

THE HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A

CRP No.17 of 2014

Smt. Kalpana Biswas (Roy),
W/o Sri Tagendra Mohan Roy
of S.D. Mission Colony,
P.S. West Agartala,
District - West Tripura.

..... *Petitioner.*

– *Versus* –

1. Smt. Sachi Rani Biswas,
W/o Late Surendra Chandra Biswas.
2. Shri Swapan Kumar Biswas
S/o Late Surendra Chandra Biswas.
3. Shri Supriya Biswas,
S/o Late Surendra Chandra Biswas.

All of them are the resident of Village South Badharghat,
Chowrangee Para, P.O. Charipara via A. D. Nagar,
Pin- 799003, P.S. West Agartala, Dist. Tripura West.

..... *Respondents.*

B_E_F_O_R_E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner	:	Mr. B Majumder, Advocate.
For the respondents	:	Mr. D Chakraborty, Sr. Advocate, Ms. S Gupta, Advocate.
Date of hearing and delivery of judgment.	:	13.4.2015.
Whether fit for reporting	:	Yes.

JUDGMENT & ORDER (ORAL)

This petition is directed against the order dated 11th June,
2013 passed by the learned Civil Judge, Sr. Division (Court No.1), West
Tripura, Agartala in TS(P)35 of 2007 whereby he rejected the

application filed by the plaintiff for amendment of the schedule attached to the plaint and also for amendment of the decree sheet.

2. Briefly stated, the facts of the case are that Late Shri Swapan Kumar Biswas expired on 4th March, 2003. He was the father of the plaintiff and defendants 2 and 3 and husband of defendant No.1. According to the plaintiff, in the year 2006 she had approached her mother and her brothers for partition of the property but they had not agreed to the same. Therefore, she had filed a suit for partition of the property. As far as defendant No.2 Swapan Kumar Biswas is concerned, he right from the very beginning had not denied that the plaintiff had one fourth share in the property of Late Sri Surendra Chandra Biswas. Defendants 1 and 3 had initially contested the suit but later on they also filed an application admitting the claim of the plaintiff and thereafter on the basis of the admission of the parties a preliminary decree was passed wherein it was declared that each of the parties had one fourth share in the suit land. Thereafter, the petitioner filed an application for preparation of final decree and also for partition of the suit land in terms of the preliminary decree.

3. During the course of these proceedings she filed an application for amending the plaint as well as for amending the decree. In the original suit filed by the plaintiff the suit land was described in the schedule as follows :

“All that piece and parcel of land measuring four kanis and six and half gandas a little more or less comprising of tilla, vastu viti, ghar, bagan

tilla, pukur path viti situated at vill. South Badharghat Agartala West P.S. A.D. Nagar P.O. Tripura West district, Bishalgarh Sub-Division and the said suit land is recorded in the Khaitan No.2292/1, 2292/2. Hal plot No.7929, 7919, 7920, 7928, 7930, 7931, 7918 published by the land records and settlement Dept.

Bounded by the

- (1) North** :- Pathway.
- (2) South** :- Nemaï Sarkar, Basana Chakraborty,
Haradhan Sarkar, Dulal Ch. Ghosh.
- (3) East** :- Kajal Chakraborty.
- (4) West** :- Charipara Via Chowurangee Beltali main Road.”

The only prayer made in the application for amendment was :

“At Page -6 (i.e. in Schedule of land) in the 6th line the figure 7927 will be inserted after the words Hal Plot No. and before the figure 7927.”

4. There is a mistake in this application also because the figure 7927 has to be inserted before the figure 7929 and not before the figure 7927. If the figure 7927 had already been there, there was no need to amend the suit. However, the fact remains that there is no dispute between the family members with regard to the area of the property and with regard to the Khatian number which contains all the plot numbers. Therefore, I am of the considered view that this application should have been allowed. While doing so, I rely upon the judgment of the Apex Court passed in ***Niyamat Ali Molla vs. Sanargon Housing Cooperative Society Ltd. and others, (2007) 13 SCC 421*** especially the following observations :

“18. Section 152 of the Code of Civil Procedure empowers the Court to correct its own error in a judgment, decree or order from any accidental slip or omission. The principle behind the said provision is

actus curiae neminem gravabit i.e., nobody shall be prejudiced by an act of court.

19. Code of Civil Procedure recognises the inherent power of the court. It is not only confined to the amendment of the judgment or decree as envisaged under Section 152 of the code but also inherent power in general. The courts also have duty to see that the records are true and present the correct state of affair. There cannot, however, be any doubt whatsoever that the court cannot exercise the said jurisdiction so as to review its judgment. It cannot also exercise its jurisdiction when no mistake or slip occurred in the decree or order. This provision, in our opinion, should, however, not be construed in a pedantic manner. A decree may, therefore, be corrected by the Court both in exercise of its power under Section 152 as also under Section 151 of the Code of Civil Procedure. Such a power of the court is well recognized.

25. It is not a case where the defendants could be said to have been misled. It is now well settled that the pleadings of the parties are to be read in their entirety. They are to be construed liberally and not in a pedantic manner. It is also not a case where by reason of an amendment, one property is being substituted by the other. If the Court has the requisite power to make an amendment of the decree, the same would not mean that it had gone beyond the decree or passing any decree. The statements contained in the body of the plaint have sufficiently described the suit lands. Only because some blanks in the schedule of the property have been left, the same, by itself, may not be a ground to deprive the respondents from the fruit of the decree. If the appellant herein did not file any written statement, he did so at its own peril. Admittedly, he examined himself as a witness in the case. He, therefore, was aware of the issues raised in the suit. It is stated that an Advocate-Commissioner has also been appointed. We, therefore, are of the opinion that only because the JL numbers in the schedule was missing, the same by itself would not be a ground to interfere with the impugned order.”

5. Though it is true that normally an amendment of the plaint cannot be allowed after a decree has been passed but where, like in the present case, there is sufficient description of the property and there is no dispute between the parties that the property belonging to Late Sri Surendra Chandra Biswas also included plot No.7927 which appears to have been left out by mistake, it is apparent that this is only an error which has occurred and therefore, this error is ordered to be corrected. The correction of this order will not cause any prejudice to the parties and will in fact cut short this long pending dispute between the family members which they have otherwise amicably settled between themselves.

6. In this view of the matter, the petition is allowed. The amendment is permitted both in the plaint and in the decree sheet and the figure “**7927**” is ordered to be inserted in the 6th line of the schedule immediately after the words “***Hal Plot No.***” and before the figure “**7929**”.

The petition is disposed of. Send down the LCRs forthwith.

CHIEF JUSTICE

Sukhendu