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*Before H. S. Brar & V. M. Jain, JJ*

LABH SINGH & ANOTHER,—*Petitioners*

*versus*

BANT SINGH & OTHERS,—*Respondents*

R.A No. 65-CII of 1998

IN

C.R. No. 5482 of 1997

19th February, 1999

*Code of Civil Procedure, 1908—Order 47 R l. 1—Review—Error on the face of the record—Review permissible.*

*Held* that while deciding the case Hon'ble Sat Pal, J was of the opinion that right of pre-emption had been taken away only in case of sales effected before 31st March, 1961 and it was for this reason that prayer for seeking the amendment in this regard was rejected. However, from a perusal of the notification dated 21st December, 1962, it would be clear that right of pre-emption was taken away only with regard to sales which were effected after 31st March, 1961. In our opinion, this is definitely an error on the face of the record. The present review petition is allowed and the petitioners are allowed to amend the plaint with regard to the first part.

(Paras 5 and 7)

R. S. Mittal, Sr. Advocate, with Sudhir Mittal, Advocate for the Petitioners.

J. S. Yadav, Advocate for the Respondent.

### ORDER

*V.M. Jain, J*

(1) In a suit for declaration and permanent injunction filed by Labh Singh etc., the plaintiffs (Labh Singh) had filed an application for amendment of the plaint. After contest, the same was dismissed by the learned Additional Civil Judge, (Senior Division), Guhla,—*vide* order dated 17th December, 1997. The said order was challenged by the plaintiffs in this Court by way of Civil

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Revision No. 5482 of 1997 which was partly allowed by Hon'ble Sat Pal J., (As his Lordship then was). The petitioners were permitted to partly amend the<sup>3</sup>plaint with regard to the fact that Guardian appointed on behalf of Kaka Singh petitioner did not defend the earlier suit properly. However, with regard to other amendment sought by the petitioners to the effect that earlier suit was not maintainable against the petitioners as the petitioners being Bazigars belong to Scheduled Castes and the suit was not competent in view of the notification dated 23rd February, 1962, the said prayer was rejected on the ground that the previous notification dated 23rd February, 1962 was amended by a subsequent notification dated 21st December, 1962 and the right of pre-emption was taken away only in the case of sales effected before 31st March, 1961.

(2) After the order dated 28th May, 1998 was passed, as referred to above, while disposing of the revision petition, the petitioners filed the present application for review under Order 47 Rule 1, read with Section 114 of the Code of Civil Procedure, seeking review of the order dated 28th May, 1998, passed by Hon'ble Sat Pal J. In the petition for review, it was alleged that in fact the subsequent notification dated 21st December, 1962 *vide* which the previous notification dated 2nd/3rd February, 1962 was amended, had been misread by the learned Single Judge while passing the order dated 28th May, 1998. It was alleged that infact the right of pre-emption in respect of sales which were effected after 31st March, 1961, was taken away and not in respect of the sales which had been effected before 31st March, 1961. It was further alleged that there was error on the face of record and was sufficient to review the judgment dated 28th May, 1998.

(3) The said petition for review came up for hearing before Hon'ble Sat Pal J., on 9th July, 1998 and notice of motion was issued to the respondents with a direction that final order shall not be passed by the trial Court. In the meanwhile, Hon'ble Sat Pat J., retired and the present review petition came up for hearing before us.

(4) We have heard the learned counsel for the parties and have gone through the records carefully.

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(5) During the course of arguments, learned counsel appearing for the petitioners produced before us a photo-copy of the Gazette notification dated 21st December, 1962, *vide* which the previous notification dated 2nd/3rd February, 1962, was amended. After the amended notification, the right of pre-emption was taken away in case of sales effected after 31st March, 1961. Hon'ble Sat Pal J. while deciding the case, was of the opinion that right of pre-emption had been taken away only in case of sales effected before 31st March, 1961 and it was for this reason that prayer for seeking the amendment in this regard was rejected. However, as referred to above, from a perusal of the notification dated 21st December, 1962, it would be clear that right of pre-emption was taken away only with regard to sales which were effected after 31st March, 1961. In our opinion, this is definitely an error on the face of the record. The Apex Court in *Moran Mar Basselios Catholicos and another vs. Most Rev. Mar Poulouse Athanasius and another* (1) had held that review was permissible in case of an error which is apparent on the face of the record.

(6) In our opinion, it is a fit case, where the judgment dated 28th May, 1998, rendered by Sat Pal J., should be reviewed and the petitioners be allowed to amend the plaint so as to take up the plea that earlier suit was not maintainable against the defendants as the petitioners being Bazigars belong to Scheduled Castes and the suit was State Government.

(7) For the reasons recorded above, the present review petition is allowed and the petitioners are allowed to amend the plaint with regard to the first part, referred to above. No order as to costs.

(8) Considering that the present case pertains to a civil suit filed in the year 1989, it is directed that the trial Court shall dispose of the civil suit expeditiously, preferably within six months.

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**S.C.K.**

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(1) A.I.R. 1954 S.C. 526