

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5328 of 2014

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Smt. Archana Devi & Anr

.... Petitioner/s

Versus

Ram Naresh Prasad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Roy

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 08-02-2016

Heard Mr. Tripurari Sharan, learned counsel

appearing for the petitioners.

2. This application under Article 227 of the Constitution of India has been filed by judgment debtor-petitioner against the order dated 16.01.2011 passed by the Sub-Judge-I, Gaya, in Execution Case No. 01 of 2009, whereby the court below rejected the application filed by the judgment debtor-petitioner under Sections 151 and 152 of the Code of Civil Procedure for correction of the decree and further for stay of execution case.

3. It appears that the plaintiff-respondent filed title suit for declaration of title and recovery of possession with respect to 640 Sq. ft. suit land. The suit was decreed by the trial court and the appeal filed by the judgment debtor up to the Supreme Court was dismissed. Thereafter, the plaintiff-respondent filed Execution Case No. 01 of 2009 for recovery of possession of the said

property.

4. According to learned counsel for the petitioner, if the decree for 640 sq. ft. is granted and possession is delivered, it will cover the land of the petitioner, who has purchased from the vendee of the brother, namely, Kishun Lal Bhaia, who had 6.5 decimal share in the suit plot no. 19987. Therefore, the petitioner filed an application under Article 152 to correct the decree and reduce the areas from 649 sq.ft. but the court below erroneously rejected the said application.

5. Perused the order passed by the court below. The court below found that in the suit, the plaintiff prayed for declaration of title and recovery of possession with respect to 640 sq.ft. land. The decree has also been prepared regarding the said property measuring 640 sq. ft. So far the submission of the learned counsel that if that land is carved out, it will cover the land of the petitioner also is concerned, it may be mentioned here that the Hon'ble Supreme Court in the case of *M/S. U.P.S.R.T.C vs Imtiaz Hussain* reported in *AIR 2006 SC 649* has held that the arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the Court liable to be corrected

under Section 152 C.P.C. In a case where the order contains something which is not mentioned in the decree, it would be a case of unintentional omission or mistake as the mistake or omission is attributable to the Court which may say something or omit to say something which it did not intend to say or omit. No new arguments or re-arguments on merits can be entertained to facilitate such rectification of mistakes. The provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment in the case.

6. In view of the above settled proposition of law the question which is being raised before this Court in this application is concerned, it is nothing but a question of merit and the correction which is required to be made under Section 152 is not maintainable as it is neither arithmetic mistake nor clerical mistake nor it is intentional omission or commission.

6. In the result, I find no merit in this writ application. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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