2023 LiveLaw (SC) 324

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
AJAY RASTOGI; J., BELA M. TRIVEDI; J.
17.04.2023

CIVIL APPEAL NO. 1497 OF 2008
JHABBAR SINGH (DECEASED) THROUGH LEGAL HEIRS & ORS. *versus* **JAGTAR SINGH S/o DARSHAN SINGH**

CIVIL APPEAL NO. 1498 OF 2008
BALAK RAM S/o SHRI SANTU & ORS. *versus* **JAGTAR SINGH S/o DARSHAN SINGH**

Code of Civil Procedure, 1908; Order XX Rule 18 - Punjab Land Revenue Act, 1887; Section 121 - Instrument of Partition - For the purpose of interpreting Section 121 of the Land Revenue Act, the Court can safely draw an analogy from the provisions contained in Order XX, Rule 18 C.P.C. which pertain to the procedure to be followed on the passing of the decree for the partition of the property. *(Para 28)*

Code of Civil Procedure, 1908; Order XX Rule 18 - Punjab Land Revenue Act, 1887; Section 121 - When a decision is taken by the Revenue Officer under Section 118 on the question as to the property to be divided and the mode of partition, the rights and status of the parties stand decided and the partition is deemed to have completed. At this stage, such decision is required to be treated as the "decree". *(Para 30)*

Punjab Land Revenue Act, 1887; Section 118 - Disposal of other question - When a Revenue Officer takes a decision under Section 118 of Punjab Land Revenue Act, for partition of property, then the said partition would stand completed and the joint status of the parties would stand severed; subject to the decision in appeal if any preferred by the party. The further proceeding to draw an instrument of partition would be only an executory or ministerial work to be carried out to completely dispose of the partition case. Hence, merely because the instrument of partition was not drawn, it could not be said that the partition was not completed or that the joint status of the parties was not severed. *(Para 30)*

Right of Pre-emption - the pre-emptor must establish that he had the right to pre-empt on the date of sale, on the date of the filing of the suit and on the date of the passing of the decree by the Court of the first instance. If the claimant-plaintiff loses that right or the vendee improves his right equal or above the right of the claimant before the adjudication of the suit, the suit for pre-emption would fail. *(Para 17)*

Summary: - the partition having been accepted as per the "Naksha Be", the joint status of the parties stood severed. The High Court misinterpreted the provisions of Punjab Land Revenue Act, 1887 and erred in setting aside the judgments and decrees passed by the trial court and the appellate court. The Bench quashed the order of the High Court and allowed the appeal.

For Appellant(s) Mr. Jasbir Singh Malik, Adv. Ms. Divya Mishra, Adv. Mr. Varun Punia, AOR

For Respondent(s) Mr. Kamal Mohan Gupta, AOR Ms. S. Janani, AOR

J U D G M E N T

BELA M. TRIVEDI, J.

1. Both the appeals arise out of the common judgment and order dated 17.08.2007 passed by the High Court of Punjab and Haryana at Chandigarh in RSA No.1470/1983 and RSA No. 1557/1983, whereby the High Court, while allowing the said appeals filed by

the original plaintiff Jagtar Singh (predecessor of the present respondent) decreed the Civil Suits no. 420/1981 and 421/1981, filed by him, seeking decree for the possession of the suit lands, claiming right of pre-emption against the original defendants Jhabbar Singh and others (the predecessor of the present appellants). The present appellants and respondent have been substituted as the legal heirs of the original defendant Jhabbar Singh and original plaintiff Jagtar Singh respectively.

2. The factual matrix giving rise to the present appeals are as under: -

(2.1) The Civil Suit No. 420/1981 was filed by the plaintiff Jagtar Singh against the defendant Jhabbar Singh and others, with regard to the land admeasuring 12 bighas representing 240/819th share of the land admeasuring 40 bighas 19 biswas, as detailed in para 1 of the plaint. The said land was originally owned by one Jit Singh, who had sold the same for consideration of Rs. 46,500/- to the defendant Jhabbar Singh and others vide registered sale deed dated 07.04.1980.

(2.2) The Civil Suit no. 421/1981 was also filed by the plaintiff Jagtar Singh pertaining to the land admeasuring 10 bighas 18 biswas representing 218/819th share of the land admeasuring 40 bighas and 19 biswas as detailed in para 1 of the plaint, originally owned by Jit Singh and his wife Piar Kaur, who had sold the same for a consideration of Rs 42,500/- to the defendant Jhabbar Singh and others vide registered sale deed dated 24.04.1980.

(2.3) On 06.04.1981, the plaintiff Jagtar Singh filed the said two suits seeking possession of the suit lands on the ground that he was having a superior right to pre-empt those sale deeds as the co-sharer in the joint khewat, however no notice of the sale was given to the plaintiff by the said owner Jit Singh. The defendants Jhabbar Singh and others resisted the suits denying the plaintiff's claim of superior right of pre-emption.

(2.4) During the pendency of the said suits, on 25.05.1982, the defendant Jhabbar Singh filed a Partition case being no. 78/TP before the Assistant Collector, Tehsil Pihowa, in which the plaintiff Jagtar Singh had filed his objections. The Assistant Collector, Tehsil, Kurukshetra passed the following order on 25.05.1982 as under: -

"…..Therefore, the objections placed by Jagtar Singh and others are rejected and the mode of partition which has already been prepared has been confirmed. Naksha Be is already annexed in the file because it has already been prepared. Therefore, the case is to be listed on 31.5.82 for objections as to Naksha Be".

(2.5) Thereafter on 31.07.1982, the Assistant Collector, Tehsil, Pihowa passed the following order: -

"Today the file has been produced. Counsel of parties are present, Patwari and Kanoongo are also present who as per the earlier order have provided for passage and boundaries of the plots and about which the parties have been explained. There was no passage for these plots earlier. Even then passage has been given from Khasra 802/1 and 806 from Village Kamoda to Village Jyotisar which is connecting these villages. Another passage is at the East side after 4-5 acres and if these plots did not get any other passages then this is the correct place for such passage. As per Naksha Be of partition, the partition is accepted the details of which is as follows:

Name	Number of Khasras allotted
1.Jhabbar Singh, Balak Ram, Sardar Ram, Afsar Ram, Sher Singh, Santu S/o Shibbu all the six portions are equal	790/2-792/2-792/1/2-800 2-16 3-14 0-4 4-0 801 783/2 -802/1 – 806/1 4-0 0-6 3-16 3-16 Total: 22 bigha 12 biswa
2. Jagtar Singh, Pranav Singh, Palvinder Singh, Tarsem Singh S/o Darshan Singh. All four portions are equal.	788 – 789 -783/1-784 3-8 4-11 3-14 4-0 787 2-2 Total: 17 bigha 15 biswa

In addition to above for No.1	802/1-806-790/1-792/1
For No.2	0-4 0-4 0-2 x 792/1
	0-2
	Total: 0-12 Biswa

Now the case is to be listed on 30/8/82 after expiry of time for appeal. Pronounced in Open Court.

31-7-82

Sd/-

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(2.6) It further emerges that thereafter the defendant Jhabbar Singh had filed an application before the Trial Court seeking an amendment in the written statement in the suits stating *inter alia* that during the pendency of the suits, the joint khata including the suit lands had been partitioned by the AC-I Grade, Pihowa vide order dated 31.07.1982. Consequent upon such amendment, an additional issue came to be framed by the trial court vide the order dated 28.09.1982 in the suits, as to "whether the suit land has been partitioned?"

(2.7) On 12.10.1982, the Collector Guhla dismissed the appeal filed by the said Jagtar Singh and Others against the order dated 31.07.1982 passed by the Assistant Collector, Pihowa. On 19.10.1982, the said Jagtar Singh had filed Revision application before the Commissioner, in which the Commissioner had initially granted stay against the operation of the order dated 31.07.1982 upto 16.11.1982, however the said stay was not extended thereafter.

(2.8) Both the suits being 420/1981 and 421/1981 came to be dismissed by the Civil Judge, SJIIC Kaithal vide the judgments and decrees dated 01.12.1982, holding *inter alia* that khewat in dispute had remained no more joint as per the order dated 31.07.1982 and that the plaintiff had lost the joint status as the co-sharer on the date of passing the judgment and decree. The First Appeals preferred by the plaintiff Jagtar Singh also came to be dismissed by the Additional District Judge, Kurukshetra, vide the judgment and decrees dated 08.04.1983.

(2.9) However, the RSA no. 1470/83 and RSA no. 1557/83 preferred by the plaintiff Jagtar Singh against the said judgments and decrees of the First Appellate Court, came to be allowed by the High Court vide the impugned common judgment and order dated 17.08.2007.

3. The learned senior counsel Mr. Narender Hooda appearing for the appellants (original defendants) placing reliance on the provisions contained in Section 121 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the 'Revenue Act') submitted that after the partition was completed, the function of the Revenue Officer to prepare an instrument of partition and fixing the date for taking effect of the partition was only an executory or ministerial act. As such "Naksha Be" having already been prepared when the Assistant Collector had passed the order, and the objections of the respondent (original plaintiff Jagtar Singh) with regard to the mode of partition having already been rejected vide his order dated 25.05.1982, the said "Naksha Be" had stood confirmed, and thereafter the said "Naksha Be" was to be treated as "Naksha Zeem" for the final allocation of lands between the parties. According to him, thereafter the Assistant Collector had passed the order on 31.07.1982 accepting the partition, and the appeal against the said order preferred by Jagtar Singh before the Collector was dismissed on 12.10.1982, and therefore the right of pre-emption even if had existed in favour of the plaintiff Jagtar Singh on the date of filing of the suits, did not survive on the date of passing of the decrees in the civil suits on 01.12.1982. He further submitted that the right of pre-emption under the Punjab Pre-emption Act, 1913 (hereinafter referred to as the 'Pre-emption Act') is a weak kind of right, and as per the settled legal position, the right of pre-emption should not only exist on the date of filing of the suits, but has to subsist on the date of passing of decree

also. Mr. Hooda has placed reliance on the decisions of the Punjab and Haryana High Court in ***Har Devi vs. Ram Jas and Others (1974 PLJ 345); Lala Ram vs. The Financial Commissioner, Haryana (1991 SCC Online P&H 1105); Pritam Singh Vs. Jaskaur Singh (1992 SCC Online P&H 676) and Munshi vs. The Financial Commissioner, Haryana, Chandigarh (1993 SCC Online P&H 1086)*** to buttress his submissions.

4. Per contra, the learned senior counsel, Mr. Rajiv Bhalla appearing for the respondent repelling the submissions made on behalf of the appellants submitted that as per Section 121 of the Revenue Act, the partition comes into effect on a date to be notified by the Assistant Collector in the instrument of partition and not on the date of preparation of "Naksha Be" or "Naksha Zeem". According to him, the said date is significant for the purpose of determining the liability of the parties to pay the revenue and also for recording the ownership rights in the record of rights. Mr. Bhalla relied upon the various proformas contained in the Haryana Land Records Manual, 2013 to submit that the partition and severance of status of the cosharer could be notified by the Assistant Collector only in accordance with Section 121 of the Revenue Act and Clauses 18.12 to 18.14 of the Manual. Distinguishing the judgments relied upon by the learned senior counsel Mr. Hooda for the appellants, learned senior counsel, Mr. Bhalla submitted that in the said cases, the status of co-sharer had come to an end on the date set out in the instrument of partition, whereas in the instant case neither the instrument of partition was prepared, nor the date was determined by the Assistant Collector as per Section 121 of the Revenue Act, and therefore it could not be said that the proceedings of partition had stood concluded before the date of decrees passed in the suits. Placing reliance upon the judgment of this Court in case of ***Bishan Singh & Others vs. Khazan Singh & Another***[1] he submitted that the right of pre-emption is a right of substitution and not a right of re-purchase and therefore the plaintiff was not required to challenge in the suits, the sale deeds executed in favour of the appellantsdefendants.

5. For the better appreciation of the rival contentions raised by the learned counsel for the parties, it would be beneficial to refer to some of the provisions contained in the Pre-emption Act and the Revenue Act. Section 4 of the Pre-emption Act pertains to the right of pre-emption which reads as under:

"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."

6. Section 15 deals with vesting of right of pre-emption in favour of certain categories of persons. The relevant part thereof is reproduced as under: -

"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).....

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

[1] AIR 1958 SC 838

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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;

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)……."

7. The procedure for giving notice to the pre-emptor has been laid down in Section 19 and the procedure for giving notice by the preemptor to the vendor has been laid down in Section 20. Section 21 of the Pre-emption Act states that any person entitled to a right of pre-emption may, when the sale or foreclosure has been completed, bring a suit to enforce that right.

8. So far as the provisions contained in the Punjab Land Revenue Act, are concerned, Chapter IX thereof pertains to the "Partition". As per Section 111 thereof, the application for partition could be made by any joint owner of land or any joint tenant of a tenancy in which a right of occupancy subsists, to the Revenue Officer in the circumstances mentioned therein. The procedure to be followed by the Revenue Officer on receiving the application under Section 111 is laid down in Sections 113 to 120.

9. Section 118 pertaining to the disposal of other questions and to the Appeal reads as under: -

"**118. Disposal of other question**: -(1) When there is a question as to the property to be divided, or the mode of making a partition, the Revenue-officer shall, after, such injury as he deems necessary, record an order stating his decision on the question and his reasons for the decision.

(2) An appeal may be preferred from an order under sub-section (1) within fifteen days from the date thereof, and, when such an appeal is preferred and the institution thereof has been certified to the revenue-officer by the [authority to whom the appeal has been preferred] the Revenue-officer shall stay proceeding pending the disposal of the appeal.

(3)……

(4)……"

10. Section 121 which pertains to the instrument of partition, being relevant for our purpose is reproduced as under:

"121. Instrument of partition: - When a partition is completed, the Revenue-officer shall cause an instrument of partition to be prepared, and the date on which the partition is to take effect to be recorded therein."

11. Section 123 pertains to the affirmation of partition made without the intervention of the Revenue Officer which reads as under:

"123. Affirmation of partition privately affected: - (1) In any case in which a partition has been made without the intervention of a Revenue-officer, and party thereto may apply to a Revenue-officer for an order affirming the partition.

(2) On receiving the application, the Revenue-officer shall inquire into the case, and, if he finds that the partition has in fact been made, he may make an order affirming it and proceed under section 119, 120, 121 and 122, or any of those sections, as circumstances may require, in the same manner as if the partition had been made on an application to himself under this Chapter."

12. At the outset, it may be noted that the plaintiff Jagtar Singh, the predecessor of the present respondent, had filed the suits claiming himself to be the co-sharer in the joint khewat along with the vendor Jit Singh, and had sought relief against the defendant

Jhabbar Singh and others with regard to the possession of the suit lands, on the ground that he as a co-sharer had a superior right to pre-empt the sales, and that he was not put to any notice of sale of the suit lands on or before the date of such sales. In a very loosely drafted plaint, the plaintiff had neither pleaded as to how he was the cosharer, nor had he impleaded the said Jit Singh, the owner of the suit lands, with whom he claimed to be the co-sharer, and who had sold the suit lands to the defendants Jhabbar Singh and Others. It is needless to say that in a suit for pre-emption, the vendor i.e., the owner of the suit land who had allegedly not given any notice of sale to the plaintiff as required to be given under Section 19 of the Preemption Act and against whom the right to pre-empt the sale is claimed would be a proper party if not a necessary party, for a complete and final adjudication on the issues involved in the suit.

13. As held by this Court in ***U.P. Awas Evam Vikas Parishad vs. Gyan Devi***[2], necessary party is one without whom no order can be made effectively; and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings. When a right to pre-empt the sale was claimed by the plaintiff Jagtar Singh as a co-sharer in the lands along with the owner Jit Singh, alleging that the mandatory provisions contained in Section 19 i.e., for giving notice to the pre-emptor, was not complied with by the owner or seller Jit Singh, his presence as the party defendant was desirable along with the other defendants Jhabbar Singh and Others, to effectively and finally decide the disputes between the parties. Though, Order I, Rule 9 states that no suit shall be defeated by reasons of the misjoinder or non-joinder of parties, care must be taken by the court to ensure that all the parties, be it the plaintiff or the defendant, whose presence is necessary for complete and final adjudication on the issues involved in the suit, are before the court. That is the reason why the courts are empowered to strike out or add parties, at any stage of the proceedings as per Order I, Rule 10, C.P.C.

14. Further, having regard to the absolutely sketchy and loosely drafted plaint in the instant case, the Court is tempted to regurgitate the basic and cardinal rule of pleadings contained in Order VI, Rule2(1) of the Code, according to which every pleading (i.e., plaint or written statement) has to contain a statement in concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be. Of course, the pleading need not contain the evidence by which such material facts are to be proved, nonetheless the facts necessary to formulate a complete cause of action i.e., the material facts must be stated. Omission of a single material fact would lead to an incomplete cause of action and in that case, the statement of claim would become bad in the eye of law.

15. Now, so far as the right of pre-emption is concerned, it may be noted that it is a very weak right and could be defeated by all legitimate methods. This Court as back as in 1958, in case of ***Bishan Singh and Others vs. Khazan Singh & Another*** (supra), had set-forth the contours of the right of pre-emption. It was opined therein by the four-Judge Bench that-

"***11***.....The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase i. e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can

[2] AIR 1995 SC 724

be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place."

16. The afore-stated position was reiterated by this Court in ***Barasat Eye Hospital vs. Kaustabh Mondal***[3], and again in the recent decision in case of ***Raghunath (Dead) by LRs. vs. Radha Mohan (Dead) Through LRs. And Others***[4], wherein it has been observed as under: -

"14. We have given our thoughtful consideration to the aforesaid issue and in order to determine the same, we had, at the inception itself, set out the judgment in *Barasat Eye Hospital case* [*Barasat Eye Hospital* v. *Kaustabh Mondal*, (2019) 19 SCC 767 : (2020) 4 SCC (Civ) 810] . We have, thus, referred to the earlier judicial view in para 10 of the judgment extracted aforesaid. The historical perspective of the right of pre-emption shows that it owes its origination to the advent of the Mohammedan rule, based on customs, which came to be accepted in various courts largely located in the north of India. The pre-emptor has been held by the judicial pronouncements to have two rights. Firstly, the inherent or primary right, which is the right to the offer of a thing about to be sold and the secondary or remedial right to follow the thing sold. It is a secondary right, which is simply a right of substitution in place of the original vendee. The preemptor is bound to show that he not only has a right as good as that of the vendee, but it is superior to that of the vendee; and that too at the time when the preemptor exercises his right. In our view, it is relevant to note this observation and we once again emphasise that the right is a "very weak right" and is, thus, capable of being defeated by all legitimate methods including the claim of superior or equal right."

17. At this juncture, it would be also apt to mention that apart from the fact that the right of pre-emption is very weak right and capable of being defeated by all legitimate methods, the pre-emptor must establish that he had the right to pre-empt on the date of sale, on the date of the filing of the suit and on the date of the passing of the decree by the Court of the first instance. The pre-emptor or the claimant-plaintiff who claims the right to pre-empt the sale on the date of sale, has also to prove that such right continued to subsist till the passing of the decree of the first court. If the claimant-plaintiff loses that right or the vendee improves his right equal or above the right of the claimant before the adjudication of the suit, the suit for pre-emption would fail.

18. This proposition of law has been well settled by this Court since 1971, in case of ***Bhagwan Das (Dead) by LRS and Others vs. Chet Ram***[5]***.*** In the said case, this Court had approved the full bench decision of Punjab High Court in ***Ramji Lal and Another vs. The State of Punjab and Others***[6], which had ruled that a pre-emptor must maintain his qualification to pre-empt upto the date of the decree.

19. The Constitution Bench in case of ***Shyam Sunder and Others vs. Ram Kumar and Another***[7] also while examining the issues whether in a suit for pre-emption, the pre-emptor should possess his right to pre-empt on the date of sale and on the date of the decree of the First Court, and whether the loss of that right after the date of decree either by his own act or by an act beyond his control or by any subsequent change in the legislation which is prospective in operation during the pendency of the appeal filed against the decree of the Court of First instance, would affect the right of the pre-emptor or not, has laid down certain principles, after making analysis of various decisions

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[3] (2019) 19 SCC 767
[4] (2021) 12 SCC 501
[5] 1971 (1) SCC 12
[6] AIR 1966 P&H 374
[7] (2001) 8 SCC 24

including the decision of the Full Bench rendered by the Punjab and Haryana High Court in ***Ramji Lal vs. State of Punjab*** (supra).

"10. On an analysis of the aforesaid decisions referred to in first category of decisions, the legal principles that emerge are these:

1. The pre-emptor must have the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree by the Court of the first instance only.

2. The pre-emptor who claims the right to pre-empt the sale on the date of the sale must prove that such right continued to subsist till the passing of the decree of the first court. If the claimant loses that right or a vendee improves his right equal or above the right of the claimant before the adjudication of suit, the suit for pre-emption must fail.

3. A pre-emptor who has a right to preempt a sale on the date of institution of the suit and on the date of passing of decree, the loss of such right subsequent to the decree of the first court would not affect his right or maintainability of the suit for pre- emption.

4. A pre-emptor who after proving his right on the date of sale, on the date of filing the suit and on the date of passing of the decree by the first court, has obtained a decree for preemption by the Court of first instance, such right cannot be taken away by subsequent legislation during pendency of the appeal filed against the decree unless such legislation has retrospective operation."

20. In the light of the afore-stated legal position, let us examine whether the pre-emptor i.e., plaintiff Jagtar Singh had established his superior right of pre-emption all through out from the date of the execution of the sale deeds by the original owner – vendor Jit Singh, till the date of filing of the suit as also till the date of passing of the decree by the court of the first instance.

21. Recapitulating the facts, it appears that the said plaintiff Jagtar Singh, the predecessor of the present respondent, had filed the suits on 06.04.1981 claiming his superior right to pre-empt the sale on the ground of being co-sharer in the joint Khewat alleging *inter-alia* in the plaint that the original owner of the suit lands Jit Singh had executed the registered sale deeds on 07.04.1980 and 24.04.1980 in favour of the defendants Jhabbar Singh and others, predecessors of the present appellants, without giving any notice to the plaintiff. Since it was not disputed that the plaintiff Jagtar Singh was the co-sharer in the joint Khewat as per the Jamabandi for the year 1978-1979 (exhibit P-1), it could be safely held that the plaintiff had the right of pre-emption on the date of execution of the sale deeds in question and also on the date of filing of the suits.

22. However, the core issue that has fallen for consideration before us is, whether the plaintiff Jagtar Singh had the right to pre-empt on the date of passing of the decree by the trial court i.e. on 01.12.1982.

23. As stated earlier, pending the suits, the defendant Jhabbar Singh had filed a Partition case being no. 78/TP in respect of lands in question before the Assistant Collector, in which the plaintiff Jagtar Singh had filed his objections. The Assistant Collector vide the order dated 25.05.1982 had rejected the objections of Jagtar Singh and had listed the case on 31.05.1982 for the objections as to the "Naksha Be", which was already prepared and annexed to the file. As transpiring from the record, on 31.07.1982, the Assistant Collector in presence of the parties provided for the passage and the boundaries of the plots, and passed the order giving details of partition as per the "Naksha Be", mentioning as to which of the khasara numbers would be allotted to Jhabbar Singh and which to Jagtar Singh.

24. The trial court after discussing various decisions of the Punjab and Haryana High Court held that the Khewat in dispute had remained no more joint as per the order dated 31.07.1982 passed by the Assistant Collector, and that the plaintiff had lost his status of a cosharer on that date. Therefore, according to the trial court, the plaintiff did not possess the status of the co-sharer on the date of decree. The First Appellate Court in the appeals preferred by the plaintiff Jagtar Singh, also while confirming the judgments and decrees passed by the trial court and dismissing the appeals of the plaintiff held vide judgment and decree dated 08.04.1983 that the joint relationship between the parties had come to an end as soon as the order dated 31.07.1982 was passed by the Assistant Collector, and that the plaintiff had ceased to be the co-sharer in the land in dispute.

25. However, the High Court in the Second appeals preferred by the original plaintiff Jagtar Singh reversed the concurrent findings recorded by the two courts below and allowed the second appeals, holding *inter alia* that on the date of the passing of the decree, no instrument of partition was drawn by the Revenue Officer, and therefore it could not be said that the joint status of the parties had come to an end or that the plaintiff had lost his superior right of preemption. The High Court while passing the impugned order had followed its earlier judgment in ***Pritam Singh vs. Jaskaur Singh***[8].

26. In our opinion, it is difficult to subscribe the view taken by the High Court in the impugned order that since no instrument of partition was drawn on the date of passing of the decree by the trial court, the joint status of the parties had not come to an end. Having duly considered the provisions contained in the Punjab Land Revenue Act and also the Haryana Land Records Manual placed on record by the learned counsel for the parties, it clearly emerges that as per Section 118 of the Land Revenue Act, when there is a question as to the property to be divided, or the mode of making a partition, the Revenue Officer after such inquiry as he deems necessary, is required to record an order stating his decision on the question and record his reasons for the decision. Sub section 2 of Section 118 provides for an appeal to be preferred from decision of the Revenue Officer on the question of property to be divided, or the mode of making the partition. As such, there is no further appeal provided against the order in appeal passed under Section 118(2) of the Land Revenue Act. Section 119 deals with the administration of the property excluded from partition referred to in Clause 2 of Section 112, with which we are not concerned. Section 120 deals with the provisions with regard to the distribution of revenue and rent after the partition.

27. The relevant Section 121 states that when the partition is completed, the Revenue Officer shall cause an instrument of partition to be prepared, and the date on which the partition is to take effect to be recorded therein. If the said provision contained in Section 121 is closely read, it clearly appears that it deals with the procedure to be followed by the Revenue Officer, after the partition is completed. Meaning thereby, the Revenue Officer after the Partition is completed, has to cause an instrument of partition to be prepared and record therein the date on which the partition is to take effect. Therefore, when the inquiry as contemplated in Section 118 on the question as to the property to be divided, or the mode of making partition is made by the Revenue Officer, and an order stating his decision on the question along with the reasons for such decision is passed, the partition is deemed to have completed, subject to the decision of appeal that may be preferred against such order as contemplated in sub-section 2 of Section 118.

28. It is pertinent to note that Section 117 of the Punjab Land Revenue Act confers discretion upon the Revenue Officer to decide the question as to the title in any property

[8] 1992 SCC online P&H 676

of which the partition is sought, either by himself or to refer the question to be determined by the competent court. Thus, the jurisdiction of the Revenue Officer in the cases of partition is concurrent with that of the civil court. Therefore, for the purpose of interpreting Section 121 of the Land Revenue Act, the Court can safely draw an analogy from the provisions contained in Order XX, Rule 18 C.P.C. which pertain to the procedure to be followed on the passing of the decree for the partition of the property. The said provision reads as under :-

"**18. Decree in suit for partition of property or separate possession of a share therein.—** Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required."

29. This Court in case of ***Shub Karan Bubna Alias Shub Karan Prasad Bubna v. Sita Saran Bubna and Others***[9]**,** had an occasion to deal with the said provisions contained in Order XX, Rule 18, and it was observed as under:-

"7. …. In a suit for partition or separation of a share, the court at the first stage decides whether the plaintiff has a share in the suit property and whether he is entitled to division and separate possession. The decision on these two issues is exercise of a judicial function and results in first stage decision termed as "decree" under Order 20 Rule 18(1) and termed as "preliminary decree" under Order 20 Rule 18(2) of the Code. The consequential division by metes and bounds, considered to be a ministerial or administrative act requiring the physical inspection, measurements, calculations and considering various permutations/combinations/alternatives of division is referred to the Collector under Rule 18(1) and is the subject-matter of the final decree under Rule 18(2)."

30. If the said analogy is applied to the provisions contained in the Punjab Land Revenue Act pertaining to the Partition, we are of the opinion that when a decision is taken by the Revenue Officer under Section 118 on the question as to the property to be divided and the mode of partition, the rights and status of the parties stand decided and the partition is deemed to have completed. At this stage, such decision is required to be treated as the "decree". The consequential action of preparing the instrument of partition as contemplated in Section 121 of the Land Revenue Act would be only ministerial or administrative act to be carried out to completely dispose of the partition case instituted before the Revenue Officer. Hence, once the decision on the property to be divided and on the mode of partition is taken by the Revenue Officer under Section 118, the joint status of the parties would stand severed on the date of such decision, subject to the decision in appeal if any preferred by the party. The consequential action of drawing an instrument of partition would follow thereafter. Hence, merely because the instrument of partition was not drawn, it could not be said that the partition was not completed or that the joint status of the parties was not severed.

[9] (2009) 3 SCC (Civ) 820

31. The first part of Section 121 of the Land Revenue Act states that "when a partition is completed". Meaning thereby, when the issue with regard to the properties to be divided and the mode of making partition stand decided and rights of the parties stand determined by the Revenue Officer, the latter part of Section 121 for preparing the instrument of partition and recording the date of partition would come into play. Such actions required to be taken as contained in the latter part of Section 121, would be only an executory work or administrative act to be carried out for completely disposing of the partition case instituted by the party before the Revenue Officer. Just as in case of a decree in civil suit, the adjudication conclusively decides the rights of the parties with regard to the matter in controversy, however the decree would be preliminary when further proceedings have to be taken before the suit can be completely disposed of. In the same way, when the decision is taken by the Revenue Officer under Section 118, the partition would stand completed, the joint status of the parties would stand severed and would remain no more joint, after the period of limitation prescribed under the Act. The further proceeding to draw an instrument of partition would be only an executory or ministerial work to be carried out to completely dispose of the partition case.

32. So far as the facts of the present case are concerned, the Assistant Collector i.e., concerned Revenue Officer vide the order dated 25.05.1982 had rejected the objections raised by the plaintiff Jagtar Singh and others with regard to the mode of partition and had confirmed the mode of partition accordingly. On that day, the "Naksha Be" was already annexed to the file and the case was listed on 31.05.1982 for hearing the objections as to the "Naksha Be". On 31.07.1982, the Assistant Collector passed the order stating *inter alia* that the Patwari and Kanungo were present, and they had explained the parties about the passage and the boundaries of the plots, and that as per "Naksha Be", the partition was accepted. The details of the number of khasras allotted to both the parties i.e., to Jhabbar Singh and others and to Jagtar Singh were also mentioned in the said order. The partition having been accepted as per the said "Naksha Be", the joint status of the parties had stood severed. Of course, the said order dated 31.07.1982 was challenged by the plaintiff Jagtar Singh by way of an appeal before the Collector who vide the order dated 12.10.1982 had dismissed the same. The said order of Collector was further challenged by the said Jagtar Singh by filing revision application before the Commissioner. Though, the Commissioner had initially granted stay against the operation of the order dated 31.07.1982 upto 16.11.1982, admittedly the said stay was not further extended thereafter. Under the circumstances, the joint status of the parties had come to an end on 31.07.1982, when the Assistant Collector passed the order and when the same was confirmed by the Collector on 19.10.1982. The trial court and the appellate court, under the circumstances, had rightly held that the plaintiff Jagtar Singh did not possess the status of co-sharer on the date of decree i.e., on 01.12.1982, and that his right of pre-emption had not survived till the date of passing of the decree in the suits. In our opinion, the High Court had grossly erred in misinterpreting the provisions of Punjab Pre-emption Act and of Land Revenue Act, and in setting aside the judgments and decrees passed by the trial court and the appellate court.

33. In that view of the matter, the impugned common order passed by the High Court deserves to be quashed and set aside and is accordingly set aside. Both the appeals stand allowed accordingly.