

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12199 of 2023

Petitioner :- Shyam Kumari Devi

Respondent :- Mewalal And 4 Others

Counsel for Petitioner :- Devansh Misra, Keshari Kumar Tiwari

Hon'ble Ashutosh Srivastava, J.

Heard Shri Devansh Mishra, learned counsel for the petitioner.

The instant petition under Article 227 of the Constitution of India has been filed for setting aside the judgment and order dated 15.7.2023 passed by the Addl. District Judge, Court No. 3, Mirzapur in Misc. Civil Case No. 50 of 2023 (Shyam Kumari Devi versus Mewalal and others). By the order dated 15.7.2023, the application of the petitioner/plaintiff under Section 152 and Order 6 Rule 17 read with Section 151 CPC registered as Paper No. 3A seeking amendment in Para 9A-1 of the plaint of Original Suit No. 155 of 1995 (Shyam Kumari versus Mewalal and others) and correction in the judgment dated 29.3.2023 at the relevant places has been rejected and the Misc. Case No. 50 of 2023 has been decided accordingly.

It is the case of the petitioner/plaintiff that she had instituted a suit for specific performance of an agreement to sell dated 17.7.1990 executed by the defendant/respondent Mewa Lal in her favour. During the pendency of the suit, Mewa Lal executed a sale deed dated 13.2.2004 bearing registration number Book 1, Section 786, page Nos. 117-154 at Sr. No. 998 in favour of the respondent Nos. 2 to 5. The petitioner/plaintiff challenged the execution of the sale deed dated 13.2.2004 by amending the plaint which was allowed. The Suit No. 155 of 1995 was after contest dismissed vide judgment and decree dated 12.2.2016 passed by the trial court. The petitioner/plaintiff preferred an appeal under Section 96 CPC before the First Appellate Court which was allowed and the suit for specific performance of the contract was decreed and the sale deed dated 13.2.2004 executed in favour of the respondent Nos. 2 to 5 was cancelled vide judgment and decree dated 29.3.2023. Against the said judgment and decree, the defendant respondent Nos. 2 to 5 have preferred a second appeal before this Court, being Second Appeal No. 304 of 2023 which appeal has been admitted vide order dated 2.5.2023 and a status quo order is operating with regard to the nature and possession of the property.

Learned counsel for the petitioner submits that the Sub Registrar, Chunar, Mirzapur vide letter dated 11.9.2023 intimated to the First Appellate Court which had decreed the suit of the petitioner and cancelled the sale deed in favour of the respondent Nos. 2 to 5 that the sale deed dated 13.2.2004 is registered at Sr. No.

598 in stead of 998 mentioned in the order. The petitioner on obtaining the above information preferred the application 3A under Order 6 Rule 17 read with Section 151 and 152 CPC for correction before the lower Appellate Court which application has been rejected by the order dated 15.7.2023.

Learned counsel for the petitioner has argued that the learned First Appellate Court has illegally rejected the application 3A which had been moved to amend the Para 9A-1 of the plaint in which inadvertently the page number on which the sale deed had got registered before the Sub Registrar was incorrectly got typed as 998 in stead of 598 and likewise after page 9 of the judgment and order dated 29.3.2023 at 4th line of the Issue No. 11, 4th line of Issue No. 3, Page 22, 5th line under decision on Issue Nos. 3 and 4 and lastly on page 23 8th line from bottom, the number 998 instead of 598 has been got typed which needs to be corrected.

The prayer is limited to correction of the serial number on which the sale deed which has been set aside by the First Appellate Court has been got registered. The learned First Appellate Court while rejecting the application of the petitioner under Order 6 Rule 17 read with Sections 151 and 152 CPC has failed to exercise the jurisdiction so vested in it. The correction was liable to be allowed but the learned First Appellate Court erred in law in doing so otherwise. Learned counsel for the petitioner has thus urged that the petition is liable to be allowed as prayed. Reliance has been placed upon a Full Bench decision of this Court in Case of ***Ganesh versus Sri Ram Lala Ji Maharaj Birajman Mandir and others*** reported in ***1972 All LJ 1037 (FB)*** as also upon a decision of a co-ordinate Bench of this Court dated 29th May, 2015 in the case of ***Rakesh Kumar and others versus Ashok Kumar and another, Matters Under Article 227 No. 1648 of 2018*** connected with ***Matters Under Article 227 No. 1647 of 2015***.

I have heard learned counsel for the petitioner and have perused the record as also the case laws referred to above cited at the bar.

Perusal of the record shows that the petitioner moved the application dated 10.4.2023 under Section 152 and Order 6 Rule 17 read with Section 151 CPC before the Addl. District Judge (POCSO), Mirzapur/First Appellate Court seeking amendment in Para 9A-1 of the relief clause by replacing 998 appearing in the 15th line by 598 and likewise after page 9 of the judgment dated 29.3.2023, 998 appearing in the 4th line of Issue No. 11, 4th line of Issue No. 3, 998 occurring on page 22, 5th line under decision on Issue No. 3 and 4 and lastly on page 23, 8th line from bottom be replaced by 598 and the decree be also corrected. The said application was registered as Paper No. 3A

The Code of Civil Procedure permits clerical or arithmetical mistakes in the judgments, decrees, orders or errors arising therein from accidental slip or omission to be corrected at any time, by the Court, either of its own motion or on the application of any of the parties. The said power is contemplated by Section 152 CPC, which is being reproduced below

"152. Amendment of judgments, decrees or order: Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties."

Section 153 of the CPC also contemplates general power to amend. The Section 153 CPC is quoted below:-

"153. General power to amend:- The Court may at any time, and on such terms as to costs or otherwise as it thinks fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."

The basis of the provision in Section 152 CPC is founded on the maxim "*actus curiae neminem gravabit*" i.e. an act of Court shall prejudice no one. An error in the description of property in the plaint can be corrected on the principle that a plaintiff cannot be deprived of the fruits of the litigation. In the opinion of the Court, a Court has the power under Section 152 of the Code of Civil Procedure to amend not only any clerical or arithmetical mistakes that has occurred in the judgment or decree but can also correct any such error that crept in plaint, decree etc. In the case at hand, what is sought to be corrected, is the page number on which the impugned sale deed 13.2.2004 which has been set aside by the First Appellate Court was got registered by the Sub Registrar concerned. The page number is 598 but the plaint and consequentially the judgment rendered by the First Appellate Court dated 29.3.2023 and the decree drawn mentions 998 in stead of 598. In the opinion of the Court, a Court exists to dispense justice any mistake which is found to be clerical in nature as in the case at hand, should be allowed to be rectified by exercising inherent powers vested in the Court for subserving the cause of justice. Whatever is intended by the Court while passing the order or decree must be properly reflected therein otherwise it would only be destructive of the principle of advancing the cause of justice. The Court should not bind itself by the shackles of technicalities.

There is no dispute as to the power under Section 152 of CPC to correct any clerical or arithmetical mistake that has occurred in the judgment or decree but can also correct any such error that has crept in the plaint, decree etc. However, which Court i.e. the Court of the first instance, the lower Appellate Court or the 2nd Appellate Court would be competent to entertain an application under Section 152 CPC is the question for consideration.

Admittedly, the judgment and decree of the Lower Appellate Court dated 29.3.2023 which decreed the suit in favour of the plaintiff petitioner herein has been assailed in Second Appeal No. 304 of 2023 which has been admitted and is pending before this Court.

In such view of the matter, this Court is of the opinion that the application under Section 152 CPC read with Order 6 Rule 17 and 151 CPC was liable to be filed before the 2nd Appellate Court. The Court finds that the petitioner had filed

application (3A) before the Lower Appellate Court. The Lower Appellate Court vide the impugned order dated 15.7.2023 has taken note of the fact that the Second Appeal No. 304 of 2023 is pending before this Court and has refused to grant the relief prayed for and rejected the application 3A. There is no error in the view taken by the learned Addl. District Judge, Court No. 3, Mirzapur warranting any interference in exercise of the powers under Article 227 of the Constitution of India. The case laws cited at the Bar are not applicable to the case at hand inasmuch as in the case of Rakesh Kumar and others (supra) the Second Appeal had been dismissed under Order 41 Rule 11 CPC and the application was required to be filed before the Court of first instance. So far as the Full Bench Decision in the case of Ganesh (supra) is concerned the application under Section 152 & 151 CPC were filed a Civil Revision pending before this Court arising out of execution proceedings and thus were allowed in the interest of justice. This is not the case at hand. The Second Appeal against the judgment and decree of the lower Appellate Court before whom the Application was moved is subjudice/pending. The petition is accordingly **dismissed**. However, it is observed that in case any such application under Section 152 and Order 6 Rule 17 read with Section 151, 153 CPC is filed before the appropriate Court, it is expected that the same shall be dealt with all expedition, in accordance with law.

No order as to costs .

Order Date :- 1.12.2023

Ravi Prakash

(Ashutosh Srivastava, J.)