1978 RLR 99 (FB)

Suit filed for possession in the exercise of right of pre-emption on the ground of tenancy under the vendor on the date of sale. Vendor instituting suit for ejectment under the Punjab Security, of Land Tenures Act. Application seeking a prayer for restraining the vendors from proceeding, with, ejectment proceedings not maintainable. *Mandan Lal and others v. Dil Singh*. 1982 Land Laws Reporter 113.

Brother-Interpretation of- Brother includes step brother. *Moti Ram v. Bakhwant Singh*. 1967 PLR 1041 =ILR 1968 1 Punj. 1.

There is no distinction between a full brother and a half brother for the purpose of pre-emption law. *Balbir Singh v. Jagrup Singh*. 1969 PLR 500.

The expression "brother" in the context of section 15 denotes a "real brother" and not a "step brother" or a "uterine brother". The expression 'brother' normally to an Indian mind indicates a "real" brother, though loosely the word has been used even for the relationship whether it is of a "step" or a "uterine brother". But primarily, the expression 'brother' is used to indicate a 'real brother' and not a "step" or uterine brother". *Sujan Singh v. Harcharan Singh*. AIR 1968 Punj. 137=ILR(1967) Punj. 730.

Right to pre-empt the sale of land -From a bare perusal of the provision of section 15 (2) (b) it is abundantly clear that the daughter of the husband of the female can only have a right of pre-emption if she succeeds in proving that the property which was sold by the female was held by her husband. 'If the property comes to her from her son' it has further to be established that the son had inherited the land or, 'property' from his father. *Smt. Biro v. Mohinder Singh*. 1971 PLJ 652.

Right of Pre-emption-Heritability -The statutory right of pre-emption is a heritable right and a decree for pre-emption can be passed in favour of the legal representatives of the deceased pre-emptor, when the representatives are properly brought on record under the provisions of Order 22 rule 1 read with

O. 22 R 10 CPC. *Telu Ram v. Smt. Iabal Kaur* 1973 Punj. Rev. LR 21.

Sale- Sale in favour of tenant is not pre-emptible. Tenant's share in the sale not pre-emptible *Mangat and others v. Tharu Ram and others*

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Effectuated by males and females jointly. It is well-known canon of construction of statutes that specific provisions will exclude a general provision. Where males and females effected sale of a joint holding and they had sold their 'respective' shares, the sale must be treated so far as by the females was concerned pre-emptible under section 15(2) and the sales by male would fall

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under section 15(1) of the Act. *Santa Singh v. Hazara Singh*.

1965 PLR 132= 1965 Cur. L. J 44.

Sale. by widow succeeding to life estate. A widow who originally succeeded to some land or property through her husband as a limited owner under the Hindu Law, is not deemed to have succeeded to the absolute and full ownership of the estate in the said land or property, which she acquires under section 14 (1) of the Hindu Succession Act, on the coming into force of the said provision, by the merger of her lesser estate into the greater one, within the meaning of clause (b) of sub-section (2) of section 15 and therefore the sale of such absolute estate by her after the coming into force of the Succession Act, is pre-emptible under sub-section (1) and not under section 15 of the Act. A Hindu widow who succeeded to the property left by her husband as her life estate cannot be said to have succeeded through her husband within the meaning of section 15 (2) (b) of the Punjab Pre-emption Act when after the commencement of the Hindu Succession Act she becomes a full owner of the property. *Jai Singh v. Mughla*. ILR (1967) 2 Pun 658=1967 PLR 475.

Sale of a specific portion of land. Described by particular khasra number by a co-owner out of a joint khewat, would be sale of share of the joint land. Such a person becomes co-sharer and any subsequent sale is pre-emptible by him. *Mahesh Pal and others v. Desh Raj and others*.

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Sale of land falling within the ambit of both sections. Notwithstanding anything contained in sub-section (1) of section 15, sub-section (2) of the section will prevail. 1979 Rev L.R 289.

Punjab Security of Land Tenures Act, 1953; section 17-A- Agricultural land. Sale made to a tenant and not to a stranger. Pre-emption suit cannot be maintained against the tenant. Tenant of agricultural land by joining a stranger with him does not sink to the level of stranger. Pre-emption decree can be passed to the extent of land purchased by the stranger. *Sultan v. Sardar & others*. 1980 Land Laws Reporter 481.

The provisions of sub-section (2) of S. 15 override the provisions of sub-section (1) of S. 15 of the Act. and if a sale falls within both the sub-sections, sub-section (2) must prevail notwithstanding anything contained in sub-section (1). *Smt. Birjee v. Pitthi*. 1972 Cur. L.J 978= 1972 PLJ 501.

Where no person having the superior right of pre-emption defined in sub-section (2) of S. 15 of the Act is in existence, the right under sub-section (1) of the section cannot be exercised in the absence of such a person. *Arnar Nath v. Smt. Nirmal Kumari*. Punj. (1973) Rev. LR 146=1973 PLJ 321.

The sale 'by a widow' who acquired the absolute ownership by operation of law under section 14 (I) of the Hindu succession Act is pre-emptible under sub-section (1) and not under sub-section (2) of section 15 of the Punjab Pre-emption Act. *Inder Singh v. Karnail Singh*. 1975 PLJ 436.

Sale by co-sharer.-It is to be noticed that sub-section (1) does not

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refer to the sale made by a female or a male but merely to a sale made by a co-sharer.
Gurbachan Singh v. -Shrimati Bhagwati. 1966 Cur. LJ 10

Amendment.- S 31 applies not only to suit filed after the Amending Act came into force ,and to those pending at the time of its commencement but also to appeals which were so pending. (1960 PLR 29 followed). *Nihala v. Harke.* 1970 Rev. LR 794=1970 PLJ 167= 1970 Cur. LJ 347.

The only proper interpretation of cl. (a) of sub-section (1) of Section 15 of the Punjab Pre-emption Act, as amended by Punjab Act 10 of 1960, is that although a tenant becomes qualified to bring a suit for pre-emption as soon as he can establish that he holds rights of tenancy over any portion of the land which forms part of the sale, his right to pre-empt extends only to the extent of the property over which he has the tenancy rights. *Kartar Singh v. Kirpal Singh.* 67 PLR 123 (SN).

Tenant -Tenant pre-emptor must have a right to pre-empt not only at the time of sale but also at the institution of the suit and, the passing of the suit and the passing of the decree by the trial Court. 72 PLR 325= 1970 Rev LR 657 = 1970 PLJ 83, 69 PLR overruled. *Bhagwan Das v. Chet Ram.* 1970 PLJ 780 (SC).

Tenant when entitled to a decree? Tenant must be in, possession on. date of sale. If the tenant is in possession of the land at the date of sale, that would be enough" to enable him to get a decree. *Bhag Singh v. Bhajan Singh.* 71 PLR 723.

Title of, the vendor or vendee-Under the pre-emption law the pre-emptor cannot. challenge the title of the vendor or the vendee and he has to take - the bargain as it stands. *Bakhshish Singh v. Gurcharan Singh.* 1972 PLR 672= 1972 Rev. L.R 547.

Suit for pre-emption by tenant.-During pendency of suit, vendor obtained order of eviction against tenant. Tenant loses his status as tenant. He is not entitled to obtain decree for pre-emption. Superior right of pre-emption must be possessed on the date of sale, or the date of the suit and on the date of the decree by the trial court. *Sural Singh v. Ram Phal.* 78PLR (SN) 9.

Preferential right of pre-emption-The provisions of section 15 (I) (b) pre-supposes that before the provisions of this section are attracted there should be a sale of a share out of the joint land. If no share is sold out of the joint land, there will be no preferential right of pre-emption. *Smt.Gurnam Kaur v. Ralla ram.* 1972 Rev LR 242.

Right of pre-emption of sale -When accrues to sons-The plaintiffs can only pre-empt the sale. Firstly, regarding which they have a right of pre-emption and, secondly, if they have claimed that particular right in the plaint. That being so, the plaintiff could get a decree for possession regarding the shares of their fathers. Only and for getting possession of their shares,, they would have to pay the proportionate price of the sale consideration.

Hazari Lal v. Falku. 74 PLR 983=;:1972 Cur. LJ 704:-1972 PLJ 437.

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When transferee becomes the co-sharer-A transferee of co-sharer of a specific portion of a part of the entire holdings' of the transferor- does not become a co-sharer in the Joint Khata but in case the transferor in the joint State, the-transferee does become the co-sharer. *Shiv Ram v. Shree Des Raj*. 1970 Cur. LJ 331=1970 PLJ 198=1970 RLR 589.

Sale by a female:- An examination of the provisions in section 15 (2) .shows that the legislature intended that if the property which is sold by a female is one of which she had succeeded from her father's side, the descendants from the father's side should have the right to pre-empt the said property and if she had succeeded to the said property from her husband's side the descendants. on the husband's side should have the right of pre-emption. *Sidhu v. Hans Raj*. 1970 PLR (D) 52.

The clear position that emerges is that section 15 (2) is applicable to the property inherited by a female from her father and is available for pre-emption to her brothers and brother's sons, while the sale of the property inherited by a female from her husband or son is open to pre-emption, firstly by her husband's son or daughter and, secondly, by her husband's brother or husband's brother's Sons. *Smt. Birjee v. Pirthi*. 74 PLR 986= 1972 Cur. LJ 978=1971 PLJ 501=1972 Rev LR 482

The purpose of introducing section 15 (2) (a) was that if a female sold property to which she had succeeded through her brother then the right to pre-empt – should vest in her brother or brother) :son, so that the property may remain in the same family from where it had come and not go to strangers Even such female's own son would not have a right of preemption, because after marriage she had gone in another family to which that property never belonged *Karta Ram v. Om Parkash*. AIR 1971 Punj 423 =1970 PLJ 815=1971 PER 783.

Hindu female succeeding to the property left by the widow of her brother 'succeeds through the instrumentality of her brother. She would not have got the property if she were not his sister. The property devolves on her on account of or by reason of this very relationship. The devolution of the property of the female on heir of her husband would be in the same order and according to the same rules as would have applied if the property had been of the husband and' he died intestate in respect thereof immediately after the female's death. By this provision of law on husband's death the property would be deemed to be that of the husband. Accordingly the property would devolve on the sisters of the husband under Entry II of Class II heirs in' the Schedule of the Hindu. Succession Act. Thus the sisters having succeeded to the property through her; brother, sale made by her cannot be preempted by her Son, *Karta Ram v. Om Parkash*. 73 PLR 783=AIR 1971 Pb. 423=ILR (1971) 1 Pb. 244=1970 PLJ 815.

The right of pre-emption given to the persons mentioned in clause (a) (b) of sub-section (2) of S. 15 of the Punjab Pre-emption Act prevails over those mentioned in .sub-section (1) of that section *Snrja v. Smt. Chhotto*. 1972 PLJ 739= 1972 Rev. LR 500.

Intention 'of legislature is to provide for sales made- by female owners who had succeeded to property .either through their fathers or brothers or husbands. The right of pre-emption is restricted to denial descendants of last male

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holders. Provisions further constrict this right to closest of relations only. *Kalwa v. Vasakha Singh and another*. 1983 Land Laws Reporter 156.

It is only a particular type of acquisition by a female owner qua which provision has been made in S. 15(2), otherwise the right of pre-emption in regard to the property held by a female, if sold, has to be determined under section 15(1) If S. 15(2) does not come into play, the case must necessarily be decided under S. 15(2) of the Act. *Mewa Singh v. Manpnul Singh*. 69.PLR.316=1967 Cur. L. J. 129.

If a sale falls under S. 15 (2) (a) of the Punjab Preemption 'Act, the application of S 15(1) of the Act is excluded. The language employed in S. 15(2)(a) of the Act says that in spite of anything that has been mentioned in section 15(1) of the Act, where the sale has been made by a female and of property to which she has succeeded through her brother. then the right of pre-emption shall vest in her brother or brother's son. In other words, the right of pre-emption qua such a sale will not vest in anybody else. The persons mentioned in sub-section (1) 'of section 15, in such a case, have no right of pre-emption. *Karta Ram v. Om Patkash*. 73 PLR 783= AIR 1971 Pb 423=ILR (1971) 1 Pb. 244= 1970 PLJ 815.

Sale by daughters of property which passed on to them by their mother by succession Originally mother had succeeded to the land of her husband before the commencement of Hindu Succession Act. Daughters cannot be said to have succeeded to the land through their father. *Bachan Singh v. Jas Kaur*. 71 PLR 675.

Under S. 15(2) a sale by a female is not subject to pre-emption by a tenant. *Mohinder Singh Y. Mohinder Kaur*. 68 PLR 839= 1966 Cur.LJ 91

A close analysis of paragraphs (first) and (secondly) of S. 15(2)(b) before the amendment introduced by Punjab Act No. 13 of 1964 would demonstrate that a son of the husband of a female vendor though not born from her womb would be entitled to pre-empt. The legislature by enacting Act 13 of 1964, intended to include a step-son and consequently retrospective operation had to be given to the amending Act. *Moti Ram v. Bakhwant Singh*. 69 PLR 1041=AIR 1968 Punj 15=ILR (1968) 1 Punj 104.

Where a female had succeeded to the limited, estate of a Hindu widow before the commencement of Hindu Succession Act, the sale of land by her after acquiring full ownership under section 14 of the Hindu Succession. Act.- could not be pre-empted. *Kitpa Ram v. Harnam Singh*. 70 PLR 809.

16. Person in whom right of pre-emption vests in an urban immovable property-The right of pre-emption in respect of urban immovable property shall vest in the tenant - who holds under tenancy of the vendor the property sold or apart thereof.

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) I[*omitted*].
- (d) 1[*omitted*].
 - (e) *in any other case, by such pre-emptors in equal shares.*

18. Provision of sections 15 and 17 applicable to foreclosure *mutatis mutandis* - In the case of a foreclosure of the right to redeem village immoveable property, the provisions of sections 15 and 17 and in the case of a foreclosure of the right to redeem urban immoveable property, the provisions of sections J 6 and 17 shall be construed by the Court with such alterations, not affecting the substance, as may be necessary or proper to adapt them to the matter before the Court.

CHAPTER IV

PROCEDURE

19. Notice to pre-emptors .-When any person proposes to sell any agricultural land or village immoveable property or urban immoveable property or to foreclose the right to redeem any village immoveable property or urban immoveable property, in respect of which any persons have right of pre-emption, he may give notice to all such persons of the price at which he is willing to sell such land or property or of the amount due in respect of the mortgage, as the case may be.

Such notice shall be given through any Court within the local limits of whose jurisdiction such land or property or any part thereof is situate, and shall be deemed sufficiently given

1. Clauses (c) and (d) omitted by Punjab Act 10 of 1960, section 5

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if it be stuck up on the chaupal *or* other public place *of* the village, town or place in which the land or property is situate.

CASE LAW

Waiver. - If a person entitled to pre-empt the sale of land purchases rights in the tube well sold with the land from the vendee, he shall be deemed to have waived his right of pre-emption because he has purchased a part of the property sold from the vendee and has recognised the validity of the sale in favour of the vendee: *Niranjan Singh v. Karan Singh*. ILR (1966) 2 Punj 653.

A pre-emptor who, without expressing any intention of enforcing his right of pre-emption, decline to purchase the property for more than a certain sum which is much below the price offered, and there is nothing to show that he honestly believed that that price was in excess of the real price or gave expression to that belief, must be held to have waived his right to pre-empt and cannot enforce that right. *Mukh Ram v. Harjas*. AIR 1920 Lab 430,

A person who has waived his right of Pre-emption (by attesting the sale deed) is barred from asserting it afterwards either as a plaintiff or as a defendant. *Ghannum Ram v. Jattu Ram*. AIR 1925 Lah 442.

When the vendee has purchased a property at the request of the preemptor the latter is debarred from asserting his right of pre-emption *Chaito v. Niaz Begam* 205 PLR 1910.

Before selling by auction the occupancy rights of an insolvent occupancy tenant, the plaintiff pre-emptor was specifically asked by the clerk of the Official Receiver to purchase the same but he declined to do so- It was held that he is estopped from asserting his right of pre-emption. *Bagga Singh v. Chuni Lul*. AIR 1952 Punj 255.

20. Notice by pre-emptor to vendor.-The right of preemption *of* any person shall be extinguished unless such person shall, within the period of three months from the date on Which the notice under section 19 is duly given *or* within such further period, not exceeding one year *from* such date, as the Court may allow, present *to* the Court a notice *for* service on the vendor or mortgagee of his intention to enforce his right *of* pre-emption. Such notice shall state whether the pre-emptor accepts the price *or* amount due on the footing of the mortgage as correct *or* not, and if not, what sum he is willing to pay.

When the Court is satisfied that the said notice has –been duly served on the vendor or mortgagee, the proceedings shall be filed.

21 Suit for pre-emption.-A person entitled to a right

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of pre-emption may when the sale or foreclosure has been completed, bring a suit to enforce that right.

Plaint-The right on which pre-emption is claimed must be specifically stated in the plaint. It is nowhere required by the law of pre-emption that the meticulous description of the subject-matter of pre-emption should be stated in the plaint. *Aziz-ud-Din v. Ram Chander*. 1970 PLR 134.

The specific grounds on which a preferential right of pre-emption is sought must be pleaded in the suit within the period of limitation. A particular defined relationship does not give a right of pre-emption. If such a right is claimed on the ground of relationship, then obviously the particular relationship referred to as a ground in section 15 of the Act has to be stated in the plaint within the period of limitation. If such an attempt is made after the expiry of the period of limitation, it cannot be permitted to defeat a right that has accrued to vendee to defeat the pre-emptor's claim as not coming within the statutory provision on which reliance is placed. In such a case the amendment of the plaint should not be allowed. *Shankar Singh v. Chanan Singh*. 1968 Cur. LJ 363.

Amendment of plaint If the mistake is inadvertent it can be permitted to be rectified by way of amendment even after the period of limitation for the suit is over. *Banta Singh v. Mehar Singh*. 1970 PLR 37.

Where the plaintiff in a pre-emption suit inadvertently omitted to mention in the plaint a small portion of the property sold it was held that the court is justified in allowing amendment of the plaint *Banta Singh v. Harbhajan Kaur*. 1969 Cur. LJ

Parties to a pre-emption suit-It is not uncommon in India for parents to purchase property in the name of their children or for husbands to purchase property in the name of their wives. Unless it can be established that some fraud was intended or involved generally speaking there is no reason why the real fact may not be allowed to be brought on the record. The ostensible vendee can, therefore, take up a plea that the real purchaser is somebody else and that he or she is only a *benamidar*. Once this plea is taken it is the duty of the court to find out the truth of this plea. If it is found that someone else is the real purchaser normally such a purchaser should be made a party in the suit. In any case the pre-emptor can succeed only if he can establish that even as against the real purchaser he has a superior right of pre-emption. *Ram Kishan v. Jagdish Kaur*. ILR (1966) 2 Punj 894.

Improvement in status of vendee-A vendee who associates with himself in the sale a stranger cannot resist the claim for pre-emption on the basis of his own qualifications or status. It is settled law that where the sale is in favour of several persons, it is the status of the lowest of the vendees that has to be taken into account in determining whether the pre-emptor has a preferential right.

A vendee not merely sinks to the level of the stranger for so long as the stranger remains associated with him in the bargain but he forfeits his right if he purchases the property along with the stranger and the sale is indivisible.

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When a person who has right to first refusal does not exercise that right to take over the entire bargain but on the other hand choose to associate with him a stranger or a person who has no right to pre-empt the property he cannot be subsequently allowed to object to the sale, which has with his acquiescence, violated the pre-emptive right.

Once a person has waived his right to acquire the entire property, which is the subject matter of the sale by joining with him a stranger and he thus forfeits his rights he cannot revive that right by subsequently changing his mind and acquiring the interests of the purchaser. *Garib Singh v. Harnam Singh*, 74 PLR 186=AIR 1972 Pb. 99=ILR (1972) 1 Pb. 341=1971 Cur. LJ 569=1971 Cur. LJ 569=1971 Rev. LR 706=1971 PLJ 579.

Registration- When complete.-From the wording of sub-section (2) of section 61 of the Indian Registration Act, 1908 it is clear that the registration under the Act is complete only after the document is copied in the register of the registering officer and after the registering officer appends his signature to the endorsements under section 59 and he has also appends a certificate giving the necessary details as to the document having been copied at a particular : number and the page of the register maintained by him. Thereafter, this last endorsement and certificate have to be copied in the margin of the register and it is only after all these formalities are completed, that the registration within the meaning of the Registration Act can be "deemed complete".

A sale is not complete when a document is merely executed. It will not be complete even when the document is duly presented before the registering officer. *Ram Chand v. Shrimati Rajinder Kaur* 1972 Rev. LR 486= 1972 PLJ 584. .

Death of the plaintiff.-When the plaintiff dies during the pendency of a suit for pre-emption, his sons can continue the suit only if they have independent right of pre-emption. They cannot continue the suit if they did not have any independent right of pre-emption. *Mohinder Singh v. Mohinder Kaur* 48 PLR' 839.

The Supreme Court has recently held that the claim for pre-emption does not abate upon the death of the pre-emptor and that the legal representative of the pre-emptor can be properly brought on the record under Order XXII, Rule 1 read with Order XXII, Rule 10 of the Code of Civil Procedure. *Hazari v. Neki*. AIR 1968 SC 1205 = 1968 Cur. LJ 705.

Right of the Pre-emptor when defeated.-The right of pre-emptor is piratical in nature and it is open to the vendee to defeat the pre-emptor's right of pre-emption by all legitimate means. If the vendee's wife can claim, in her own person, a superior right of pre-emption, the exercise of such a right can on no principle of law or of equity be considered to be an illegitimate means. The fact that such a suit will ultimately benefit the vendee in no way places either the plaintiff or the vendee at a discount. A collusive decree is not the same thing as a fictitious decree *Dhanpat v. Shri Ram* 1959 PLR 774.

Execution of decree .-Where a vendee has included in the sale deed some property in respect of which the plaintiff-pre-emptor has no right of preemption and some other in respect of which he has a right of pre-emption.

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and the Court passes a decree regarding the property' about which the plaintiff has a right of pre-emption, it would not be in consonance with the principles of justice and equity to burden the plaintiff with payment of the full amount including the price for the portion of the property in respect of which the suit is dismissed. *Basawa Singh v. Santa Singh* 1966 PLR 128

A pre-emptor should not be debarred from obtaining a decree on the ground that the order would be violative of section 19-A of the Punjab Security of Land Tenure Act, 1953. This question can arise only at the time of the execution of the decree and not at the time of awarding the decree. (*Bhupinder Singh v. Surinder Kaur* ILR (1965)=Punj. 513=AIR 1966 Pb. 310.

The Court decreeing a claim to pre-emption is bound to direct that on payment into Court of the purchase money the defendant shall deliver possession of the property to the plaintiff whose title thereto shall be deemed to have accrued from that date. If the property is in the possession of the mortgagees, the pre-emptor merely pre-empts the equity of redemption and if he deposits the money in the Court within the period specified by the decree, he need not execute the decree for possession nor need he immediately sue the mortgagee for possession. *Fateh Mohd. V. Hakim Khan* AIR 1945 Lah 523.

Death of the decree-holder – In case of a pre-emption decree the right to execute the same after the death of the pre-emptor-decree-holder will vest in his personal legal representatives by operation of law because the continuity of the decree holder will be presumed in his case. The same cannot be said where the rights in the decree are assigned by the decree-holder in favour of third person because the decree-holder has no right to transfer the pre-emption decree. *Hazari v. Zila Singh* AIR 1970 Punj. 215 – ILR (1970) punj 326 =1969 PLR 927.

Death of the appellant – Where in pre-emption suit by the tenant the tenant died during the pendency of the appeal the legal representative of the tenant pre-emptor can continue the appeal. *Joginder Singh v. Kartar Kaur*, 1970 Cur LJ 436

[21-A Any improvement, otherwise than through inheritance or succession made, in the status of a vendee defendant after the institution of a suit for pre-emption shall not affect the right of the pre-emptor-plaintiff in such suit]

CASE LAW

Object of – By adding section 21-A the legislature clearly 'intended to recognise no voluntary improvement in the status of a vendee after the institution of the suit, but only those resulting from inheritance or succession. Apart from this, the view taken by me is, in consonance with the rules of equity and if it is accepted as the correct rule of law, it would prevent

1) Added by Punjab Act 1 of 1944, section 2. It applies to all suits or appeals pending on, or instituted after, the commencement of this Act. "

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genuine claims being rendered in fructuous. *Garib Singh v. Harnam- Singh*. 1972 PLR186=AIR1972 Pb. 99= 1971 Rev. LR 106=ILR (1972) 1 Pb.342 =1971 Cur.L7569=1971 PLJ 579.

Improvement in the status of vendee-There was nothing dishonest about the purchaser reducing himself to the status of mortgagee only. By this sacrifice, however, he was making a distinct improvement in his capacity to resist the suit for pre-emption. This improvement in his rights, so far as the pre-emption suit was concerned, would fully attract the application of section 21-A of the Punjab Pre-emption Act, 1913. As the improvement in the status of the vendee had been made otherwise than through inheritance or succession after the institution of the pre-emption suit, it could, not in any way affect the right of the pre-emptor. *Karnail Singh v. Kehar Singh* AIR1972 Punj. 426=1972 Rev. LR 261=1972 PLJ 13.)

It can be through the same transaction, a portion of which is sought to be pre-empted. Death of a co sharer-- Land inherited by his heirs-Pre-emption by other co-sharers-Heirs of the deceased included 2 females-2/5 sharer of land belonging to female heirs could not be pre-empted by co-sharers in view of Section 15(1). Vendee owning 2/5 land as a co-sharer by sale deed. Improvement made by vendee in his status by sale deed in dispute can be taken into consideration for holding that vendee had become such a co-sharer which could defeat right of plaintiffs. 1978 PLJ 328 : 1978 RLR 588.

The acquisition of superior right by the vendee during the pendency of the pre-emption suit is not hit by the doctrine of pendens lite and does not defeat the right of the pre-emptor. *Malhu v. Sham Lal*. 1964 PLR 507 = 1964 Cur. LJ 200.

22. Plaintiff may be called on to make deposit or to file security.-(1) In every suit for pre-emption the Court shall at, or at any time before, the settlement of issues, require the plaintiff to deposit in Court such sum as does not, in the opinion of the Court, exceed one-fifth of the probable value of the land or property, or require the plaintiff to give security to the satisfaction of the Court for the payment, if required of a sum not exceeding such probable value with in such time as the Court may fix in such order.

(2) In any, appeal the appellate Court may at any time exercise the powers conferred on a Court under subsection (1)11

(3) Every sum deposited or secured under sub-section (1) or (2) shall be available for the discharge of costs.

(4) If the plaintiff fails within the time fixed by the Court or with in such further time as the Court may allow to make the deposit or furnish the security mentioned in sub-section (1) or (2), his plaint shall he rejected or his appeal dismissed as the case may be.

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(5) (a) If any sum so deposited is withdrawn by the plaintiff, the suit or appeal shall be dismissed.

(b) If any security so furnished for any cause becomes void or insufficient, the Court shall order the plaintiff to furnish security or to increase the security, as the case may be, within a time to be fixed by the Court, and if the plaintiff, fails to comply with such order, the suit or appeal shall be dismissed.

(6) The estimate of the probable value made for the purpose of sub-section (1) shall not affect any decision subsequently come to as to what is the market value of the land or property.

CASE LAW

Scope -Section 22' of' the 'Punjab' Pre-emption Act indubitably insists upon the court 'calling upon the plaintiff to deposit one-fifth of the purchase value of the property *in dispute* or to require him to give security for a sum not exceeding such probable value. In case of security the Court has to specify the probable value of the property in respect of which the right of pre-emption is claimed and the plaintiff is not left to his own assumption or estimate of the probable value. *Nihal Singh v. Ram Chander*. AIR 1953 Pepsu 23.

Under section 22 (1) there is ample power in Court to extend the time and to direct for the deposit being made on or before the date fixed for the issue being framed. *Umrao Singh v. Dharma*. 1972 Cur. LJ 355= 1972 Rev. LR 305.

Object- The object of Section 22 seems to that the Court wants to make sure that the plaintiff is *bonafide* prosecuting his pre-emption suit which is sometimes collusive and may be that when a suit is decreed, the plaintiff is not in a position to get himself substituted for the vendee because of his inability to pay the sale price. Any such situation would naturally result in harassment for the vendee and the legislature in its wisdom has taken the precaution of enabling a court to obtain some sort of security from the plaintiff. *Dalip Singh v. Hardev Singh*. 1969 PLR 61

The object is to ensure that the pre-emptor is serious about the suit for pre-emption and is not out to harass the vendee. Whether pre-emptor can be asked to pay cash to the tune one fifth or he can be asked to furnish security to that extent, there is no reason why part cannot be allowed to be deposited in Court and qua the remaining in security is demanded. *Suraj Parkash v. Nina Rani Aggarwal*. 1967 PLR 642.

Pre-emption Amount-withdrawal of-Where the decree holder on, his own volition chooses to withdraw the pre-emption amount, he gives his

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implied agreement to have the suit dismissed or the plaint rejected under subsection (4) or (5) of S. 22. If one fifth of the value of the land deposited under sub-section (1) is also withdrawn then the amount has ceased to be available as security for the discharge of the costs of the vendee as contemplated by sub-section (3) of section 22. Order 20, Rule 14 CPC makes the deposit of the pre-emption money on or before the date specified by the Court a condition precedent to the pre-emptor's right to get possession of the land and no provision has been made for the withdrawal of the amount once deposited or for its redeposit. *Kundan v. Mukanda*. 1970 PLJ 585=1970 Rev. IR 596.

Extention of time-Main criteria-No hard and fast rule can be laid down in the matter of extension of time, but in each case, the question will have to be decided on the facts of that particular case. If a proper case is made out, the Court will be justified in extending the time under section 22 (4) of the Act and if a case is not made out, of course, it goes without saying, the prayer will be rejected. *Chand Kaur v. Radha Sham*. 1966 Cur. LJ 239

Deposit one fifth of the sale consideration extension of time for deposit.-It is open to a Court having once ordered the one fifth of the sale consideration to be deposited in cash to subsequently that order and direct that the security for the sale consideration be furnished. *Dalip Singh v. Hardev Singh*. 1970 Cur. LJ 304=ILR (1970) 1 Pb. 58.

An appellate Court can at any time exercise the powers conferred on the Trial Court under S 22(1) of the Punjab Pre-emption Act, 1913. It can also extend the "time for the deposit of 1/5th of the probable value of the land. It is only when the plaintiff fails to make the required deposit either within original time fixed or within the extended time allowed by the Court that his plaint shall be rejected or his appeal dismissed as the case may be. *Kartar Singh v. Ajmer Singh* 71 PLR 512= 1969 Cur. LJ 358.

Where the Court which had directed deposit of pre-emption money by a certain date had unexpectedly curtailed the time for deposit, though by a few hours only and rejected the plaint and also plaintiff's application for extension of time on his failure to deposit the money, the order of rejecting the plaint, was liable to be set aside. 1963 Cur. LJ 315 referred to. *Saroop Singh -v. Gian Singh*. AIR 1972 Punj. 191

Deposit of 1/5th of sale price Last date of deposit falling on Sunday. Order of rejection of plaint on the opening day of the court held illegal. *Gian Singh v. Gopal Dass*. 1969 Cur. LJ 351

Deposit under-Departmental inquiry proceedings are not judicial proceedings. Order on its basis is invalid. *Mohinder Singh v. Kehr Singh*. 1967 Cur. LJ 77.

It is open to a court having once ordered the one fifth of the sale consideration to be deposited in cash to subsequently change that order and direct that the security for the sale consideration be furnished. *Dalip Singh v. Hardev Singh*. 1969 PLR 61.

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It is, discretion. of court to accept less than one-fifth. But the amount cannot be split up, part in cash and part as security. *Kaka Singh v. Dalip Singh*. -1967 PLR 771.

The object of section 22 is to ensure that the pre-emptor is serious about the suit for pre-emption and is not out to harass the vendee. When the pre-emptor can be asked to pay cash to the tune of one-fifth or he can be asked to furnish security to that extent, there is no reason why part cannot be allowed deposited in court and qua the remaining security is demanded. *Suraj Parkash v. Smt. Nina Rani Aggarwal*. 1967 PLR 642

The mere omission to have the signatures of the Presiding Officer on the order, must. therefore, be regarded as mere mistake of a Court Official for which the litigant should not be penalised There was sufficient ground for the plaintiff to have been misled in the case. *Balbinder Singh v. Tej Singh*. 1967 PLR 402

No hard and fast rule can be laid down in the matter of extension of time, but in each case the question will have to be decided on the facts of that particular case. If a proper case is made out, the court will be justified in extending the time under sub-section (4) of section 22 of the Act But if a case is not made out, of course it goes without saying that the prayer will be rejected. *Chand Kaur v. Radhey Sham*. 1966 Cur. LJ 239.

Power to extend time.-Deposit of 1/5th of sale consideration. Trial court competent to extend time for the deposit of sale consideration in the stage of framing issues. No jurisdiction thereafter. *Rama Nand v. Chandgi*. 1978 PLJ 295= 1978 RLR 602= 1978 Cur- LJ 467.

The court can, from time to time, in the exercise of its judicial discretion extend the period for deposit of cash or furnishing of security, subject to the condition that either of these things must be done before the settlement of issues. *Dalip Singh v. Hardev Singh* 1969 PLR 61.

The court has jurisdiction under section 22 to extend time for making the deposit of one-fifth of the pre-emption money even after the expiry of time previously fixed by it and application for extension of time was made after the expiry of time already fixed. *Ram Saran Das v. Gurmukh Ram*. 1969 PLR 870.

23. Special conditions relating to sales of agricultural land. - No decree shall be granted in a suit for preemption in respect of the sale of agricultural land until the plaintiff has satisfied the Court:

- (a) that the sale in respect of which pre-emption is claimed is not in contravention of the [Punjab Alienation of Land Act, 1900 (XIII of 1900)] ;and

1. Repeated by the, Adaptation of Laws (Third Amendment) Order, 1951.

(b) that he is not debarred by the-provisions of section 14 'of this Act from exercising the right of pre-emption.

24. Procedure on determination of the said issues.-In a suit for pre-emption in respect of a sale of agricultural land ,if the Court finds that the sale is in contravention of the [Punjab Alienation of Land Act, 1900], the Court shall dismiss the suit.

CASE LAW

Pre-emptor's right at the date of sale, at the date of suit and at the date of decree – If the original holding of the landowner was subject to the disability of pre-emption the land allotted in lieu thereof will be equally subject to the same disability. This will however always be subject to the law of pre-emption itself, and to the well-settled principle of pre-emption, namely, that the pre-emptor must have a right of pre-emption at the date of the sale, at the date of the suit and finally at the date of the decree.

If the land allotted in lieu of the original holding or tenancy is pre-emptible under the law of pre-emption and the right of pre-emption still exists on the three dates to which we have already referred the pre-emptor would by virtue of section 24 be able to enforce his rights against land which may have been allotted to the vendee in lieu of the land which was actually the subject matter of sale. *Sunder Singh v. Narain Singh*. 1967 Cur LJ 528(SC).

25. Fixing of price for purpose of suit in case of sales – (1) If in the case of a sale the parties are not agree as to the price at which the pre-emptor shall exercise his right of pre-emption, the Court shall determine whether the price at which the sale purports to have taken place was not so fixed or paid, it shall fix as the price for the purpose of the suit the market value of the land or property.

– (2) If the Courts finds that the price was fixed in good faith or paid, it shall fix such price as the price for the purposes of the suit :

Provided that when the price at which the sale purports to have taken place represents entirely or mainly a debt greatly exceeding in amount the market value of the property, the Court shall fix the market value as the price of the land of

1. Repeated by the Adaptation of Laws (Third Amendment) Order, 1951.

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Property for the purposes of the suit, and may put the vendee to his option either to accept such value as the full equivalent of the consideration for the original sale or to have the said sale cancelled and the vendor and vendee restored to their original position.

26. Fixing of price for purposes of suit in case of foreclosure – If in case of a foreclosure the parties are not agreed as to the amount at which the pre-emptor shall exercise his right of pre-emption the Court shall determine whether the amount claimed by the mortgage is due under the terms of the mortgage, and whether it is claimed in good faith. If it finds that the amount as the price for the purposes of the suit ; but if it finds that the amount is not so due, or though due, is not claimed in good faith, it shall fix as the price for the purposes of the suit the market value of the property.

30. Market value, how to be determined – For the purpose of determining the market value, the Court may consider the following among other matter as evidence of such value :-

- (a) the price of value actually received or to be received by the vendor from the vendee or the amount really due on the footing of the mortgage as the case may be
- (b) the amount of interest included in such price, value or amount ;
- (c) the estimated amount of the average annual net assets of the land or property.
- (d) the land revenue assessed upon the land or property ;
- (e) The value of similar land or property in the neighborhood;
- (f) The value of the land or property as shown by previous sales or mortgages.

CASE LAW

Scope – Court can determine the question whether the consideration has

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Been fixed in good faith or not. It cannot go into the question as to whether the lease deed was executed bonafide or not. *Tara Singh v. Smt. Giano and others*. 1983 Land Laws Reporters 87.

Sales price-Determine of – In pre-emption suit if in case of sale effected the parties are not agreed as to the price at which the pre-emptor id to exercise his right of pre-emption, the court has a duty to determine whether the price at which the sale purports to have taken place was fixed in good faith or paid, and if it finds that the price was not so fixed or paid, it has to fix as the price was fixed in good faith or paid the court is bound to fix as the price for the purposes of the pre-emption suit. In order to determine the market price, the court is empowered to consider the price or value actually received or to be receiver by the vendor along with other relevant factors stated in section 97. *Wayryam Singh v. Sadhu Singh* 1966 Cur. LJ 226.

28 Concurrent hearing of suits – When more suits than one arising out of the same sale or foreclosure are pending, the plaintiff in each suit shall be joined as defendant in each of the other suits, and in deciding the suits, the Court shall be in each decree state the order in which each claimant is entitled to exercise his right.

CASE LAW

Scheme of – The scheme of section 28 of the Punjab Pre-emption Act read with Order 20, Rule 14 CPC does not postulate decree of pre-emption of different amounts of purchase money in respect of the same sale, Such a course may lead to conflicting decisions on the question of value of pre-emption suit. *Mula v. Godhu* 1971 AIR SC 89 1970 Rev. LR 775 SC= 1970 PLJ 632 SC.

Scope- Section 28 of the Act deals only with a matter of procedure. Therefore non-compliance with it would hardly render the decree a nullity. It is only if the plaintiff in a pre-emption suit is aware of the pendency of another pre-emption suit that he is enjoined to implead the rival pre-emptor plaintiff. This joinder or non-joinder of parties of causes of action (unless of course the parties are admittedly essential) is merely an error, defect or irregularity and does not by itself affect the merits of the case or the jurisdiction of the court. *Dhupan v. Shri Ram* 1959 PLR 774

¹**[28A. Postponement of decision of pre-emption suits in certain cases** – (1) If any suit for pre-emption any person bases a claim or plea on a right of pre-emption derived from the ownership of agricultural land or other immovable property, and the title to such land or property is liable to be defeated by the enforcement of a right of pre-emption with respect to it, the court shall not decide the claim or plea until

1. Inserted by Punjab Act 3 of 1928, section 2

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The period of limitation for the enforcement of such right of pre-emption has expired and the suits for pre-emption (if any) instituted with respect to the land or property during the period have been finally decided.

- (2) If the ownership of agricultural land or other immovable property is lost by the enforcement of a right of pre-emption, the court shall disallow the claim or plea based upon the right of pre-emption derived there from]

29. Copy of decree to be sent to Deputy Commissioner ; application for revision – (1) The Court shall send to the Deputy Commissioner a copy of every original decree granting pre-emption other than a decree granting pre-emption in respect of a building or site of a building in a town or subdivision of a town, and a Deputy Commissioner may within two months from the date of the receipt of such copy, apply to the Court to which the appeal in the pre-emption suit would lie, or if no appeal lies, to the Divisional Court for revision of the decree on the ground that the decision of the Court of first instance is contrary to the provisions of the Punjab Alienation of Land Act, 1900 (XIII of 1900)

- (2) No stamp shall be required upon such application and the provision of of the Code of Civil Procedure (V of 1908) as regards appeals shall apply, as far as may be, to the procedure of the Appellate Court on receipt of such application.

- (3) No appearance by or on behalf of the Deputy Commissioner shall be deemed necessary for the disposal of the application.

CHAPTER V

30. Limitation – In any case not provided for by article 13 of the Second Schedule of the Indian Limitation Act, (IX of 1908) the period of limitation in a suit to enforce a right of pre-emption under the provision of this Act shall notwithstanding anything in article 120 of the said schedule, be one year –

- (1) in the case of a sale of agricultural land or of village immovable property ;

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From the date of the attestation (if any) of the sale by a Revenue Officer having jurisdiction in the register of mutations maintained under the Punjab Land Revenue Act 1887; or (XVII of 1887)

From the date on which the vendee takes under the sale physical possession of any part of such land or property ;

Whichever date shall be the earlier ;

- (2) in the case of a foreclosure of the right to redeem village immovable property or urban immovable property;

from the date on which the title of the mortgagee to the property becomes absolute ;

- (3) in the case of a sale of urban immovable property from the date on which the vendee takes under the sale physical possession of any part of the property.

CASE LAW

Applicability of Mutation under S. 30 of the Pre-emption Act is the starting point limitation on the ground that it is a short of public notice of the event of sale as is the case with regard to a registered document. Registration of a transfer is public notice of the same. That is why the period of limitation is reckoned from the date of registration of the sale under Art 10 of the Limitation Act (Ram Chander v. Pirthi. 1966-68 PLR 709)

Limitation for Pre-emption suit – That there is no manner of doubt that the property sold included share is Shamlat Deh Patti as well. That being so, the whole of the properties sold was not capable of physical possession within the meaning of Art. 10 of the Limitation Act, and, therefore, the pre-emption suit should have been filed within one from the date of the registration of the sale deed under that very article. Kirpal Singh v. Surjan Singh 1970 AIR Punj. 519=1970 Rev. L.R 614 = 1970 PLJ 226

Suit for pre-emption – Limitation - Under Section 30 for a suit for pre-emption in the case of sale of agricultural land the terminus-a-quo for limitation is (1) from the date of attestation or of the mutation and (2) on the date the vendee took physical possession of any part of the property. Knowledge of the sale is not one of the points from which limitation will start running and a suit filed within the year of the date of attestation of the mutation or from the date when the transfer of possession took place would be within limitation. Bachan Singh v. Darbara Singh (Punj) 66 PLR 91.

Property was incapable of being physically delivered to the vendees on the date, when it is said to have been sold and had never in fact

been physically handed over to the vendees. The only terminus-a-quo from which the period of limitation can start is the date of registration. *Balwant Rai v. Ram Gopal*. 74 PLR 70.

The only difference between Article 97 of the Limitation Act and Section 30 of the Pre-emption Act is that in the case of a sale agricultural land the attestation of the mutation following the sale furnishes the terminus-a-quo whereas in the case of registered sale deeds the date of registration furnishes the terminus-a-quo. Otherwise in the case of property which is capable of physical possession in the case where Article 97 of the Limitation Act applies possession of the whole of the property and in case where section 30 of the period of limitation running for a suit for pre-emption. *Bachan Singh v. Dalbara Singh*

Under section 30 of the pre-emption Act for a suit for pre-emption in the case of agricultural land and the terminus-a-quo for limitation is (1) from the date of attestation of the mutation and (2) on the date the vendee took physical possession of any part of the property. Knowledge of sale is not one of the points from which limitation will start running and a suit filed within one year of the date of attestation of the mutation or from the date when transfer of possession took place would be within limitation. (*Bachan Singh v. Dalbara Singh* 1964 PLR 91)

¹[**31 Punjab Pre-emption (Amendment) Act 1960 to apply to all suits.** - No court shall pass a decree in a suit for pre-emption whether instituted before or after the commencement of the Punjab Pre-emption (Amendment) Act, 1960 which is inconsistent with the provision of the said Act]

CASE LAW

Scope – Section 31 is plain and comprehensive enough to require an appellate Court to give effect to the substantive provisions of the Amending Act whether the appeal before it is one against a decree granting pre-emption or one refusing that relief. Following the ratio of the decision it must be held that it is not open to the court to pass a decree of pre-emption in favour of the appellant who were deprived of their rights by the Amending Act of 1960. *Mula and others v. Godhu* 1970 Rev. LR 775 SC = 1970 PLJ 632 SC = 1971 AIR Sc 89.