



CRP.No.3005 of 1997

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2023

CORAM

THE HON'BLE MR.JUSTICE **C.KUMARAPPAN**

CRP(PD).No. 3005 of 1997 and
CMP(MD).Nos.5806 and 5807 of 2004

R. Durairaj

Petitioner

Vs.

1.V. Subburaman (died)

2.K.Subbulakshmi

3.Mariammal

4.S.Panjaliammal

5.K.Nagarani

6.K.Hariharasudhan

7.K.Rajaram

8.N.Selvarani(died)

9.S.Devaki

(AA4 to 9 are brought on record as LR's of the
deceased R1 the deceased R1 vide Court, order
dated 14.03.2019 made in CMP.Nos.5805 to 5807/2004 and
CMP(MD).No.2350/2017 in CRP(MD).No.3005 of 1997)

10.Varathalakshmi

11.Saravanan



CRP.No.3005 of 1997

12. Alagarsamy

13. Karthikeya Venkatachalapathi

14. Krishnaveni

(respondents 10 to 14 are brought on record

as LR's of the deceased 8th respondent vide Court, order dated

14.12.2021 made in CMP(MD).Nos.10782, 10783 and 10785 of 2021

in CRP(MD).No.3005/1997)

... Respondents

PRAYER : Civil Revision Petition filed under Section 115 CPC against the Judgment and Decree, dated 05.08.1997 passed in I.A.No.1978/96 in O.S.No.96/83 on the file of the District Munsif Court,. Aruppukkottai.

For Petitioner : Mr. V.R. Venkatesan

For Respondents 5 to 7
and 9 to 14 : Mr.S. Natarajan
Senior Counsel

ORDER

This Civil Revision Petition has been filed against the Judgment and Decree, dated 05.08.1997 passed in I.A.No.1978/96 in O.S.No.96/83 on the file of the District Munsif Court, Aruppukkottai.



CRP.No.3005 of 1997

WEB COPY

2. The revision petitioner herein is the, petitioner / 3rd defendant before the trial Court. The first respondent is the first respondent / plaintiff before the trial Court. The respondents 2 and 3 herein are the respondents 2 and 3 / defendants 1 and 2 before the Court below.

3. The learned counsel appearing for the revision petitioner would submit that there was a suit against him for the relief of partition, and that the Judgment was passed on 14.08.1986 dividing the suit property. However, the decree was not drafted in consonance with the Judgment. Therefore, prayed to amend the decree under Section 152 C.P.C., in consonance with the Judgment.

4. The learned counsel for the petitioner would draw the attention of this Court in respect of the various findings of the Court below and would submit that when the Courts below arrived at conclusion that there was no division of property, the clause containing in the decree allotment of western side of the property, become redundant and therefore, would pray to allow this revision petition.



CRP.No.3005 of 1997

5. However, the learned Senior Counsel appearing for the respondents / plaintiffs strongly objected the said argument, and would submit that the decree was drafted in consonance with the Judgment. Therefore, he would submit that the finding of the Court below does not call for any interference.

6. The sum and substances of contention putforth by the learned counsel for the petitioner herein is that, the decree is not in-consonance with the Judgment. In order to understand the whole gamut of issue this Court deem it appropriate to extract the issues framed in the suit. The same is find a place in Para No.6 of the Judgment of the suit in O.S.No.96 of 1983. The same is reads as follows:

□1. தாவா “எ□ செட்யூல் சொத்து வாதிக்கு பாத்திய அனுபவமுள்ளதா?

2. தாவா “எ□ செட்யூல் சொத்து வாதிக்கு பாத்தியமானது இல்லை என்று கூறினால் வாதிக்கு தாவா “பி□ செட்யூல் சொத்தில் வாதி கோரிய பாகப் பரிகாரம் கிடைக்கக் கூடியதா?

3. பிரதிவாதிகள் எதிர் வழக்குரையில் கண்டபடி தாவா சொத்து முழுவதையுமே 2ம் பிரதிவாதிக்கும் அவர் கணவர் துரைச்சாமி



CRP.No.3005 of 1997

WEB COPY

ரெட்டியாருக்கும் இனாமாக விடப்பட்டது என்பது உண்மையானதா? அது சட்டப்படி செல்லத்தக்கதா?

4. பிரதிவாதிகளுக்கு தாவா சொத்தில் அனுபவ பாத்தியம் ஏற்பட்டிருக்கிறதா?

5. இவ்வழக்கில் வாதிக்கு என்ன பரிகாரம் கொடுக்கப்படக்கூடியது?

கூடுதல் வினா 1. இவ்வழக்கு வேச்சன் அண்டு அக்கியூசன்ஸ் என்ற தோசத்தினால் பாதிக்கப்படுகிறதா?

2. இவ்வழக்கு அவசியமான கட்சிக்காரர்களை சேர்க்கவில்லை என்ற தோசத்தால் பாதிக்கப்பட்டுள்ளதா?

4. 1, 3 பிரதிவாதிகள் நல்லெண்ணத்துடன் கிரயம் வாங்கியுள்ளார்களா? அது செல்லத்தக்கதா?

7. While answering those issues, the Court below in para No.

27 has held as follows:

“27. தாவா சொத்து ஐசெடியூலின் மேல் பகுதி வாதிக்கு பாத்தியமானது என்பதை நிரூபிக்க முடியவில்லை. மேல் பகுதியில் 3 ம் பிரதிவாதி கட்டிடம் கட்டிக் கொண்டிருப்பதால் வாதியால் மேல் பகுதி அவருக்கு பாத்தியம் என்பதை நிரூபிக்க முடியவில்லை. அது மாரியம்மாளுக்கு ஒதுக்கப்பட்டுள்ளது என்பதற்கு ஆதாரம் ஏதும் கிடையாது. ஆனால் ஐபி செடியூல் சொத்தில் வாதி கோரியுள்ள பாக



CRP.No.3005 of 1997

WEB COPY

பரிகாரம் அவருக்குக் கிடைக்கக் கூடியது தான். ஆனால் அதே நேரத்தில் 2ம் பிரதிவாதி மாரியம்மாளுக்கும், அவருடைய கணவர் துரைசாமி ரெட்டியாருக்கும் □பி□ செட்யூல் சொத்து முழுவதும் இனாமாக கொடுக்கப்பட்டுள்ளது என்பது நிரூபிக்கப்படவில்லை. இதனால் பிரதிவாதிகளுக்கு தாவா சொத்தில் அனுபவ பாத்தியம் ஏற்படவில்லை. □பி□ செட்யூல் சொத்து முழுவதும் பிரிக்கப்படாமல் பொதுவாக தான் உள்ளது என்பது இந்த வழக்கில் தெளிவாக நிரூபிக்கப்பட்டுள்ளது. எனவே வினா 1 வாதிக்கு எதிராகவும், பிரதிவாதிகளுக்கு ஆதரவாகவும், வினா 2 வாதிக்கு ஆதரவாகவும், பிரதிவாதிகளுக்கு எதிராகவும், வினாக்கள் 3, 4 கூடுதல் வினாக்கள் 1, 3 பிரதிவாதிகளுக்கு எதிராகவும், வாதிக்கு ஆதரவாகவும் விடை அளிக்கப்படுகிறது.□

8. As per the above finding, the Court below has granted a relief in respect of the issue No.2 in favour of the plaintiff. According to issue No.2, the relief sought for is an allotment of western portion of the “B” schedule property. The same was allowed in favour of the plaintiff and granted as prayed for. As such, while perusing the decree, this Court could not find any non confirmity or dissonance to the findings of the Judgment. The plain reading of the Judgment indisputably the trial Court gave a Judgment by granting the issue No.2 as prayed for qua allotment of Western portion of the “B” Schedule property. The petitioner herein may



CRP.No.3005 of 1997

have grievance that the said conclusion is not in consonance to the other finding of the Judgment. However, we are only concerned with the findings for the issue No.2, and the Court below has granted the second prayer as prayed for as an answer to the issue No.2.

9. At this stage, the learned Senior Counsel appearing for the respondents would invite the attention of this Court in respect of the First appeal in A.S.No.66 of 1988 as against the decree and Judgment of the suit in O.S.No.96 of 1999. In support of his submission, the learned Senior Counsel has relied on the Judgment of the Hon'ble Supreme Court reported in *AIR 2001 SCC 1084* in the case of *Jayalakshmi Coelho Vs. Oswald Joseph Coelho*, and the Judgment reported in *AIR 1999 SCC 1031* (*Dwarka Das vs. State of Madhya Pradesh and another*) and would contend that under Section 152 CPC, the correctness of the reasoning of the Judgment could not be gone into.

10. For ready reference, the relevant portion of the Judgment are extracted as follows. In the Judgment reported in *AIR 2001 SCC 1084* in the case of *Jayalakshmi Coelho Vs. Oswald Joseph Coelho*, wherein



CRP.No.3005 of 1997

at paragraph No.15 it is held as follows:

WEB COPY

“15. As a matter of fact such inherent powers would generally be available to all courts and authorities irrespective of the fact whether the provisions contained under Section 152 C.P.C. may or may not strictly apply to any particular proceeding. In a matter where it is clear that something which the Court intended to do but the same was accidentally slipped or any mistake creeps in due to clerical or arithmetical mistake it would only advance the ends of justice to enable the Court to rectify such mistake. But before exercise of such power the Court must be legally satisfied and arrive at a valid finding that the order or the decree contains or omits some thing which was intended to be otherwise that is to say while passing the decree the court must have in its mind that the order or the decree should be passed in a particular manner but that intention is not translated into the decree or order due to clerical, arithmetical error or accidental slip. The facts and circumstances may provide clue to the fact as to what was intended by the court but unintentionally the same does not find mention in the order or the judgment or something which was not intended to be there stands added to it. The power of rectification of clerical, arithmetical errors or accidental slip does not empower the court to have a second thought over the matter and to find that a better order or decree could or should be passed.. There should not be re-consideration of merits of the matter to come to a conclusion that it would have been better and in the fitness of things to have passed an order as sought to be passed on rectification. On a second thought court may find that it may have committed a mistake in passing an order in certain terms but every such mistake does not permit its rectification in exercise of Courts inherent powers as contained under Section 152 C.P.C. It is to be confined to something initially intended but left out or added against such intention. So far the legal proposition relied upon by the learned Single Judge and the Honble Division Bench



CRP.No.3005 of 1997

deciding the matter in its LPA jurisdiction, we are totally in agreement with the same i.e. an unintentional mistake which occurred due to accidental slip has to be rectified. The question however which requires consideration is as to whether on the facts of the present case and the principles indicated above, it could be said that there was any clerical or arithmetical error or accidental slip on the part of the Court or not.”

(Emphasis supplied by this Court)

11. In the Judgment reported in ***AIR 1999 SCC 1031 (Dwarka Das vs. State of Madhya Pradesh and another)*** wherein at paragraph No.6 it is held as follows:

“6. Section 152 C.P.C. provides for correction of clerical arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, court or the tribunal becomes functus officio and thus being not entitled to vary the terms of the judgments, decrees and orders earlier passed. The correction contemplated are of correcting only accidental omission or mistakes and not all omissions and mistakes which might have been committed by the Court while



CRP.No.3005 of 1997

WEB COPY

passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 for which the proper remedy for the aggrieved party is to file appeal or review application. It implies that the Section cannot be pressed into service to correct an omission which is intentional, how erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the province of Sections 151 and 152 of the CPC even after passing of effective order in the Us pending before them. No Court can under the cover of the aforesaid sections modify, alter or add to the terms of its original judgment, decree or order. In the instant case, the trial court had specifically held the respondents-State liable to pay future interest only despite the prayer of the appellant for grant of interest with effect from the date of alleged breach which impliedly meant that the court had rejected the claim of the appellant in so far as pendente lite interest was concerned. The omission in not granting the pendente lite interest could not be held to be accidental omission or mistake as was wrongly done by the trial court vide order dated 30th November, 1973. The High Court was, therefore, justified in setting aside the aforesaid order by accepting the revision petition filed by the State.”

By relying the above Judgments, the learned Senior Counsel



CRP.No.3005 of 1997

appearing for the respondents would contend that Section 152 C.P.C only be used to rectify the arithmetical mistakes and typographical error. Here as discussed hereinabove, the learned counsel for the petitioner contend that the ultimate findings of the Judgment in para 27 of O.S.No.96 of 1983 is contrary to the observation made in the previous ratiocination of the Judgment. But, such contentions are beyond the scope of the Sec.152 CPC.

12. Hear, what the petitioner wants an interpretation of the Judgment with the aid of oral evidence, which could be done only by way of regular appeal. Therefore, this Court is of the view that there is no merits in this application and the order passed by the Court below does not require any interference.

13. In the result this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

21.08.2023

Index : Yes / No
Internet : Yes / No



CRP.No.3005 of 1997

trp

WEB COPY

To

The District Munsif Court, Aruppukkottai.



WEB COPY



CRP.No.3005 of 1997

C.KUMARAPPAN, J.,

trp

CRP(PD).No. 3005 of 1997 and
CMP(MD).Nos.5806 and 5807 of 2004

21.08.2023