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Bakshish Singh Vs Prithi Pal Singh and Others

Civil Appeal No. 12118 Of 1986

Court: Supreme Court of India

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

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.