

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
CRP No.108 of 2024

Subrata Bardhan, son of late Subodh Chandra Bardhan, resident of Joynagar,
A.K. Road, P.O. Agartala, P.S. West Agartala, District- West Tripura.

..... Petitioner(s)

V E R S U S

Debabrata Bardhan, son of late Subodh Chandra Bardhan, resident of
Joynagar, A.K. Road, P.O. Agartala, P.S. West Agartala, District- West
Tripura, Pin-799001.

..... Respondent(s)

For Petitioner(s) : Mr. Kundan Pandey, Advocate.

For Respondent(s) : Mr. Nitai Chowdhury, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO

JUDGMENT & ORDER (ORAL)

02/08/2025

Heard Mr. Kundan Pandey, counsel for the petitioner and Mr.
Nitai Chowdhury, counsel appearing for the respondent.

[2] This revision petition is filed by the petitioner challenging the
order dt. 16.08.2024 of the learned Civil Judge, Senior Division, Court No.2,
Agartala, West Tripura in Case No. Civil. Misc.(Review) 03 of 2022 and
also order dt. 07.05.2022 passed by the said Court in Civil Misc.(J) No.01 of
2021 in TS(P) No.84 of 2003.

[3] The respondent/plaintiff had initially filed TS(P) No.84 of 2003
before the Civil Judge, Senior Division, West Tripura, Agartala praying for
partition of the suit scheduled property. A preliminary decree was passed on
28.09.2005 declaring that the parties are entitled to partition of the land
described in Schedule-A of the plaint in equal share and subsequently a final
decree was also passed on 09.10.2007.

[4] The petitioner filed Title Appeal No.10 of 2009 challenging the preliminary decree dt. 28.09.2005.

[5] On 18.10.2012, the Title Appeal No.10 of 2009 was dismissed.

[6] Petitioner then filed a Second Appeal in this Court being SAO No.03 of 2013 against the order dated 18.10.2012 in Title Appeal No.10 of 2009.

[7] The said appeal was also dismissed on 04.06.2013.

[8] After a delay of more than 14 years from the date of passing the final decree i.e. 09.10.2007, the respondent filed an application Civil Misc.(J) No.01 of 2021 under Section 152 CPC for correction of alleged mistake in the final decree and sought for setting aside of the said decree and for appointment of a Survey Commissioner to survey the plots as per the preliminary decree.

[9] By order dt. 07.05.2022, the Civil Judge, Senior Division, Court No.2, West Tripura, Agartala allowed the said application under Section 152 CPC and set aside the final decree dated 09.10.2007.

[10] The petitioner then filed Civil Misc.(Review) No.03 of 2022 under Order XLVII CPC seeking review of the order dt. 07.05.2022 passed in Civil Misc.(J) No.01 of 2021.

[11] The same was also dismissed on 16.08.2024.

[12] Assailing the same, this revision is filed.

[13] The principal contention of the counsel for the petitioner is that the Court below could not have dismissed the review petition filed by him because the order dt. 07.05.2022 passed by the said Court allowing the application under Section 152 CPC was clearly erroneous. He contended that under Section 152 CPC, only clerical or arithmetical mistakes or accidental slip or omission could have been corrected, and under the guise of such mistakes, there cannot be an interference with the original decree on merits. He contended that Section 152 CPC cannot be invoked for claiming a substantive relief which was not granted under the final decree and/or as a pretext to modify the final decree which had attained finality. According to him, there cannot be reconsideration of merits of the matter and an issue requiring adjudication did not call for correction under Section 152 CPC and was clearly beyond the scope of Section 152 CPC. He also asserted that the final decree dt. 09.10.2007 was already upheld by the Additional District Judge, Court No.3 in Title Appeal No.10 of 2009 and also by this Court in SAO No.03 of 2013.

[14] Counsel for the respondent refuted the said contention and supported the order passed by the Court below. He contended that the Trial Court, in the order passed in the review petition filed by the petitioner, has taken the view that the order dated 07.05.2022 was a reasoned order, passed after hearing both the parties and relevant points had been discussed therein. It also held that the order allowing Section 152 petition filed by the respondent could have been appealed by the petitioner herein, and he ought not to have filed the review petition. Certain decisions on the scope of

review under Order XLVII, Rule 1 were also referred to in the said order. He contended that the Court below rightly held that even if the decision in Civil Misc.(J) 01 of 2021 was not correct and was erroneous, it cannot be set aside in exercise of power of review. He also justified its decision by stating that a unique situation had arisen due to drawing of final decree without appointing a Survey Commissioner and without actually partitioning the suit land by metes and bounds, and the petitioner, who was defendant in the suit, cannot be allowed to take advantage of that situation.

[15] I am unable to agree with the view taken by the Trial Court. Section 152 of CPC states as under :

“152. Amendment of judgments, decrees or orders

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.”

[16] A bare reading of Section 152 CPC makes it clear that the power of the Court under the said provision is limited to rectification of clerical and arithmetical errors arising from any accidental slip or omission.

[17] In case of ***Century Textiles Industries Limited versus Deepak Jain and another*** reported in ***(2009) 5 SCC 634***, the Supreme Court considered the scope of Section 152 CPC and held that there cannot be reconsideration of the merits of the matter, and the sole object of the provision is based on the maxim *actus curiae neminem gravabit* i.e. an act of court shall prejudice no man.

[18] In case of *Bijay Kumar Saraogi versus State of Jharkhand* reported in (2005) 7 SCC 748, the Supreme Court also held that Section 152 CPC cannot be invoked for claiming a substantive relief which was not granted under the decree, or as a pretext to get the order which had attained finality reviewed.

[19] It may be that after passing of the preliminary decree, without appointing a Survey Commissioner to make actual partition of the scheduled land, the final decree came to be passed. But such an error in the final decree dt. 09.10.2007 can only be corrected by filing a first appeal against the said final decree or by filing a petition under Section 47 CPC for reviewing the final decree on the ground that it was wrongly passed without appointing a Survey Commissioner. 15 years after the final decree was passed, and without availing the remedy of appeal under Section 96 CPC or filing a review petition under Order XLVII CPC, it was not open to the respondent to file a petition under Section 152 CPC and get the final decree corrected.

[20] In my view, it was not a mere arithmetical or clerical error arising from any accidental slip or omission. Therefore, there was thus an error apparent on the face of record in the order passed on 07.05.2022 by the Civil Judge, Senior Division, Court No.2, Agartala, West Tripura allowing the application under Section 152 CPC filed by the respondent. When the review petition was filed i.e. Civil Misc.(Review) No.03 of 2022 by the petitioner seeking review of the said order, the said Court ought to have allowed the review petition and set aside the order dt. 07.05.2022 instead of dismissing it on untenable grounds.

[21] Accordingly, the instant Civil Revision Petition is allowed. The order dt. 16.08.2024 in Civil Misc.(Review) No.03 of 2022 passed by the Civil Judge, Senior Division, Court No.2, West Tripura, Agartala is set aside; the said review petition is allowed; the order dt. 07.05.2022 in Civil Misc.(J) No.01 of 2021 connected with TS(P) No.84 of 2003 is set aside and the said application is dismissed; and the original final decree passed on 09.10.2007 is restored. No costs.

[22] Pending application(s), if any, also stands disposed of.

(M.S. RAMACHANDRA RAO, CJ)



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