

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.2178 of 2008

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1. Aftab Khan
2. Nisar Khan, both sons of late Ashique Khan, both resident of village-Sarimpur,
P.S. Buxar, District-Buxar. Petitioner/s

Versus

1. Zaibunnisha wife of late Samiullah Khan.
2. Hasnain Khan.
3. Hasib Khan.
4. Nasim Khan.
5. Shamim Khan.
6. Lalan Khatoon.
7. Sakhri Khatoon.
8. Khurshida Khatoon, all are sons and daughters of late Samiullah Khan, all
resident of village- Sarimpur, P.S. Buxar, District-Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abbas Haider, Adv.
Mr. Md.Kamil Akhtar, Adv.
Mr. Syed Hussain Majeed, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-05-2016

Heard Mr. Abbas Haider, learned counsel for the
petitioners.

The present revision application has been filed against the
order by which the learned court below has rejected the Misc. Case
No. 03 of 2004 initiated on the petition under Section 152 C.P.C. filed
by the petitioners for correction in the decree by incorporating therein
the reliefs prayed in the suit.



The relevant facts in the present context are that a suit was filed by the petitioners for declaration of their title over the suit land and also for declaration that the recent revisional survey entry with regard to the suit land was wrong. The suit was dismissed on contest. However, in appeal by the plaintiffs, the appellate court below allowed the appeal and decreed the suit. It would also be pertinent to notice that during the pendency of the appeal, the amendment of the plaint was allowed on the prayer of the plaintiffs for incorporating the relief for confirmation of possession or in the alternative for recovery of possession over the suit property through the process of the court in case of dispossession.

However, it further transpires that in the execution case filed by the plaintiff-petitioners the defendants raised the objection with regard to the executability of the decree. The petitioners thereafter made the prayer for correction in the decree for incorporating the reliefs as prayed but the said prayer was turned down. The petitioners thereafter filed civil revision application before this Court but the said civil revision application was dismissed as withdrawn with liberty to the petitioner to file a petition before appropriate court. The petitioners thereafter filed a petition (Annexure-5) before the appellate court praying for correction in the decree. On the basis of the said petition the Misc. Case. No. 03 of

2004 was initiated. By the impugned order, the appellate court has rejected the prayer holding that there is no error in the decree prepared by the court requiring the exercise of jurisdiction under Section 152 C.P.C.

Mr. Haider, learned counsel for the petitioners has submitted that the learned court below has committed error of jurisdiction as well as material irregularity in refusing to incorporate the reliefs prayed by the petitioners in the suit including the relief incorporated by way of amendment. By putting emphasis on different provisions in the Civil Procedure Code, it has been propounded that when a judgment and decree of reversal is passed by the appellate court, in that case the reliefs prayed by the plaintiffs must be incorporated in the appellate decree.

After considering the submissions on behalf of the parties and perusal of the impugned order, it is manifest that the learned court below has come to the conclusion that there is no error in the nature as specified in Section 152 C.P.C. for exercising the jurisdiction under the said provision for correction of the decree. It is apparent from the admitted facts that the suit was filed by the plaintiff-petitioners for declaration of title over the suit land and also for declaration against the recent survey entries for the suit land and therefore clearly the suit was declaratory in nature. Subsequently, however, at the appellate



stage the plaintiffs' prayer for amendment in the plaint incorporating the reliefs for confirmation of possession or in the alternative for recovery of possession in case of dispossession was allowed. However, it does not appear from the judgment (Annexure-3) of the appellate court that any finding much less the finding that the plaintiffs were out of possession over the suit land has been recorded and sequentially there is also no finding declaring the plaintiffs' possession or their entitlement to possession over the suit land.

The jurisdiction under Section 152 C.P.C. can be invoked for the limited purpose of correcting the clerical or arithmetical mistakes which might have crept in the judgment or decree by accidental slip or omission. Such jurisdiction cannot be invoked for the purpose of substantial modification, addition or alteration in the judgment or decree which has attained finality and for which purpose the remedy may be available in accordance with law in other jurisdictions of the court.

Furthermore it is not the case of the petitioners that there is any error in the judgment passed by the appellate court. The contents of the decree to be passed by the appellate court below is provided under Order 41 Rule 35 C.P.C. which is as follows:-

35. Date and contents of decree— (1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.



- (2) *The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.*
- (3) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
- (4) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Juxtaposing the aforesaid provision with the provision as contained under Order 20 Rule 6 C.P.C. with regard to a decree to be passed in a suit, it becomes evident that the particulars of the claim (s) as made by the plaintiffs is not required to be incorporated in decree of the appellate court. In the present case, it is demonstrably clear that the relief which has been granted to the plaintiff as apparent from the judgment passed in appeal has been incorporated in the decree of the appellate court. This Court therefore does not find that the learned court below has committed any error of jurisdiction or material irregularity in refusing the prayer for correcting the decree as made by the plaintiff-petitioners.

In result, this civil revision application is dismissed. However, the petitioners shall be at liberty to pursue the remedy available to them in accordance with law.

Devendra/-

(V. Nath, J.)

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