

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 94 of 2013 (O&M)

Date of decision: 19.11.2015

Ram Chander

... Petitioner

versus

Manphool

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ajay Jain, Advocate for the petitioner.

Mr. Raman Chawla, Advocate for the respondent.

K.Kannan, J.

The revision petition is against the order dismissing the application filed for correction of the decree as regards the fractional share of land measuring 40 kanals 15 marlas that comes to 3 kanals. The fractional share according to the plaintiff ought to have been referred to as 60/815 but in the plaint there was a mistake in referring to the share as 7/815 that got incorporated in the decree as well. The petition for rectification of the decree was dismissed as incompetent.

Learned counsel appearing on behalf of the decree holder-petitioner states that the mistake in the fractional share happened by virtue of the phonetic similarity of the hindi expression that signifies 7 and 60 namely *saat* and *saath* and the reference in the numerator as 7 must have been 60. There was never a dispute that the property agreed to be sold for which a decree was granted was to an extent of 3 kanals and the wrong reference to 7/815 share would required to be corrected in an order that there is no confusion at any stage in enjoying the property. The counsel would point out that if the decree merely carries out a mistake that has happened in the plaint, it is not necessary to even correct the mistake in the plaint by an amendment and the Court has power under Section 152 and 153 to carry out the mistake. It would refer to the decisions in Mohinder Singh and others Vs. Teja Singh and

others, AIR 1979 P&H 47, where the Court was considering the mistake that had happened with reference to khasra No. in the plaint as 20 instead of 24. The Court had allowed for the correction of the decree under Section 152. Yet another judgment relied on by the petitioner was Bawa Singh Vs. Babu Singh, AIR 1979 P&H 47, that also considered the issue of the power of the Court to make such correction without any fetter of bar of limitation.

Learned counsel appearing on behalf of the respondent argues that it was no doubt true that what was agreed to be sold was only 3 kanals and the fractional share was only 60/815 but when the plaintiff had made a reference to 7/815 share, that cannot be corrected after a decree was passed. Section 152 and 153 could be invoked only for modification of a clerical mistake in the decree without any mistake that could have occurred in the plaint and the power to modify under Section 152 and 153 cannot be invoked to rectify the mistake that originated in the plaint. The counsel would refer me to the judgment of the Supreme Court in Srihari (dead) through LT. Ch. Niveditha Reddy Vs. Syed Maqdoom Shah in 2005 (1) SCC 610 that held that the basis of the provision under Section 152 was an unintended mistake of the Court which might prejudice the cause of any party. The Supreme Court was not considering the issue of whether the mistake that had originated in the plaint if it had been carried through in the decree could be corrected under Section 152 or not. On the other hand, it was trying to explain in more generic sense that the mistake or omission must have been the result of the Court's own error which was clerical in nature. I must observe that even if the mistake had originated in the plaint and the Court had itself the power to grant a decree, which was admittedly agreed to between the parties and had carried out the reference to the correct share namely 60/815 instead of 7/815 as claimed in the plaint, then the very same power ought to be available to it even after the decree was passed.

I do not, therefore, think that the judgment of the Hon'ble Supreme Court could be used against the decree holder for the relief sought. The judgment in Shri Jagdamba Prasad (dead) thr. LRs and others Vs. Kripa Shankar (dead) thr. LRs and others, 5014 (5) SCC 707 as a case that considered the issue of the legal contentions of the applicability of Section 48 of the Uttar Pradesh Consolidation of Holdings Act, 1953 and the Court's power in its revision under Section 115 CPC. I make no sense out of the reliance placed by the counsel on this judgment for its application in this case. In Daljit Singh Gujral and others Vs. Jagjit Singh Arora and others, 2014 (12) SCC 198, the Court was considering the issue of what constituted an error in judgment. It was a case where a party was said to have died when he had not died. The Court said it was not a clerical error and remitted the matter for consideration before the Court for making appropriate correction. I will not find this to be a clerical error for it was an error of fact of whether the person was dead or alive. As far as this case is concerned 7/815 share out of 40 kanal 15 marlas cannot be 3 kanals. On the other hand, it will be 60/815 share out of 40 kanals 15 marlas will make it 3 kanals. This is an example of what clerical mistake is and the power of the Court to modify is elicited by the typical mistake that has happened in this case.

There is further reference to a decision of this Court in Ajit Pal Singh etc. Vs. Kovalska Iryna etc., 2015 (2) Law Herald 721, where the name and parentage of wife was allowed to be corrected. The Court said that it could not be taken as a clerical mistake. It was stated that the clause for custody of children was not incorporated. The Court held that the failure to make reference to custody was a serious issue and not a clerical mistake liable for correction under Section 152 CPC.

None of these judgments have any bearing to fetter the conclusion that I have taken that the mistake that had entered with

respect to the fractional share is the illustration of clerical mistake itself and it was bound to be corrected.

The impugned order is set aside and the correction is ordered as sought for in the petition, with costs assessed at Rs. 3,000/- against the respondent.

(K.KANNAN)
JUDGE

19.11.2015

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