

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.979 of 2016**

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Dharmdeo Sahay S/o Late Satyadeo Sahay, R/o Mohalla- Damuchak,
Ward No. 27, P.S. Kazimohammadpur, District- Muzaffarpur.

.... Appellant

Versus

Onkardeo Sahay, S/o Late Satyadeo Sahay, R/o Mohalla- Damuchak,
ward No. 27, P.S. Kazimohammadpur, District- Muzaffarpur.
2. Vishnudeo Sahay, S/o Late Satyadeo Sahay, R/o Mohalla- Damuchak,
ward No. 27, P.S. Kazimohammadpur, District- Muzaffarpur.

.... Respondents

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Appearance :

For the Appellant/ : Mr. Ravindra Kumar, Advocate.
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**
ORAL ORDER

3 17-11-2016 Heard Mr. Ravindra Kumar, learned counsel for the
petitioner.

Perused the impugned order passed in FDPS Case No.
339 of 2003 whereby learned court below rejected application
under Section 152 of Code of Civil Procedure for prayer of
correction in the judgment.

Learned counsel for the petitioner submitted that in place
of 1/3rd share, the plaintiff has been given 2/3rd share which is
clerical mistake liable to be corrected under Section 152 of Code
of Civil Procedure.

Learned court below by impugned order has held that it is
not a clerical mistake.

From perusal of the judgment passed in the suit, it

appears that the plaintiff has claimed 2/3rd share. The trial court found that the share of the plaintiff was admitted by the petitioner and accordingly, the plaintiff claimed for 2/3rd share has been decreed. It is not the case that the plaintiff has claimed 1/3rd share but the court below had granted 2/3rd share.

Hon'ble Supreme Court in the case of U.P.S.R.T.C. Vrs. Imteyaz Hussain reported in A.I.R. 2006 S.C. 649, has held that "the correction contemplated are of correcting only accidental mistake and not mistake which might have been committed by the court while passing the judgment, decree, or order".

In the present case, if the case of the petitioner is accepted then it will mean that the finding recorded in the judgment and decree passed by the court below is wrong and share granted to the plaintiff is against the provision of law and in my view in the decision of the Hon'ble Supreme Court, this cannot be ground under Section 152 of Code of Civil Procedure.

Thus, I find no reason to interfere with the order in exercise of supervisory jurisdiction. Accordingly, this Civil Miscellaneous Application is dismissed.

(Mungeshwar Sahoo, J)

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