

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.30 OF 2015

Rajaram Shivaji Newse ... Petitioner
Vs.
Shivaji Mahadev Newse and others ... Respondents

Mr. V. S. Talkute for Petitioner.
Mr. S. R. Ghanavat for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 04, 2015

P.C. :

Heard Mr. Talkute, learned Counsel for petitioner and Mr. Ghanavat, learned Counsel for respondent No.2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 03.11.2014 passed by the learned Civil Judge, Junior Division, Khandala below exhibit-1 in Civil Miscellaneous Diary Application No.6 of 2013. By that order, the learned trial Judge rejected the application made for carrying out the amendment by striking Gat No.669 in plaint and mentioning Gat No.679.

3. Mr. Talkute submitted that except respondent No.1, all the respondents are supporting the petitioner and are conceding for correcting the mistake. He submitted that respondent No.1 is served through paper publication and has not entered appearance. In other words, respondent No.1 is also not seriously contesting the Petition. He submitted that the learned trial Judge rejected the application on the ground that the petitioner failed to show under what provision, amendment in the original Suit as well as judgment and decree can be

made. He submitted that the learned trial Judge failed to consider the provisions of Sections 151 and 152 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), which empower the Court to rectify the clerical mistakes. In support of these submissions, he relied upon the following decisions:

- a. *Tilak Raj Vs. Baikunthi Devi*, (2010) 12 SCC 585; and
- b. *Dhanaji Ganpati Gaikwad Vs. Namdeo Digambar Gaikwad*, 2012 (2) ALL MR 142

4. He submitted that instead of remitting the matter to the trial Court, in terms of paragraph 27 of the judgment of the Apex Court in the case of **Tilak Raj** (*supra*), this Court should allow the application thereby rectifying the mistakes.

5. I have considered the submissions advanced by Mr. Talkute. I have also perused the material on record. In the case of **Tilak Raj** (*supra*), in paragraph 23, the counsel appearing for the respondents during his submissions fairly accepted that there was mistake of clerical nature, which can be corrected by applying provisions of Section 152 C.P.C. In the present case, respondent No.1 is served through paper publication. However, respondent No.1 is not appearing in the Court. In my opinion, the ends of justice will be served by setting aside the impugned order as the learned trial Judge failed to consider that under Sections 151 and 152 I.P.C., the Court has power to rectify the mistakes. Hence, the following order:

- a. The impugned order is set aside and application filed by the petitioner is restored to the file of the trial Court;
- b. The learned trial Judge will issue notice to the respondent No.1, and thereafter proceed with the matter as expeditiously as possible and will dispose of the same within 2 months of service on respondent No.1;

c. All contentions of the parties on merits are expressly kept open.

d. Order accordingly.

6. Petition is disposed of.

(R. G. KETKAR, J.)

Minal Parab