

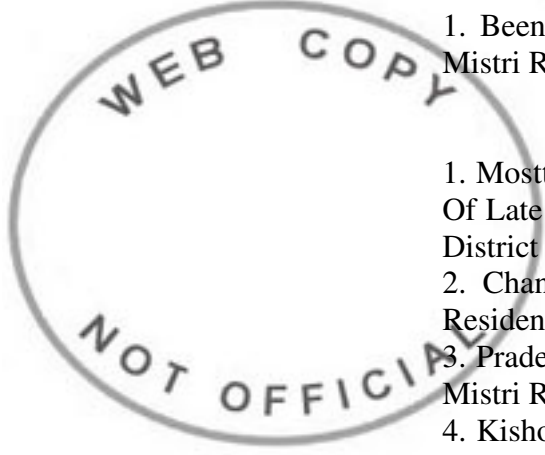
IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13687 of 2012

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1. Beena Devi Wife Of Panchanand Sharma Daughter Of Late Pancham
Mistri Resident Of Village - Kumhri; P.S. - Kadwa, District - Katihar
..... Petitioner/s

Versus

1. Mostt.Kedo Devi (Deceased) Widow Of Late Narayan Sharma Daughter
Of Late Kishan Lal Mistri Resident Of Village - Bhelai, P.S. - Dandkhora,
District - Katihar
2. Chanda Devi Wife Of Jyotish Mistri, Daughter Of Late Kedo Devi
Resident Of Village - Tikeli, P.S. Dandkhora, District - Katihar
3. Pradeep Mistri Son Of Late Kedo Devi Son Of Late Narayan Sharma @
Mistri Resident Of Village - Bhelai , P.S.- Dandkhora, District - Katihar
4. Kishore Mistri Son Of Late Kedo Devi Son Of Late Narayan Sharma @
Mistri Resident Of Village - Bhelai , P.S.- Dandkhora, District - Katihar
5. Pratima Devi Wife Of Barun Mistri, Daughter Of Late Narayan Sharma
@ Mistri Resident Of Village - Hurdeli, P.S. - Pranpur, District - Katihar
6. Razia Devi Wife Of Debi Mistri Daughter Of Late Dukhan Sharma
Resident Of Village - Baghwabari, P.S And District - Katihar
7. Meera Devi (Deceased) Wife Of Hari Mistri Daughter Of Late Dukhan
Sharma Resident Of Village - Bhelai, P.S. - Dandkhora, District - Katihar
8. Sumitra Devi Wife Of Ganga Mistri , Daughter Of Late Meera Devi
Daughter Of Late Hari Mistri Resident Of Village - Sanjheli, P.S. - Kasba,
P.O. - Mahamdia, District - Purnea
9. Atwari Mistri Son Of Late Meera Devi, Son Of Late Hari Mistri Resident
Of Village - Bhelai , P.S.- Dandkhora, District - Katihar
10. Pancham, Mistri (Deceased) Son Of Late Kishan Mistri Resident Of
Village - Kumhri, P.S. - Kadwa, Distt.- Katihar
11. Meena Devi Wife Of Chanchal Sharma Daughter Of Late Pancham
Mishri Resident Of Village - Kasba, Hat P.S. - Kasba, District - Purnea
12. Manju Devi Wife Of Naresh Sharma; D/O Late Pancham Mistri
Resident Of Village - Buari, P.S. - Dagarua, District - Purnea
13. Basudeo Sharma Son Of Late Santoliya Devi Resident Of Village -
Gauripur Saha Nagar, P.S. - Pranpur, District - Katihar
14. Anil Sharma Son Of Late Santoliya Devi Son Of Sakhkho Mistri
Resident Of Village - Gauripur Saha Nagar, P.S. - Pranpur, District -
Katihar
15. Neera Devi @ Nirmala Devi Wife Of Nadu Rishi, Daughter Of Late
Santoliya Devi & D/O Sakhkho Mistri Resident Of Village - Gauripur Saha
Nagar, P.S. - Pranpur, District - Katihar
16. Shanti Devi D/O Late Santoliya Devi & D/O Sakhkho Mistri Resident
Of Village - Marangi, P.S. - Mansahi, District - Katihar
17. Chamru Mistri Son Of Late Uchit Mistri Resident Of Village - Kumhri,
P.S. - Kadwa, Distt.- Katihar
18. Radhey Mistri Son Of Late Uchit Mistri Resident Of Village - Kumhri,
P.S. - Kadwa, Distt.- Katihar
19. Krityanand Mistry Son Of Late Uchit Mistri Resident Of Village -
Kumhri; P.S. - Kadwa, District - Katihar
20. Mukund Mistry Son Of Late Uchit Mistri Resident Of Village - Kumhri;
P.S. - Kadwa, District - Katihar
21. Sanful Mistri Son Of Late Uchit Mistri Resident Of Village - Kumhri;



P.S. - Kadwa, District - Katihar

22. Chhote Lal Mistri Son Of Late Uchit Mistri Resident Of Village - Kumhri; P.S. - Kadwa, District - Katihar

23. Daiyan Devi Wife Of Radhey Sharma D/O Late Uchit Mistri Resident Of Village - Kumhri; P.S. - Kadwa, District - Katihar

24. Khokha Mistri Son Of Late Sukhdeo Mistri Resident Of Village - Kumhri, P.S. - Kadwa, District - Katihar

25. Arjun Mistri Son Of Late Sukhdeb Mistri Resident Of Village - Kumhri, P.S. - Kadwa, District - Katihar

26. Kanak Lal Mistry Son Of Late Sukhdeo Mistri Resident Of Village -

Kumhri, P.S. - Kadwa, District - Katihar

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan, Advocate
Mr. Suresh Prasad Sah @ Baranwal, Advocate
Mr. R.C. Sinha, Advocate
For the Respondent/s : Mr. Bhola Prasad, Advocate
Mr. Satya Prakash, Advocate

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

9 22-12-2015

Heard the parties.

2. Petitioner/defendant has challenged the order dated 25.06.2012 passed by Sub-Judge, 1st, Katihar in Title Partition Suit No. 25/1994 (*Most. Kedo Dev & Ors v. Pancham Mistri & Ors.*).

3. The aforesaid Title Partition Suit No. 25/1994 was disposed of by Sub-Judge, Katihar vide judgment dated 02.06.1995 and preliminary decree dated 15.06.1995 and the stage thereof, as disclosed, happens to be regarding the stage of preparation of final decree. The petitioner/defendant had referred presence of registered deed of will executed by Kishan Lal Mistri



in favour of Pancham Mistri, husband of petitioner in the pleading and the document was also filed during course of hearing. However, in the judgment dated 02.06.1995 instead of registered deed of will, it has been recorded as registered deed of gift and on account thereof petitioner/defendant, prayed for correction at the relevant paragraph of the judgment whereupon objection was raised on behalf of plaintiff, more particularly, on the point of limitation as prayer has been made after 17 years. The learned lower court while considering the ambit and scope of Section 152 of the C.P.C. rejected the prayer by the order impugned on the ground of such a long delay of 17 years.

4. In the case of *Samarendra Nath Sinha v. Krishna Kumar Nag* as reported in *AIR 1967 SC 1440*, the aforesaid issue has been taken note of and has been dealt with under para-11 thereof which is as follows:-

11. Now, it is well settled that there is an inherent power in the court which passed the judgment to correct a clerical mistake or an error arising from an accidental slip or omission and to vary its judgment so as to give effect to its meaning and intention.

"Every court", said Bowen L. J. in *Mellor v. Swire*, (1885) 30 Ch. D. 239, "has inherent power over its own records so long as those records are within its power and that it can set right any mistake in them. An order even when passed and entered may be amended by the Court so as to carry out its intention and express the meaning of the court when the order was made."



In *Janakirama Iyer v. Nilakanta Iyer*, AIR 1962 SC 633 the decree as drawn up in the High Court had used the words "mesne profits" instead of "net profits". In fact the use of the words "mesne profits" came to be made probably because while narrating the facts, these words were inadvertently used in the judgment. This court held that the use of the words "mesne profits" in the context was obviously the result of inadvertence in view of the fact that the decree of the Trial Court had specifically used the words "net profits" and therefore the decretal order drawn up in the High Court through mistake could be corrected under Sections 151 and 152 of the Code even after the High Court had granted certificate and appeals were admitted in this court before the date of the correction. It is true that under O. 20, R. 3 of the Code once a judgment is signed by the Judge it cannot be altered or added to but the rule expressly provides that a correction can be made under Section 152. The Rule does not also affect the court's inherent power under Section 151. Under Section 152, 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 on its own motion or on an application by any of the parties. It is thus manifest that errors arising from an accidental slip can be corrected subsequently not only in a decree drawn up by a ministerial officer of the court but even in a judgment pronounced and signed by the court.

5. On the point of limitation while exercising the power under Section 152 of the C.P.C. in *State Bank of Hyderabad v. B. Rangaswamy* as reported in AIR 2004 Andhra Pradesh 91, it has been held as under:-

6. A bare reading of the aforesaid provision, it is clear that the Court has got ample powers to correct the clerical or arithmetical mistakes in



judgments, decrees or orders or errors arising from any accidental slip or omission at any time. There is no dispute as to the fact that there is no prescribed period of limitation for filing an application under Section 152, C.P.C. Further, it is well established that the Court has got ample powers, inherent or otherwise, as prescribed under the aforesaid provision to correct any such error which resulted due to any accidental slip or omission. It is not necessary to go into the total interpretation of the expression 'accidental slip or omission' as contemplated under the aforesaid provision. The expression 'accidental' means, any happening by chance or unexpectedly taking place not according to the usual course of things, unintentional, something unforeseen and unexpected and casual. Further an effect is said to be accidental when the act by which it is caused is not done with intention or causing it and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precautions against it. Therefore, the expression 'accidental' cannot be equated to the expression 'negligence' or 'willful negligence' on the part of a party. In the circumstances, it is to be seen that the mistake, which occurred in this case is purely that of the office and the petitioner cannot be denied any such relief. Merely because of delay and laches, as long as there is no prescribed period of limitation to file an application under Section 152, C.P.C., it cannot be said that the application can be dismissed by attributing delay and laches. In the circumstances, it has to be held that the application as has been filed is to be allowed. Accordingly, I.A. No. 525 of 1998 in O.S. No. 13 of 1985 on the file of the Senior Civil Judge, Wanaparthi is allowed. The Court below is directed to draft a fresh decree in the above suit as if it is a decree in a simple suit for recovery of money. Accordingly, the revision petition is allowed. No order as to costs.

Revision petition allowed.

6. In the case of *Khudu Mahto v. Bhim Mahto*

reported in *AIR 1950 Patna 183*, it has been held as follows:-

“I am inclined to agree with Mr. Majumdar that merely because the decree stood executed the Court below should not have rejected the prayer for amendment. Under Ss. 151 and 152, Civil P. C., very wide powers have been given to the Court. Section 151 lays down that nothing in this Code shall be deemed to limit or otherwise effect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. It was the duty of the Court to check the arithmetical calculation made by the commissioner before passing the final decree on the basis of the commissioner’s report, and if the Court passed a decree without noticing the mistake that had been committed by the Commissioner, then the Court would ultimately be deemed to be responsible for the mistake which has cropped up in the decree, and under s. 151, Civil P. C., it must correct the mistake committed by it for the ends of justice or to prevent the abuse of the process of the Court. Section 152 lays down that 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 on an application of any of the parties. If the learned Subordinate Judge was not able to detect the mistake himself, he should have corrected the mistake when the plaintiff pointed it out and applied for its correction. The fact that the decree has been executed is of no importance so far as the question as to whether the amendment prayed for should be allowed or not is concerned. The amendment ought to be allowed if it is fit to be allowed in view of the provisions of Ss. 151 and 152, Civil P. C., it being another matter as to how the plaintiff will proceed so far as the execution is concerned after the amendment prayed for is made. This application, therefore, succeeds.”

7. Accordingly, the order impugned is set aside.

Petition is allowed.

(Aditya Kumar Trivedi, J)

Patna High Court
December 22nd 2015
Perwez/AFR

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