

Banta Singh, etc., v. Mehar Singh, etc., (Gurdev Singh, J.)

engage the services of other persons as cleaners for his bus on bus journeys to and from various places. He has, however, neither produced any account of such journeys wherefrom it could be ascertained that his bus actually undertook those journeys on the date when he attended hearings of the case in the court of the Executive Magistrate nor did he care to bring into the witness-box any persons who may have acted as cleaners on the said journeys. There is also no reliable evidence to indicate that his bus used to ply on particular routes every day. In this view of the matter he is not entitled to any damages in respect of this part of his claim.

(18) No other point was urged before me on behalf of the plaintiffs. In the result, therefore, R.S.A. No. 573 of 1959 succeeds in part and a sum of Rs. 275 is awarded to the plaintiffs as damages (for incarceration of Resham Singh, Plaintiff No 3), in addition to that granted by the trial Court. The plaintiffs will be entitled to proportionate costs on the entire sum of Rs. 475 to which they have been held entitled, throughout. The decrees of the Courts below are modified accordingly.

K.S.K.

APPELLATE CIVIL

Before Gurdev Singh, J.

BANTA SINGH AND OTHERS,—Appellants.

Versus

MEHAR SINGH AND ANOTHER,—Respondents.

Regular Second Appeal No. 13 of 1969

July 28, 1969

Code of Civil Procedure (V of 1908)—Order 6, Rule 17—Punjab Pre-emption Act (I of 1913)—Section 15(1)(b)—Clauses Secondly and Thirdly—Preemptor filing suit basing his claim on relationship falling under clause Secondly—After the expiry of period of limitation for suit for pre-emption, Court allowing amendment of the plaint bringing the case under clauses Thirdly—Such amendment—Whether permissible.

Held, that in a suit for preemption, if a mistake in the plaint is inadvertent or due to a clerical error it can be permitted to be rectified by way of amendment of plaint even after the period of limitation for the suit is over. Where a preemptor inadvertantly bases his claim for preemption on his relationship falling under clause Secondly of section 15(1)(b) of the

Punjab Pre-emption Act and later, after the expiry of the period of limitation for the suit, the mistake is rectified by the amendment of the plaint allowed by the Court, bringing his claim under clause Thirdly of section 15(1) (b), such an amendment is permissible. Both at the time the plaint is originally framed and when it is subsequently amended, the plaintiff bases his claim of pre-emption on his relationship with the vendor. Though originally the relationship stated by him brings his case under clause Secondly of section 15(1) (b) of the Act, later as a result of the amendment it falls under clause Thirdly of section 15(1) (b). It is not a case where the plaint originally discloses on ground for pre-emption or that the ground pleaded is not the one recognised under the Act. (Paras 5 and 6)

Regular Second Appeal from the decree of the Court of Shri Diali Ram Puri, District Judge, Ferozepur, dated the 6th day of December, 1968 affirming with costs that of Shri M. L. Murchia, Senior Sub-Judge, Ferozepur, dated 6th May, 1968, granting the plaintiff a decree for possession of the land in suit through pre-emption on payment of Rs. 12887 on or before 1st June, 1968 (after deducting any sum already deposited by him towards 1/5th) failing which his suit would stand dismissed and ordering that in case the sum of Rs. 12887 was deposited it would be payable to Banta Singh, Kashmir Singh, Niranjana Singh, Harcharan Singh and Jaswant Singh, defendants and further ordering that the costs would abide the event.

D. D. JAIN, ADVOCATE, for the Appellants.

J. N. SETH, ADVOCATE, for Respondents.

JUDGMENT.

GURDEV SINGH, J.—This second appeal arises out of the suit brought by Mehar Singh to pre-empt the sale of agricultural property made by his brother's son Bakshish Singh on 11th January, 1967. The suit was instituted on 11th January, 1968, the last day of limitation. In the plaint Mehar Singh in asserting that he had a right superior to that of the vendees Banta Singh and others averred that the plaintiff was the brother of the vendor defendant No. 6 while defendants 1-5 were not in any manner related to the said vendor. In resisting his claim the defendant-vendees denied that the plaintiff Mehar Singh was the brother of the vendor Bakshish Singh. On being faced with this plea, the plaintiff promptly realised that he had committed a mistake in stating his relationship with the vendor in paragraph 3 of the plaint. Accordingly, on 1st April, 1968, he applied to the Court under Order 6, rule 17, Code of Civil Procedure, for permission to amend paragraph 3 of the plaint so as to correctly describe his relationship with the vendor as in fact he was brother of the father

of the vendor. This prayer was sought to be justified on the following plea:—

“In para No. 3 of the plaint through a clerical omission the words “father of the” have been omitted after the word “the” in the 1st line of para No. 3. This is merely a mistake of typing. The plaintiff is not the brother of defendant No. 6 but is his father’s brother. The mistake is thus patent. In order to correct the misdescription of the relationship of the plaintiff with the vendor that has been done due to the omission of typing, it is prayed that in the interest of justice the following amendment in the plaint be allowed :—

“After the word “the” in the 1st line of para No. 3 of the plaint and before the word vendor insert the word “father of the”.

(2) This prayer was accepted by the trial Court on 6th May, 1968, and in view of the provisions contained in clause Thirdly of section 15(1)(b) of the Punjab Pre-emption Act the suit of the plaintiff for possession of the land in question by pre-emption was decreed on payment of Rs. 12,887. In appeal against that decree the sole grievance voiced on behalf of the appellant was that the trial Court should not have allowed the amendment of the plaint as by that time the period of limitation for the suit of pre-emption had long expired and the plaintiff could not be permitted to introduce a new ground of pre-emption. Finding no merit in this contention, the learned District Judge upheld the trial Court’s decree.

(3) In this second appeal, the sole question requiring consideration is whether the amendment of the plaint referred to above was rightly allowed by the trial Court. The appellant’s learned counsel Mr. D. D. Jain, has argued that in suits for pre-emption the exact ground on the basis of which the plaintiff asserts his superior right of pre-emption has to be stated and if the ground that he urges originally in his plaint is found to be either non-existent or not made out then the suit must fail as after the period of limitation for the suit has expired the plaintiff cannot be permitted to set up a new ground in support of the suit for pre-emption by way of amendment of the plaint since no amount of costs awarded can compensate the defendant who acquires a valuable right on the expiry of the period of limitation.

(4) In support of this contention he has placed reliance upon a recent decision of my Lord the Chief Justice in *Shankar Singh v. Chanan Singh* (1). Therein while dealing with the question of amendment of plaint, His Lordship after referring to *Rulia Ram v. Ram Chander Dass* (2), and *Chandgi Ram v. Rabi Dutt* (3), observed as follows:—

“The basis is that the specific ground on which preferential right of pre-emption is sought must be pleaded in the suit within the period of limitation. In this case all that Chanan Singh plaintiff did was to say that the vendors are his collaterals, but section 15 of the Punjab Act I of 1913 in such relationship by itself does not give a right of pre-emption. A particular defined relationship does give a right of pre-emption and if on the ground of relationship such a right is claimed then obviously the particular relationship referred to as a ground in section 15 of Punjab Act I of 1918 has to be stated in the plaint within the period of limitation. If after the period of limitation such an attempt is made it cannot be permitted to defeat a right that has accrued to the vendee to defeat the pre-emptor's claim as not coming within the statutory provision upon which reliance is placed. Obviously the learned Judge was wrong in allowing the amendment.”

(5) The respondent's learned counsel Mr. J. N. Seth has not joined issue on the point that a new ground for pre-emption cannot be taken and introduced in the case by way of amendment after the period of limitation is over. He, however, contends that the authority relied upon by the learned counsel for the appellant is distinguishable. This contention appears to be well-founded. On reference to the facts of the case with which the learned Chief Justice was dealing, I find that the pre-emptor had come to the Court claiming right of pre-emption on the bare allegation that he was a collateral of the vendors and for a right of pre-emption in respect of the agricultural land, mere collateral relationship as such is not recognised as a ground for pre-emption. Thus obviously the plaint as it stood disclosed no cause of action entitling the plaintiff to a decree of pre-emption it was to get out of that fatal defect that an application for amendment was made and a new plea was sought to

(1) I.L.R. (1968) 2 Pb. & Hr. 211=1968 P.L.R. 455.

(2) A.I.R. 1933 Lah. 774.

(3) A.I.R. 1952 Pb. 281.

be introduced stating that one of the vendors was first cousin of the plaintiff being his uncle's son and two others were his nephews. It was in that situation that the learned Chief Justice ruled in *Shankar Singh's case* (1) (*supra*), that after the expiry of the period of limitation for pre-emption suit the plaintiff could not be permitted to amend his plaint to defeat the pre-emptor's claim. In the instant case, the ground on which the plaintiff had asserted his right of pre-emption originally was that he was the brother of the vendor. Under section 15(1)(b) clause Secondly this is recognised as a ground for pre-emption of agricultural land of the type sold to the appellants, but when it was pointed out that the plaintiff was not the brother of the vendor the plaintiff realised his mistake in giving his relationship in the plaint and since he is not the brother of the vendor but brother of the vendor's father, he sought amendment to correct the mistake. The ground urged by him by way of amendment falls under clause Thirdly of section 15(1)(b) which recognises the right of father's brother or father's brother's son of the vendor to pre-empt the sale of a share out of the joint land. It is beyond dispute that both at the time the plaint was originally framed and when it was subsequently amended the plaintiff was basing his claim of pre-emption on his relationship with the vendors. Though originally the relationship-stated by him brought his case under clause Secondly of section 15(1)(b) later as a result of the amendment it fell under clause Thirdly of section 15(1)(b). It is not a case where the plaint originally disclosed no ground for pre-emption or that the ground pleaded was not the one recognised under the Act. On the other hand, the plaintiff in seeking amendment claimed that it was due to a typing or clerical mistake that the word "father of" was left out in paragraph 3 of the plaint while describing his relationship with the vendor.

(6) There is ample authority for the proposition that in a suit for pre-emption, if the mistake is inadvertent or due to a clerical error it can be permitted to be rectified by way of amendment even after the period of limitation for the suit is over. That there was a clerical mistake is apparent on perusal of the heading of the plaint itself. In setting out the parties name, the vendor Defendant No. 6 has been described as "Bakshish Singh, son of Arsal Singh, son of Inder Singh, resident of village Palla Megha tehsil and district Ferozepore". The plaintiff gave his own description as "Mehar Singh, son of Inder Singh, resident of Palla Megha, tehsil and district Ferozepore". It is thus obvious that the plaintiff had described himself as son of Inder Singh and while describing the vendor Bakshish

Singh he had specifically stated that he was grandson of Inder Singh being the son of Aarsal Singh. The plaint as originally put in is a typed document and it appears to me, as found by the Court below, that the person who typed out the plaint inadvertently left out the words which have been allowed to be inserted by way of amendment in paragraph 3 of the plaint while giving the exact relationship of the plaintiff with the vendor. This is the type of mistake which is not intentional and can always be corrected. In fact in quite a number of decisions relating to pre-emption suits amendments of plaints even to supply facts that had been inadvertently left out have been allowed. One of such decisions is that of my Lord the Chief Justice Mehar Singh in *Sube Ram v. Ram Dia and others* (4).

(7) The view that I have taken above is supported by two recent decisions of this Court in *Rup Ram v. Duna* (5), by the then Acting Chief Justice S. B. Kapoor. The plaintiff had originally pleaded that he was the son of the brother of the vendor. Subsequently, he applied for amendment of the plaint on the plea that by a clerical mistake he had inadvertently described himself as the son of the brother of Chandgi while actually he was the son of the brother of Chandgi's father. Distinguishing the decision in *Rulia Ram v. Ram Chander Dass* (2), and *Chandgi Ram and another v. Rabi Datt* (3), His Lordship upheld the amendment with these observations:—

“It is clear that the cases cited on behalf of the petitioners are distinguishable. In the present case whether the plaintiff comes under “Secondly” or “Thirdly”, he would on the pleadings of the parties, if he proves his case, have a superior right of pre-emption and the plaintiff could, therefore, have no motive in deliberately mis-stating his relationship with the vendor. I am, therefore, in agreement with the trial Court that the mistake was merely clerical and that the ends of justice require its correction. In such a case the principle laid down in *Shankar Lal v. Arjmand Khan*, A.I.R. 1919 Lah, 217, was rightly applied by the trial Court.”

(8) In *Ganda Singh and others v. Manmohan Singh* (6), by P. C. Pandit, J., the plaintiff had originally pleaded that his father was

(4) C.R. 547 of 1957 decided on 10th September, 1959.

(5) C.R. 881 of 1966, decided on 9th August, 1967.

(6) C.R. 1014 of 1967, decided on 9th May, 1968.

Tuhi Ram Sharma v. Prithvi Singh, etc., (Narula, J.)

the real brother of the husband of the vendor. The parties led evidence on the issue whether the plaintiff had got the superior right of pre-emption. After the evidence had concluded and arguments were proceeding it was discovered that the plaintiff and not his father Amir Singh was the brother of the vendor's husband. Thereupon an application for amendment of the plaint under Order 6, rule 17, Code of Civil Procedure, was made and it was stated therein that it was by a sheer clerical error that wrong description of the relationship had been given in the plaint. This application was contested by the vendees, *inter alia*, on the ground that it was very much belated and the period of limitation for filing the suit had long expired with the result that a valuable right had accrued to them. The trial Judge, however, allowed the amendment. In upholding the order Pandit, J., took the view that when the relationship of the plaintiff was proved and that constituted a ground for pre-emption it could not be said that any new ground for claiming pre-emption was being introduced by the proposed amendment or that the defendants were being taken by surprise.

(9) For all these reasons, I find that the amendment of the plaint was rightly allowed and since the Courts below have found that the plaintiff has a superior right of pre-emption under clause Thirdly of section 15(1)(b) of the Punjab Pre-emption Act, the decree under appeal must be upheld. The appeal is consequently dismissed. In the circumstances of the case, I leave the parties to bear their own costs.

K.S.K.

FULL BENCH

Before R. S. Narula, H. R. Sodhi and C. G. Suri, JJ.

TUHI RAM SHARMA,—Appellant.

Versus

PRITHVI SINGH AND ANOTHER,—Respondents.

Letters Patent Appeal No. 85 of 1970

With

Civil Misc. No. 4749 of 1970

October 28, 1970

Punjab Civil Services Rules, Volume I, Part I—Rules 2.9, 2.35, 2.59, 3.11, 3.12, 3.13, 3.14, 3.15 and 3.16—Interpretation and scope of—Lien of a Government servant on a permanent post—Whether can be automatically suspended—Suspended lien—Whether can be terminated without the