

## REVISIONAL CIVIL

*Before Harbans Lal, J.*GELA RAM ETC.,—*Petitioners**versus*KAILASH NATH and others,—*Respondents.**Civil Revision No. 826 of 1975.*

December 22, 1975.

*Code of Civil Procedure (V of 1908)—Order 6 Rule 17—Sale of property in favour of several vendees—One of the vendees not impleaded in a pre-emption suit—Such vendee sought to be impleaded by amendment of plaint after the period of limitation—Amendment—Whether to be allowed.*

*Held*, that the right of pre-emption is a piratical right and the equity is in favour of the vendee. If the plaintiff while exercising such a right is found remiss at any stage, he does not deserve any leniency in the matter of amendment or otherwise. Therefore if a plaintiff in a pre-emption suit does not implead one of the several vendees and subsequently after the period of limitation seeks to implead him by amending plaint, the amendment ought not be allowed. (Para 2).

*Petition under section 115 of the Civil Procedure Code for revision of the order of Shri K. K. Doda, Sub-Judge II Class, Fetehabad, dated the 22nd March, 1975 allowing the application for amendment of the plaint but subject to payment of Rs. 30 as costs.*

Ram Rang, Advocate, for the Petitioner.

A. S. Nehra, Advocate, for respondent No. 1.

G. S. Chawla, Advocate, for respondent No. 3.

## JUDGMENT

*Harbans Lal, J.*

(1) This revision petition is directed against the order of the Subordinate Judge, Second Class, Fatehabad, allowing amendment of the plaint. Kailash Nath, respondent, filed a suit for pre-emption challenging the sale of the suit property by his father in favour of Gela Ram, Harbans Lal, Ram Das and Ram Kishen. Besides these four vendees Amar Ditta was also one of the purchasers, but he had not been impleaded as a defendant in the plaint, in the first instance. According to the sale deed dated April 10, 1973, one half

of the land, in dispute, was sold in favour of Gela Ram and Harbans Lal and the remaining half was sold in favour of Ram Kishen, Ram Das and Amar Ditta. As stated above, the original suit was filed against the four vendees omitting the name of Amar Ditta, vendee. The sale, in dispute, is dated April 10, 1973. The suit was filed on February 27, 1974. The vendees-defendants in their written statement filed on December 13, 1974, took a specific objection that all the vendees had not been impleaded and, therefore, the suit was likely to be dismissed as a case of partial pre-emption. The plaintiff-respondent, Kailash Nath, filed an application under order VI rule 17, Code of Civil Procedure, for amendment of the plaint on December 26, 1974, for permission to implead the remaining vendee, Amar Ditta, as one of the defendants. The trial Court allowed the application and observed as follows:

"I agree with the counsel for the plaintiff that the plaintiff acted in good faith. The mistake committed by the plaintiff is certainly *bona fide*. He mentioned in the plaint the names of the vendees, which were given in the copy of the sale deed filed with the plaint. He cannot be penalised for the fault committed by the copying agency of sub-Registrar or of the person who drafted the plaint."

(2) Mr. Ram Rang, the learned counsel for the petitioner has vehemently urged that it is wrong that the plaintiff-respondent, Kailash Nath, made a *bona fide* mistake in not impleading one of the vendees as a defendant. According to him, in the copy of the sale deed though the name of Amar Ditta as one of the vendees is not specifically mentioned, yet it has been clearly stated therein that one half land had been sold to Ram Kishen and Ram Das and that all the "three" will be entitled to the land in equal shares. A careful perusal of the copy of the sale deed should have put the plaintiff-respondent, Kailash Nath, on enquiry as to how and why the word "three" (meaning thereby that there were three purchasers and not two of one half land) had been mentioned and he (the plaintiff-respondent Kailash Nath) should have gone to the office of the Sub-Registrar to find out all the names of the vendees. It has further been urged that it is clear from the copy of the *jamabandi* attached to the plaint that a mutation in respect of the sale, in dispute, had also been sanctioned and the plaintiff-respondent, Kailash Nath, could very well verify the names of the vendees from the mutation and other relevant revenue record from the patwari. Reliance in

Gela Ram etc. v. Kailash Nath etc. (Harbans Lal, J.)

this behalf has been placed on *Jawala Dass and others v. Gopal Lal and Des Raj and others*, (1). In *Jawala Das's case* (supra) also one of the vendees had not been impleaded as a party. The trial Court directed the plaintiff to implead the vendee who had not been impleaded as a defendant, but as he had been impleaded after the expiry of period of limitation, the suit was dismissed. In appeal, the District Judge held that the omission to implead one of the vendees was due to the wrong copy of the sale deed supplied to the plaintiff by the Registration Department. Consequently, it was held that though the suit was barred by time at the time of amendment, there had been only a mere misdescription of the defendants in the suit. In second appeal, the judgment and decree of the lower appellate Court was set aside and it was held as under:

“There was not a mere misdescription of parties, and B could not be joined after the expiry of limitation and that consequently, the whole suit should fail.”

The learned counsel for the petitioners has also derived support from *Shankar Singh v. Chanan Singh*, (2) *Gurmukh Singh v. Dalip Singh and others*, (3) *Shrimati Gurdip Kaur v. Kehar Singh and another*, (4), and *Banta Singh and others v. Shrimati Harbhajan Kaur and others*, (5). In all these cases, the amendment of the plaint in suit for pre-emption was disallowed on the ground that as a result of the expiry of the period of limitation, valuable right had vested in the defendants. On the other hand, the learned counsel for the respondents has relied upon *Deedar Singh and others v. Dalbir Singh and another*, (6), *Banta Singh and another v. Shrimati Harbhajan Kaur and others*, (7) and *Jalal Din and others v. Qaim Din and Mussammam Umar Bibi and others* (8). In *Deedar Singh's case* (supra) Tuli, J. (as he then was) came to the conclusion that the mistake had been committed by the draftsman of the plaint who probably mentioned the description of the property sold from the

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- (1) A.I.R. 1925 Lahore 343.
  - (2) 1968 Current Law Journal 363.
  - (3) 1971 Pb. Law Reporter 830.
  - (4) 1971 Pb. Law Reporter 384.
  - (5) 1974 Pb. Law Reporter 387.
  - (6) 1970 Current Law Journal 143.
  - (7) 1969 Current Law Journal 707.
  - (8) 62 P.R. 1914.

earlier part of the sale deed where it is usually mentioned and did not visualise that any part of the property sold could have been mentioned towards the end of the sale deed also. In view of this, the order of the trial Court allowing the amendment was upheld. In *Shrimati Harbhajan Kaur's case* (supra) the mistake had been committed inadvertently in the description of the property to which the sale related and Gurdev Singh, J. (as he then was) upheld the order of the trial Court allowing the amendment holding that by amendment of the plaint no fresh claim or new case had been introduced. Similarly in *Jalal Din's case* (supra), which was a case of inadvertent misdescription of property, it was held as follows:

“This was a case of inadvertence and misdescription of property claimed and not of an intentional omission and the amendments were accordingly admissible.”

Reliance has also been placed on *Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon*, (9). *Jai Jai Ram Manohar Lal's case* (supra) was also a case of misdescription of the firm name by the plaintiff. In that case, it was held by their Lordships of the Supreme Court as under:

“The description of the plaintiff by a firm name in a case where the Code of Civil Procedure did not permit a suit to be brought in the firm name should properly be considered as a case of description of the individual partners of the business and as such a misdescription, which in law can be corrected. It should not be considered to amount to description of a non-existent person.”

It is clear from the close perusal of the judgments, referred to above, relied upon by the learned counsel on both sides that it is only in those cases where the learned Judges came to the conclusion that that was a case of misdescription of property or parties in pre-emption cases that the amendment was allowed and the conclusion arrived at was that such a misdescription was *bona fide* and as a result of inadvertence. No case has been cited at the bar where a different view may have been taken from the one which has been taken in *Jawala Das's case* (supra), the facts of which are almost similar to the case in hand. No decision has been brought to my

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(9) A.I.R. 1969 Supreme Court 1267.

Gela Ram etc. v. Kailash Nath etc. (Harbans Lal, J.)

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notice in which the amendment of the plaint may have been allowed so as to include the name of a party who had not been impleaded as a defendant after the expiry of limitation. In the present case, the omission to include the name of Amar Ditta, one of the vendees, as a defendant, cannot even be held to be an act of good faith. The term "good faith" has been defined in section 2(h) of the Limitation Act, 1963, as under:

"nothing shall be deemed to be done in good faith which is not done with due care and attention."

If the plaintiff-respondent, Kailash Nath, had used "due care and attention" he must have been put on enquiry as to why after mentioning the names of all the purchasers, namely, Ram Kishen and Ram Das, the word "three" (meaning thereby three purchasers) had been mentioned and he would have easily found out the names of the three vendees from the office of the Sub-Registrar or from the revenue records in the possession of the Patwari. Though the petitioners, in their written statement, had taken a specific objection on December 13, 1974, the respondent did not file an application for amending the plaint for twelve days and it was only on December 26, 1974, that the application was submitted. It is clear from this that the plaintiff-respondent, Kailash Nath, was not paying proper attention to his case. Taking all these facts and circumstances of this case into consideration, I am of the considered view that the omission on the part of the plaintiff-respondent, Kailash Nath, to implead Amar Ditta, one of the vendees, in the plaint in the first instance, was not an act of mere inadvertence and the trial Court committed illegality in exercising jurisdiction in allowing the amendment of the plaint. The law is firmly established that the right of pre-emption is a piratical right and the equity is in favour of the vendee. If the plaintiff while exercising such a right is found remiss at any stage, he does not deserve any leniency in the matter of amendment or otherwise.

(3) For the aforesaid reasons, this revision petition, succeeds and the same is accepted with costs. The order of the trial Court dated March 22, 1975, is set aside and the application of the plaintiff-respondent, Kailash Nath, under Order VI rule 17, Code of Civil Procedure, for amendment of the plaint, is dismissed.

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N.K.S.