FULL BENCH

Before D. K. Mahajan, Bal Raj Tuli and C. G. Suri, JJ.

BANTA SINGH, ETC.,—*Appellants.*

versus

HARBHAJAN KAUR, ETC.,—*Respondents.*

Letters Patent Appeal No. 385 of 1969.

March 6, 1974.

Punjab Pre-emption Act (I of 1913)—Section 15—Code of Civil Procedure (Act No. V of 1908)—Order 6 Rule 17—Suit for pre-emption—Defendant-vendee raising objection at the earliest stage regarding the suit being bad for partial pre-emption—Plaintiff-pre-emptor not applying for amendment of the plaint inspite of the objection—Suit dismissed for partial pre-emption—Amendment of the plaint—Whether can be legally allowed by appellate Court.

Held, that in order to allow an amendment of a plaint or written statement under Order 6 Rule 17 of the Code of Civil Procedure, the first point to be considered is whether the application for amendment has been made bone-fide. Another rule for allowing amenndment is that no amendment of the plaint should be allowed if its effect is to take away a valuable right that has accrued to the opposite party by lapse of time. A suit for partial pre-emption is not competent. Such a suit has to be dismissed and if it is dismissed on that ground, a very valuable right accrues to the vendee-defendant inasmuch as his right to retain that property becomes indefeasible. If that right is put in jeopardy by allowing amendment of the plaint, a gross injustice is done to him which cannot be compensated by the award of costs. Hence where in a suit for pre-emption, the vendee-defendant raises the objection regarding the suit being bad for partial pre-emption, the plaintiff-pre-emptor, inspite of the objection does not amend the plaint and the suit is dismissed for partial pre-emption, the amnedment of the plaint to remove the defect of partial pre-emption cannot legally be allowed by the appellate Court. The appellate Court commits an illegality if the amendment is allowed.

(Paras 7 and 21)

Held, (per Suri, J.), that it cannot be laid down as a rule of universal application that in all cases where a pre-emptor has failed to

seek an amendment of his plaint during the trial after the opposite party had pointed out the defect of partial pre-emption at the earliest stage, he would be estopped from seeking that amendment at the appellate stage. It depends on facts and circumstances of each individual case whether to allow the amendment or not.

(Para 30)

Case referred by the Division Bench consisting of Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice H. R. Sodhi on 13th July, 1971 to a Full Bench for deciding an important question of law. The Full Bench consisting of Hon'ble Mr. Justice D. K. Mahajan, Hon'ble Mr. Justice Bal Raj Tuli. and Hon'ble Mr. Justice C. G. Suri finally decided the case on 6th March. 1974.

Letters Patent Appeal Under Clause X of the Letters Patent from the decree of the Court of the Hon'ble Mr. Justice Gurdev Singh in R.S.A. No. 1477 of 1967, dated the 8th day of May, 1969, modifying that of Shri Sarup Chand Goyal, Additional District Judge, Karnal, dated the 4th December, 1967, reversing that of Shri V. K. Jain, Sub-Judge, 1st Class, Kaithal, dated the 25th October, 1966, (granting the plaintiff a decree for possession by pre-emption on the condition of the plaintiff's depositing the sale consideration of Rs. 38,605 minus any amount already deposited by her in the Lower Court plus a sum of Rs. 4,839.75 paise as stamp and registration charges upto 5th February, 1968, for payment to the vendee-defendants and on such deposit being made, her title would accrue to the land thereof and further ordering that if she failed to deposit the amount according to above stipulation, her suit would stand dismissed and leaving the parties to bear their own costs in each case) to the extent that the plaintiff is granted a decree of 43 kanals, 4 marlas on payment of Rs. 6,227.

It is further ordered that if the amount has not already been deposited it shall be paid within 30 days and in case the plaintiff fails to deposit this amount within the specified time, her suit shall stand dismissed. It is further ordered that the parties shall bear their own costs.

Tirath Singh, Advocate, *for the appellants.*

C. L. Lakhanpal, P. C. Khungar and D. S. Keer, Advocates, *for the respondents.*

JUDGMENT

TULI, J.—(1) The only question of law for determination before this Bench is :—

> Whether the learned lower appellate Court was right in allowing the plaintiff-respondent to amend her plaint at

the appellate stage when the objection regarding the suit being bad for partial pre-emption was raised by the vendees-appellants in their written statement and the plaintiff-respondent, in spite thereof, persisted in maintaining, till the suit was dismissed by the learned trial Court, that only 5 *kothas* and not 6 were sold by the vendor to the vendees ?

(2) Briefly stated the facts are that Arjan Singh and his three brothers, Amar Singh, Surjan Singh and Gurmej Singh and their mother, Smt. Khem Kaur, sold 307 Kanals 6 Marlas of land along with 5 *kutcha kothas* and 1 pucca *kotha* to Banta Singh and others (appellants) for a consideration of Rs. 38,605,—*vide* registered sale-deed dated August 20, 1964. Smt. Harbhajan Kaur, daughter of Arjan Singh, vendor, filed a suit for possession by pre-emption of the said land measuring 307 *kanals* 6 *marlas* and 5 *kothas,* instead of 6, against the payment of the entire consideration of Rs. 38,605. That suit was resisted by the vendees and one of the pleas taken was that the suit was bad for partial pre-emption. This plea was stated in preliminary objection No. 3 in the written statement and in answer to paragraph 2 of the plaint, the vendees categorically stated that 6 *kothas* were sold along with the land and not 5 as stated in the plaint. In her replication, the plaintiff-respondent asserted that the preliminary objection No. 3 raised by the vendees was wrong and was denied and in answer to paragraph 2 of the written statement, she reiterated that 5 *kothas,* according to the sale-deed, were sold and not 6. Accordingly an issue was framed reading as under :—

"Whether the suit is bad for partial pre-emption ?" The plaintiff-pre-emptor filed the suit on August 17, 1965, without a copy of the sale-deed but filed a certified copy thereof on October 8, 1965, while the vendees-defendants produced the original sale-deed on October 5, 1966. In the sale-deed, as has been pointed out by the learned trial Court, it was stated that the vendors had sold land measuring 307 *kanals* 6 *marlas* along with 6 *kothas*—5 *kutcha* and 1 *pucca*—and ancillary rights, that is, right of way, trees, water tap etc. etc. Another issue was framed as to whether the suit had been properly valued for purposes of court-fee and jurisdiction on the objection raised by the vendees-defendants. The plaintiff had fixed the value of the land for the purpose of court-fee at 10 times the land revenue (Rs. 142.80 Paise) and for the purpose of jurisdiction at 30 times the land revenue (Rs. 428.40 Paise) and the 5 *kothas*

sued for were valued at Rs. 100. Court-fee was paid accordingly on that valuation. The issue with regard to proper valuation for the purposes of court-fee and jurisdiction was tried as a preliminary issue and the learned counsel for both parties agreed that the market value of the *kothas* in dispute was Rs. 500; paragraph 7 of the plaint was accordingly amended and the deficient court-fee was made good. The suit of the plaintiff was, however, dismissed by the learned trial Court on October 5, 1966, on the ground that it was bad for partial pre-emption.

(3) Against that decree, the plaintiff-pre-emptor filed an appeal which was accepted by the learned Additional District Judge, Karnal, on December 4, 1967. Along with the memorandum of appeal, an application for permission to amend the plaint, so as to mention 6 *kothas* instead of 5, was also filed. In that application, it was stated that according to the copy of the sale-deed with the plaintiff's counsel, 5 *kothas* had been sold—4 *kutcha* and one pucca—and that is how the mistake had occurred. The learned Additional District Judge allowed the amendment of the plaint and decreed the suit in full. The vendees filed R.S.A. No. 1477 of 1967 in this Court which was partly accepted by Gurdev Singh, J., on May 8, 1969. The learned Judge held that the amendment had been properly allowed by the learned lower appellate Court, but the plaintiff-respondent was entitled to pre-empt the sale only to the extent of the share of her father therein and not the entire sale because she had no right to pre-empt the sale made by her uncles and grand-mother. Consequently a decree for 1/6th of the sold property was passed against the payment of Rs. 6,227, being the amount proportionate to the area of the property to which her right of pre-emption was found to exist.

(4) Against the judgment and decree of the learned Single Judge, the vendees filed the present appeal under clause 10 of the Letters Patent to which cross-objections were filed by the plaintiff-respondent. That appeal came up for hearing before a Division Bench (D. K. Mahajan and Sodhi, JJ., and the learned Judges held that there was no merit in the cross-objections which were dismissed. As regards the vendees' appeal, the first contention that the extension of time to deposit 1/5th of the sale price allowed to the plaintiff-respondent by the learned trial Court was bad in law was repelled. The second contention that the amendment of the plaint could not be allowed by the learned lower appellate Court, in view

of the facts of this case, as stated above, was referred to a larger Bench for decision. That is how this case has been placed for hearing before this Bench.

(5) In order to allow an amendment of a plaint or a written statement, the first point to be considered is whether the application has been made *bona fide*. In the present case, the vendees, at the very first opportunity, in their written statement, pointed out with exactitude that 6 *kothas* and not 5, as stated in the plaint, had been sold by the vendors in their favour and that the suit was bad for partial pre-emption on that ground. In spite of the pointed attention of the plaintiff-pre-emptor having been drawn to this fact, she persisted in maintaining in her replication that the objection with regard to partal pre-emption was wrong and was hence denied and that only 5 *kothas*, as stated in the sale-deed, had been sold. It is quite obvious that this reassertion of 5 *kothas* instead of 6 was made in the replication without carefully reading the sale-deed which embodied the sale transaction—the subject-matter of her suit for pre-emption. The learned trial Court thereafter framed a specific issue on the point and the vendees produced the original sale-deed that was in their possession. Even then no application for amendment of the plaint was made. The learned trial Court decided the issue against the plaintiff-respondent on the basis of the recital in the sale-deed that 6 *kothas* had been sold. It is only after the dismissal of the suit that the plaintiff realised that she had wrongly persisted in maintaining that only 5 *kothas* were sold and not 6. In these circumstances, I cannot hold that the amendment sought for in the first appellate Court was *bona fide*, particularly because the copy of the sale-deed in possession of the plaintiff's lawyer was never produced to show that therein only 5 *kothas* were mentioned and not 6, on the basis of which the plaint had been drafted. It is, nowhere in evidence that the plaintiff had obtained a certified copy of the sale-deed before filing the suit in order to find out the property which had been sold and was made the subject-matter of the suit for pre-emption. The certified copy of the sale-deed, produced later on by the plaintiff, shows that it had been prepared on October 8, 1965. It cannot, thus, be said that the mistake crept in due to inadvertence; it was, to say the least, due to gross negligence and carelessness of the plaintiff and her counsel who drafted the plaint. Any person, whose attention is pointedly drawn to a fact, is expected to refute it only after apprising himself of the true facts by looking into the relevant documents carefully. Even if the copy

of the sale-deed with the counsel for the plaintiff was not a correct copy, the original sale-deed filed by the vendees or its certified copy filed by the plaintiff herself could have been inspected by her counsel during the course of the trial to apprise himself of the correctness of the objection with regard to partial pre-emption raised by the vendees. In *Shankar Lal* v. *Dallu* (1), a Division Bench of the Punjab Chief Court held that if the objection of partial pre-emption is raised by the vendees at too late a stage of the case, it could not be entertained by the Court and if entertained, the amendment of the plaint should be allowed. In the present case, the objection was raised by the vendees at the earliest opportunity but the plaintiff failed to take due notice thereof and did not ask for the amendment of the plaint till after her suit was dismissed.

(6) A Full Bench of the Lahore High Court in *Ghulam Qadir and another* v. *Ditta and others* (2), observed as under:—

> "It cannot now be disputed that a right of pre-emption is a right of substitution and if a person wishes to get himself substituted for the vendee in exercise of that right, he must claim the whole of the property over which he has a right (and in cases where the vendee happens to be a pre-emptor as well, a superior right) of pre-emption and cannot leave out any portion thereof at the peril of losing his right altogether for, besides not being able to be substituted for the vendee in respect of the whole of the property over which his right of pre-emption extends or he has a preferential right of pre-emption and thus failing to take over the whole of the bargain, he would be, by acting in that manner, not only breaking up an indivisible contract in cases where he could not have done so, but may also, as a result of his omission, allow the vendee to retain an equal or at times a superior status in respect of the portion of the property which he wished to pre-empt. The bargain which was to be pre-empted in its entirety could not, therefore, be split up by a pre-emptor except in cases where he had a right of pre-emption or a preferential right, as the case may be, to a limited extent only, that is, in respect of a portion of the property sold and where he did split it without any justification, such

(1) 25 I.C. 68.
(2) (1945) 47 P.L.R. 224.

as I have referred to above, it was bound to prove fatal and a decree could not be passed in his favour. It would, therefore, follow that a pre-emptor must always claim the maximum to which he is entitled or has a superior title and his failure to do so would result in a dismissal of his claim on the ground that he was suing for partial pre-emption."

The ratio of this decision aptly and squarely applies to the facts of the present case.

(7) Another rule for allowing amendment is that no amendment of the plaint should be allowed if its effect is to take away a valuable right that has accrued to the opposite party by lapse of time. In the present case, when the application for amendment was made in the lower appellate Court, the time for filing the suit for pre-emption had already expired and a valuable right had accrued in favour of the vendees. Gurdev Singh, J., whose judgment is under appeal, himself appears to have changed his view later, as is clear from *Smt. Gurdip Kaur* v. *Kehar Singh and another* (3). In that case, the vendee had pleaded that the *kutcha* house situated in the *abadi*, which formed part of the property sold, not having been included in the plaint for pre-emption, the suit was liable to dismissal as partial pre-emption could not be allowed. A specific issue on that plea was framed reading as under:—

"Whether the suit is bad for partial pre-emption?"

(8) The trial of the suit proceeded and while the evidence was being examined, the pre-emptor applied to the Court for amendment of the plaint so as to include the *kutcha* house situate in the village *abadi* both in the relief clause and paragraph 1 of the plaint. That application, which was admittedly made long after the period of limitation for filing the suit had expired, was vehemently opposed by the defendant-vendee and after due consideration of the matter, the learned trial Judge disallowed the amendment primarily on the ground that a valuable right had accrued to the vendee by lapse of time and it was not fair to allow the plaintiff to incorporate a new prayer in his plaint. No revision was filed against that order, with the result that the learned trial Court dismissed the suit solely on the finding that it was bad for partial pre-emption, the *kutcha* house

(3) 1971 P.L.R. 384.

stated in the sale-deed having been left out. Against that decree, the pre-emptor appealed to the Court of the District Judge and during the pendency of that appeal, an application for permission to amend the plaint was filed. In paragraph 2 of that application, it was stated: —

> "That through inadvertence the *kutcha* house alleged to have been sold,—*vide* sale-deed, dated May 26, 1964, was not mentioned in the plaint, although the plaintiff filed a suit for all the rights appurtenant to the land, in suit, as mentioned in the sale-deed, but the plaintiff did not mention the *kutcha* house, which was also allotted along with the land in dispute specifically."

(9) The learned Additional District Judge accepted the appeal and directed the trial Court to allow the amendment and to proceed with the trial of the suit on merits thereafter. Against that order, an appeal was filed which was allowed by the learned Single Judge. After referring to various decisions, it is observed in paragraph 11 of the report: —

> "It is true that one of the principles which guide the Courts in allowing the amendment is that all amendments may be allowed if the opposite party can be adequately compensated by the costs but that principle is of no help to the plaintiff in this case as by allowing the amendment, the learned Additional District Judge had prevented the dismissal of the suit. No amount of costs for amendment could have placed the defendant in the position in which she was before the amendment was allowed as, according to the judgment of the trial Court, the suit must fail because of partial pre-emption."

(10) A similar matter was considered by I. D. Dua, J., in *Gulzar Singh and another* v. *Gurbax Singh and others* (4). In that case, the sale sought to be pre-empted had been effected on May 22, 1963, and the suit for pre-emption by the vendor's brother was instituted on May 21, 1964. In paragraph 2 of the plaint it was expressly stated that Joginder Singh, defendant No. 3, had sold one-fourth share of his agricultural land mentioned in paragraph 1 of the plaint and one-sixteenth share of *ahata chah* pertaining to the

(4) C.R. No. 33 of 1964 decided on 5th March, 1965.

same Khewat. In paragraph 1, it was asserted that Gurbax Singh, Kashmira Singh, Bahadur Singh and Joginder Singh owned agricultural land pertaining to Khewat No. 36 etc. Admittedly, the sale had been effected by means of a registered deed which was referred to in the plaint. The right to pre-empt was claimed on the ground that the plaintiff was the real brother of the vendor Joginder Singh and was also a co-sharer. Written statement was filed on July 30, 1964, in which one of the preliminary objections raised was that the suit was bad for partial pre-emption and was liable to be dismissed on that ground. An issue was framed:—

"Whether the suit is for partial pre-emption?"

The proceedings were adjourned to September 25, 1964, for evidence of the parties and on that date an application was presented by the plaintiff under Order VI, rule 17, Civil Procedure Code, for amendment of the plaint alleging that in paragraph 2 of the plaint, the word "one-fourth share" had been written by mistake and that defendant No. 3, Joginder Singh, was the sole owner of the land which he had sold in favour of defendants 1 and 2. According to that application, defendant 3 Joginder Singh never sold one-fourth share. That application, in spite of resistance by the vendees, was allowed on the ground that the omission was due to inadvertence, and misdescription of property in a pre-emption suit can be rectified by amendment. The learned Judge, after considering various judgments cited at the bar, held that:—

> "........the plaintiff cannot be allowed to amend his plaint if the effect of the amendment would be to take away from the defendant a legal right which has accrued to him by lapse of time, but, somewhat surprisingly, the learned Subordinate Judge, though conceding the force of the ratio, managed to take the present case out of the principle cited by observing that the case in hand was simply a case of negligence and inadvertence, the counsel for the plaintiff having drafted the plaint without consulting the sale-deed. It is not easy to appreciate the distinction sought to be made by the learned Judge. If the defendant has acquired a vested right on account of expiry of limitation and the plaintiff is merely asserting an aggressive right of pre-emption, I do not think, consistently with the principle laid down by the Supreme Court and by this Court, any case for allowing amendment was made out by the plaintiff."

(11) In *Mst. Kako Bai* v. *Pehlad* (5), decided by D. Falshaw, C.J., the facts were that land measuring 82 *kanals* was purchased by the vendees by a registered sale-deed dated June 28, 1960. The pre-emptor filed a suit on August 23, 1960, and an objection was taken by the vendees in their written statement that the suit was bad for partial pre-emption. It was only when the trial had virtually finished and the stage of arguments reached on August 8, 1961, that the plaintiff applied to amend his plaint on the ground that he had made a *bona fide* mistake regarding the area of the land he had sued for as the result of certain errors contained in the certified copy of the registered sale-deed which he had obtained and the *fard* jamabandi which he had filed along with his plaint. The original sale-deed had been filed on May 12, 1961, and it was formally exhibited on August 4, 1961, four days before the application was filed. The trial Court held that a *bona fide* mistake had been made and, therefore, allowed the plaint to be amended. The learned Chief Justice accepted the revision petition with the following observations :—

> "On behalf of the petitioner it is stressed that there is no possibility whatever of any *bona fide* mistake in the present case. The plaintiff should have been placed on his guard straightway by the plea raised by the defendant regarding which an issue was framed that the suit was bad being for partial pre-emption, and the plaintiff was well aware of the area of the land since before the suit was instituted the landlord had filed a suit in the revenue court for his ejectment from 82 *kanals* of land of which the plaintiff admitted in those proceedings that he was the tenant. In any case, it is pointed out that although there is a slight inaccuracy in the copy of the sale-deed filed by the plaintiff, if the areas of the fields given in that copy and set out in detail are examined, it will be found that their area adds up to exactly 82 kanals. This simple addition was done by the learned counsel for the plaintiff-respondent in this Court and it was found that the area shown even in the defective copy was 82 *kanals*. It is thus clear that there was no justification at all for allowing any amendment of the plaint and I accordingly accept the revision petition and set aside the order with costs."

(5) C.R. No. 593 of 1961 decided on 14th December, 1962.

(12) These observations squarely apply to the facts of the present case as if made in that context.

(13) As against these judgments, the learned counsel for the plaintiff-pre-emptor has relied on the decisions of the Supreme Court in *Prigonda Hongonda Patil* v. *Kalgonda Shidgonda Patil and others* (6), and *A. K. Gupta and sons Ltd.* v. *Damodar Valley Corporation* (7), and has submitted that no fresh cause of action was added and the vendees-appellants could be compensated by costs. There Lordships of the Supreme Court in *Prigonda Hongonda Patil's case* (6), (supra) held that the correct propositions of law were enunciated by Batchelor, J., in *Kisandas Rupchand* v. *Rachappa Vithoba* (8), when he said at pages 649 and 650 :—

> "All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties...... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which, since the institution of the suit, had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test, therefore, still remains the same: can the amendment be allowed without injustice to the other side, or can it not ?"

These observations, far from helping the plaintiff-respondent, lend complete support to the decisions of this Court referred to above, in the light of which the amendment of the plaint allowed in the

(6) A.I.R. 1957 S.C. 363.
(7) A.I.R. 1967 S.C. 96.
(8) I.L.R. (1909) 33 Bom. 644.

present case by the learned lower appellate Court cannot be judicially justified on the well-established and oft-repeated principles relating to the amendment of the pleadings.

(14) The learned counsel has also relied on some judgments of this Court in support of his submission that the amendment had been rightly allowed by the first appellate Court and his discretion judiciously exercised could not be interfered with in appeal. Reference is made to a judgment of this Court in *Sodhi Singh and others* v. *Basant Singh and another* (9), in which it was held that when in a suit for pre-emption of the total area of land sold, the plaintiff inadvertently omitted to mention one khasra number, the Court was justified in allowing the amendment of the plaint by inclusion of the *khasra* number, which was only a detailed description of the property sold. This case is clearly distinguishable. In that case, the total area of the land had been correctly mentioned in the suit but one khasra number was inadvertently omitted. Moreover, the amendment was sought at an early stage of the suit—the framing of issues—and not after the suit had been dismissed. In *Teja Singh and others* v. *Bhagwan Singh* (10), the sale-deed was registered on October 19, 1964, and the suit for pre-emption was instituted on October 19, 1965. In the plaint, the property sought to be pre-empted was described precisely in terms as in that part of the sale-deed which preceded the recitals about the manner in which the price was paid. No mention was made in the plaint about *chah* Bhattianwala, but it was stated that the price really paid for the sale was Rs. 12,000 although it was fictitiously entered in the sale-deed as Rs. 24,000. The written statement on behalf of the vendees was presented to the Court on March 19, 1966, wherein one of the objections taken was that the suit was bad for partial pre-emption. Immediately thereafter the plaintiff-pre-emptor presented an application praying for amendment of the plaint so as to include the *chah* Bhattianwala also in the property of which he sought pre-emption, which was dismissed by the learned trial Court mainly on the ground that a valuable right had accrued to the vendees on account of the expiry of the period of limitation and that an amendment which would deprive them of that right could not be allowed. By the same order, the learned trial Court dismissed the suit as being one for partial pre-emption which the law did not permit. The pre-emptor filed an appeal to the Court of the District Judge who held that the

(9) 1962 P.L.R. 633.
(10) 1970 P.L.J. 615.

trial Court was ill-advised in not allowing the plaintiff to amend the plaint in view of the fact that the plaintiff had expressly indicated that his claim for pre-emption extended to the property comprised in the sale-deed which was appended to the plaint. According to the learned District Judge, the failure of the plaintiff to specifically ask for the share in the Bhattianwala well had arisen merely from inadvertence. The appeal was accepted by the learned District Judge and against that decree an appeal was filed in this Court and a contention was raised that the learned District Judge should not have allowed the amendment of the plaint. While dealing with that contention, the learned Judge observed in paragraph 3 of the report:—

> "The amendment allowed in the present case did not seek to add any new party or a fresh ground of pre-emption but merely sought to add in the plaint a detail of the property which had been inadvertently omitted in the original draft, although permission for the amendment was admittedly sought after the period of limitation prescribed for the suit had expired. That the omission was inadvertent admits of no doubt in view of the facts above stated. The description of the property given in the plaint as originally presented is the same as in that part of the sale-deed which precedes the recitals about consideration and purports to give the full detail of the property sold including the means of irrigation, namely, a well situated in *killa* No. 26 of square No. 36. The reference to the Bhattianwala well appears in a subsequent part of the sale-deed which would normally not be referred to for the purpose of finding out the description of the property sold in veiw of the fact that such description was given at length in an earlier part of the document and a person using ordinary diligence would be entitled to take it for granted that the property sold was described in the sale-deed in one place in a compendious form and that its description would not be split up so that a major part of it finds mention in the appropriate clause and a small one in another clause appearing towards the end of the document. In this view of the matter, the plea raised on behalf of pre-emptor that the omission to mention the Bhattianwala well in the plaint as originally drafted had resulted from inadvertence cannot be said to be without substance and the learned District Judge had full justification for acting upon it in spite of the fact that the period

of limitation for the institution of the suit had expired earlier. It is to be noted that no intention on the part of the plaintiff to give up his claim to any part of the property sold can be spelt from the plaint in spite of the fact that no reference to the Bhattianwala well was made therein. He no doubt described the price paid as Rs. 12,000 but then he also stated that the ostensible price was Rs. 24,000. This price, according to the plaintiff, was the entire sum paid in respect of the bargain which he sought to take over as a whole. In these circumstances, the permission to rectify the error arising from the omission to specify the Bhattianwala *chah* as part of the property sold and sought to be pre-empted cannot be treated as depriving the vendees-defendants of a right which has accrued to them by lapse of time even though such permission is granted after the period of limitation prescribed for the suit, as it amounts merely to a direction that the plaintiff states his case according to his real intention."

(15) The facts of that case are clearly distinguishable. As soon as the objection was taken by the vendees, the pre-emptor filed an application for amendment and it could not be said that that application had not been made *bona fide*.

(16) *Kalwant Singh and others* v. *Sher Singh and others* (11), is a judgment of Gurdev Singh, J., wherein he has followed his judgment which is under appeal before us and, therefore, is of no help. Reliance is then placed on the observations of P. C. Pandit, J., in *Bhagwan Singh and others* v. *Kashmir Singh* (12), contained in paragraph 8 of the report reading as under :—

"In cases of pre-emption, whether amendment after limitation should be allowed or not in such circumstances, the real test is whether the omission was intentional or inadvertent. What was the intention of the pre-emptor? Was he pre-empting the entire bargain or a part of it? This can be determined by reading the plaint as a whole. Does this show that he was not giving up any part of the property sold and was ready to take the whole of it? If that be the case, then, if while describing the property in the plaint some thing is left out, it must obviously be a

(11) 1971 P.L.J. 218.
(12) 1971 P.L.J. 222.

case of inadvertence or unintentional omission. As I have already stated, in the present case, the plaint clearly shows that the pre-emptor was suing for the entire bargain covered by the sale and not for anything less. He was not intentionally giving up any part of the same. *His intention is further clear from the application for amendment that he filed soon after the objection was taken regarding this matter by the vendees in the written statement,* though in a very vague manner and without giving any details. It is noteworthy that even in his evidence, the vendee did not clarify his objection. In my view, it was a case of misdescription of the property sold in the plaint and the omission to give the other details of the property was not intentional. It was accidental and due to inadvertence and *bona fide* mistake on the part of the pre-emptor. Under these circumstances, the learned Additional District Judge had correctly allowed the amendment in the plaint. It is undisputed that if the amendment had been permitted in accordance with law, it could not be held that the suit was for partial pre-emption." (emphasis supplied).

(17) In paragraph 3 of the report, it is stated that the objection raised by the vendees in the written statement was only this that the suit was for partial pre-emption and liable to be dismissed on that score alone. It was not stated as to how it was so. In paragraph 7 of the report, it is further observed :—

"The vendees in the written statement stated that the suit was one for partial pre-emption. *The pre-emptor did not persist in proceeding with the said suit as originally framed.* On the other hand, as a matter of abundant caution, he filed an application for the amendment of the plaint repeating therein that he was claiming the entire property sold along with all appurtenant and ancillary property." (emphasis supplied).

(18) These two factors prominently brought out in the judgment of the learned Judge indicate clearly the distinguishing features of that case as compared with the present case. I am, therefore, of the opinion that the learned lower appellate Court committed an illegality in allowing the plaintiff to amend her plaint and as a result thereof decreeing her suit in full in appeal. For the same

reasons, and I say so with respect, the learned Single Judge in the second appeal erred in holding that the amendment had been rightly allowed by the first appellate Court.

(19) The learned counsel for the plaintiff-respondent has then argued that the discretion exercised by the learned lower appellate Court should not be interfered with in appeal by this Court. Reliance is placed on a Division Bench judgment of the Delhi High Court in *Batoo Mal* v. *Rameshwar Nath and others* (13), wherein it was held, as per head-note 'D', as under :—

> "Normally it is in the discretion of the Tribunal, to which the application for amendment is made, to allow or reject the same. High Court will not interfere with the discretion unless it was exercised illegally or inequitably."

(20) I have no quarrel with this proposition, but on the facts of this case, the discretion was exercised illegally and inequitably by the learned lower appellate Court and in appeal it can be interfered with. In fact, the matter was raised before the learned Single Judge in second appeal and, in my opinion, his decision that the amendment had been rightly allowed is erroneous. I have, therefore, no hesitation in reversing the decision of the learned Single Judge on this point.

(21) Lastly, it is submitted by the learned counsel for the plaintiff-respondent that no injustice has been caused to the vendee-appellants by the order allowing amendment and that the costs awarded by the learned lower appellate Court amply compensated them for the delay in making the application for amendment by the plaintiff. I regret I cannot agree with this submission. The suit for partial pre-emption is not competent and such a suit has to be dismissed and if it is dismissed on that ground, a very valuable right accrues to the vendee-defendants inasmuch as their right to retain that property becomes indefeasible. If that right is put in jeopardy by allowing amendment of the plaint, a gross injustice is done to them which cannot be compensated by the award of costs. In fact, after the dismissal of the suit, the amendment should not have been allowed in view of the conduct of the plaintiff in this case to which reference has been made above. I am accordingly of the opinion that the learned lower appellate Court erred in law in

(13) A.I.R. 1971 Delhi 98.

allowing the amendment of the plaint and the learned Single Judge also erred in law in holding that the amendment had been rightly allowed.

(22) As a last resort, the learned counsel for the plaintiff-respondent has submitted that in fact the plaint did not require any amendment as the entire property sold was made the subject-matter of the suit as stated in the last paragraph of the plaint relating to the reliefs claimed. In that paragraph, it is stated :—

> "That the plaintiff prays that the decree for possession by pre-emption of agricultural land measuring 307 *kanals* 6 *marlas* situated at Patti Dogran, Kaithal, comprised in *khewat No.* 14, *khatauni Nos.* 17, 18, *killa* Nos.............................. as mentioned in Fard Jamabandi 1961-62 along with other ancillary rights and *kothas* etc., as mentioned in the sale deed in para No. 2 of the plaint on payment of Rs. 38,605 or any other sum which the Court deems fit on that payment be granted........................".

This Paragraph clearly refers to the property as mentioned in the Jamabandi 1961-62 and the sale deed and described in para 2 of the plaint. Therefore, in order to find out the property sought to be pre-empted, we have perforce to refer to what is mentioned in para 2 of the plaint. In that para "*kothas kham* and one pucca" are mentioned. The intention of the plaintiff is quite clear that she was pre-empting 5 *kothas* and not 6. That intention is further made clear by her unequivocal re-assertion in the replication that "the *kothas* were only five as mentioned in the copy of the sale deed." In paragraph 7 of the plaint the market value of all the *kothas* sued for was stated to be Rs. 100 which was later on changed to Rs. 500 when issue No 2 regarding valuation was decided. This value was of the *kothas* in *dispute* and not all the kothas sold. It is thus obvious that the plaintiff had not sued for all the *kothas* mentioned in the sale deed but only for 5 *kothas,* as mentioned in paragraph 2 of the plaint and in order to avoid the objection of partial pre-emption, the plaint required amendment. This submission is thus repelled.

(23) There is another legal infirmity in the manner in which the plaintiff carried into effect the amendment allowed. She substituted the figure 4 by figure 5 in paragraph 2 of the plaint but did not

make corresponding amendment in paragraph 7 of the plaint regarding valuation of the sixth *kotha* for purposes of court-fee and jurisdiction nor was any additional court-fee paid. The value of five *kothas*, as mentioned in the original plaint, had been determined to be Rs. 500 as per the statements of the learned counsel for the parties. After inclusion of the sixth *kotha*, it was the duty of the plaintiff to state its value and pay court-fee thereon. That not having been done, the amendment made in the plaint remained incomplete and did not entitle the plaintiff to a decree for the added *kotha*. The suit continued to suffer from the vice of partial pre-emption and could not be decreed.

(24) Since the point of law decided above is the only point that remained undecided in the appeal, there is no use sending it back to the Division Bench for passing a final decision in accordance with the opinion expressed above, I accordingly accept this appeal and dismiss the suit of the plaintiff-respondent, leaving the parties to bear their own costs throughout.

Mahajan, J.—I agree.

Suri, J.—(25) I agree with my learned brethren that, on the facts of the present case, plaintiff-respondent No. 1 should not have been allowed to amend her plaint at the appellate stage but it would be too broad a proposition of law to be laid down as a general rule that a plaintiff-pre-emptor who has not applied for the amendment of the plaint during the trial, after the objection about the partial pre-emption had been taken by the opposite party at the earliest stage, would be estopped from seeking an amendment at the appellate stage. The finality of a decree that has been challenged in appeal or revision hangs in the balance and such a decree cannot be taken to have created any vested rights in a party in the sense that an amendment which could have been allowed before the passing of the decree cannot be allowed to be made after the decree had been passed. To hold otherwise would amount to our ignoring the recent tendency of the Courts which allow pleadings to be amended at all stages if this can be done without prejudice to the rights of the other party and if that party can be compensated for the delay and inconvenience caused in the proceedings by an order awarding costs.

(26) Of late, the Courts are inclined to be liberal in the matter of allowing amendments of pleadings so as to do substantial justice

between the parties. In *Jai Jai Ram Manohar Lal,* v. *National Building Material Supply, Gurgaon* (14), the Hon'ble Judges of the Supreme Court were pleased to observe that rules of procedure are intended to be handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting *mala fide,* or that by his blunder, he had caused injury to his opponent which may not be compensed for by an order of costs. However negligent or careless may have been the first omission, and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. This Supreme Court ruling was followed by Sarkaria, J. in *M/s. The Punjab Rajasthan Timber Trading Company* v. *The Warewell Cycle Co. India Ltd.* (15), and then again by Harbans Singh, C.J., in *Raghvir Prashad etc.* v. *Chet Ram* (16). In the last mentioned ruling, it was observed further that there is no injustice occasioned by an amendment if the opposite party can be compensated by an order for payment of costs and that a plaintiff could even be allowed to add a new cause of action and the defendant to add a new defence and that there was no bar to a new case being allowed to be introduced even at a very late stage of the proceedings. The mere fact that the cause of action had been changed was no ground *per se* for disallowing the amendment. In *M/s. The Punjab Rajasthan Timber Trading Company's case* (15), (supra), an amendment was allowed to be made even after the expiry of the statutory period of limitation on the ground that the amendment had not changed the nature of the suit but amounted merely to a different or additional approach to the case. There is nothing in these rulings to suggest that the basic ratio of the principles of law laid down was intended to apply to a particular category of cases or that amendments of pleadings in a pre-emption case were to be governed by any different standards. I am aware of the fact that the right of pre-emption has at places been described as a piratical right but as long as statute recognises it, it is a legal right and cannot be allowed to be defeated otherwise than by lawful means.

(14) A.I.R. 1969 S.C. 1267.

(15) 1970 Curr. L.J. 322.

(16) 1971 Curr. L.J. 612.

(27) I would like to dwell on some aspects of the present case which may give a clearer idea of the circumstances under which the plaintiff-pre-emptor sought an amendment of her plaint in the Court of first appeal. The sale deed, Exhibit D. 2, starts as usual by giving the names and parentages etc. of the vendors. Thereafter the description of the property sold which comprised mainly of agricultural land has been given. This is the usual place in a sale deed where one would ordinarily look for a complete description of the property sold. At this place, the sale deed mentions that besides the land and some ancillary rights, four *kothas kham* and one *kotha pukhta* had been sold to the vendees. This description of the property sold had been accurately reproduced in the plaint filed by respondent No. 1. The sale deed, Exhibit D. 2, is a lengthy document written in Hindi in Devnagri script and most people like me while reading the document would have exhausted their patience by the time they reached the last line of the body of the writing in the sale deed where it has been mentioned, not consistently with the earlier description, that the land has six *kothas* standing thereon which have been sold to the vendees. Respondent No. 1 had mentioned towards the end of paragraph 2 of her plaint that a copy of the sale deed shall be filed and she had actually placed on record a certified copy of the registered sale deed long before the date on which the appellant-vendees had filed their written statement in the case. The certified copy is marked as Exhibit P. 2 and was filed in Court by the plaintiff's counsel on 8th October, 1965. The written statement filed by the vendees bears the date 11th January, 1966. The lady cannot, therefore, be held negligent for her counsel's failure to keep a true copy of this sale deed on his brief. In paragraphs 2, 5 and 8 of the plaint the lady had made it clear that she was seeking to pre-empt the entire property sold with all ancillary rights and she had offered to pay the full sale price mentioned in the deed. No one would like to forego a part of the property and still offer to pay its price and the plaintiff's intention was clear that she was seeking to pre-empt the entire bargain. The omission to include the sixth *kotha* which had been mentioned only in the last line of the body of the writing in the sale deed, Exhibit D. 2, was obviously inadvertent.

(28) The vendees had taken four preliminary objections in their written statement. One of these objections was with regard to the valuation of the suit for the purposes of Court fee and jurisdiction. The other objection was that the suit was bad for partial pre-emption. Nowhere was it clearly pointed out that the property sold comprised

of land and six *kothas*. The value of the land was assessed for the purposes of Court fee and jurisdiction at ten and thirty times the land revenue but Court fee was payable *ad valorem* on the market value of the *kothas*. In the written statement, it was stated that the *kothas* were not worth less than Rs. 1,000 and this sum was not an exact multiple of number six like the sum ultimately agreed upon by mutual agreement as the value of the *kothas* in dispute. What I mean to imply is that the written statement had not clearly brought out as to how the suit was bad for partial pre-emption.

(29) The plaintiff-pre-emptor filed a replication in which she controverted all the preliminary objections. According to the avertments made in the application for the amendment of the plaint filed in the Court of first appeal, this had been done on the basis of an inaccurate copy of the sale deed retained by the plaintiff's Advocate in the lower Court. Parties were not called upon to produce evidence in connection with this application and the occasion for producing in Court the incomplete or inaccurate copy of the sale deed had not arisen. The averment made in the application had apparently been accepted as correct by the Court when the amendment was allowed to be made on payment of Rs. 100 as costs. On the basis of the rulings cited above, I have no hesitation in saying that this discretion had been fairly exercised and that the mistake on the plaintiff-pre-emptor's part was inadvertent and *bona fide*.

(30) It cannot, however, be said that the opposite party could have been compensated in the present case by an order awarding costs. It may appear that the plaintiff-pre-emptor had by her conduct in the trial Court raised against herself a bar which estopped her from seeking an amendment of the plaint in the appellate Court. Her conduct in the Court of first instance had induced the belief in the mind of the vendees that she was not prepared to seek the possession of the sixth *kotha* in spite of the mistake or omission in the plaint having been brought to her notice. The sixth *kotha* could not be described as the property in dispute if she was not laying any claim to it. On the last hearing in the trial Court, the vendees acting on this wrong belief induced by the conduct of the plaintiff-pre-emptor were made to agree to a lower valuation of the suit for the purposes of Court fee and jurisdiction. These facts may appear to have created the bar of estoppel against the plaintiff's seeking an amendment of the plaint after the vendees had changed their position to

their disadvantage or prejudice by being made to agree to a lower valuation than may have been agreed to if the sixth *kotha* had also been included in the plaint. Persistence in one's mistake could be penalised in any of the two ways, namely, that the party at fault could either be mulcted in a substantial amount as costs which could be paid to the opposite party as compensation for the delay and the inconvenience caused in the proceedings or the party at fault could be robbed altogether of his legal rights. The latter would be a harsh and severe course which could be resorted to only if the opposite party cannot be otherwise compensated. Securing of substantial justice to the parties is more important than the drastic ending of the litigation in an unnatural manner. I would, therefore, agree only that on the peculiar facts of the case this appeal should be accepted and the pre-emption suit filed by plaintiff-respondent No. 1 should be dismissed leaving the parties to bear their own costs. I, do not, however, agree that we can lay down a rule of universal application that in all cases where a pre-emptor has failed to seek an amendment of his plaint during the trial after the opposite party had pointed out the defect of partial pre-emption at the earliest stage, he would be estopped from seeking that amendment at the appellate stage. The answer to this question would depend on the facts and circumstances of each individual case.

K.S.K.

FULL BENCH

Before D. K. Mahajan, R. S. Narula and Pritam Singh Pattar, JJ.

CHANDI RAM,—*Petitioner.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 3113 of 1971.

March 14, 1974.

Punjab Security of Land Tenures Act (X of 1953 as amended by XIV of 1962)—Sections 6 and 18—Transfer of land by big landlord after 15th August, 1947 and before 2nd February, 1955—Transferee, a small land owner inducting tenant—Such tenant—Whether entitled to purchase land under his tenancy—Section 18—Whether applies.