

**(1994) 11 SC CK 0105**

**Supreme Court of India**

**Case No:** Civil Appeal No. 12118 Of 1986

Bakshish Singh

APPELLANT

Vs

Prithi Pal Singh and Others

RESPONDENT

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**Date of Decision:** Nov. 10, 1994

**Citation:** (1995) 3 SCC 577 Supp

**Hon'ble Judges:** K. S. Paripoornan, J; J. S. Verma, J

**Bench:** Division Bench

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

1. Special leave granted.

2. Heard.

3. The second appeal filed in the High court by the respondent was allowed setting aside the decree in favour of the appellant passed by the trial court and affirmed in first appeal. The claim in the suit for pre-emption was based initially on the ground that the plaintiff (appellant) was the brother of the vendor and emphasis was not laid also on the fact that the plaintiff was a co-sharer as well. In view of the fact that the right of pre-emption based only on the ground of relationship as a brother was held to be unenforceable, an application for amendment of the plaint was made in the second appeal to claim pre-emption on the admitted fact that the plaintiff was also a co-sharer of the vendor. This amendment application was rejected by the High court and the second appeal filed by the respondent was allowed. In our opinion, rejection of the amendment application to plead an additional ground to support the plaintiff's claim, which was based on an admitted fact was erroneous. The amendment sought to be made in the plaint ought to have been allowed.

4. For the aforesaid reason, the appeal is allowed. The impugned judgment of the High court is set aside. The amendment sought in the plaint in the above manner is

allowed. The matter shall now go back to the High court for a fresh decision of the second appeal on merits in accordance with law after hearing both sides. No costs.