

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 23 of 2014

1. Smt. Mangtin w/o Bisram Aged About 52 Years R/o Anandpur, Tah. Balod, Distt. Durg C.G.
2. Smt. Dashoda Bai W/o Ramratan Sahu Aged About 55 Years R/o Balod, Tah. And Distt. Balod C.G.
3. Smt. Sushila Bai W/o Ramratan Sahu Aged About 51 Years R/o Usarwara, Tah. Balod, Distt. Balod C.G.
4. Smt. Pushpa Bai D/o Kanhaiya Sahu Aged About 47 Years R/o Usarwara, Tah. Gurur, Distt. Durg C.G.
5. Lochan Prasad Sahu S/o Kanhaiya Sahu Aged About 42 Years R/o Ranitarai, Tah. And Distt. Durg C.G.
6. Ghanshyam S/o Girdhar Sahu Aged About 47 Years R/o Anandpur, P.O. Chitoud, Tah. Gurur, Distt. Balod C.G.
7. Radhe S/o Girdhar Sahu Aged About 49 Years R/o Anandpur, P.O. Chitoud, Tah. Gurur, Distt. Balod C.G.
8. Devla W/o Hatwai Aged About 44 Years D/o Girdhar Sahu, R/o Kharenga, P.O. Kharenga, Tah. And Distt. Dhamtari C.G.
9. Maina Tamrakar W/o Ishwar Tamrakar Aged About 42 Years R/o Anandpur, P.O. Chitoud, Tah. Gurur, Distt. Balod C.G.
10. Ramratan S/o Manrakhan Sahu Aged About 55 Years R/o Usarwara, P.O. Fagundah, Tah. Gurur, Distt. Balod C.G.
11. Sunder Lal S/o Manrakhan Sahu Aged About 51 Years R/o Nipani, P.O. Nipani, Tah. And Distt. Balod C.G.
12. Sona Bai W/o Manrakhan Sahu Aged About 48 Years R/o Kuliya, P.O. Kaneri, Tah. Gurur, Distt. Balod C.G.
13. Sonkunwar D/o Manrakhan Sahu Aged About 52 Years R/o Usarwara, P.O. Fagundah, Tah. Gurur, Distt. Balod C.G.
14. Atmaram S/o Bihari Sahu Aged About 59 Years R/o Nipani, Tah. And Distt. Balod C.G.

---- Applicants

Versus

1. Ramkunwar W/o Sukhram Aged About 47 Years R/o Lal Bagicha, Dhamtari, Tah. and Distt. Dhamtari C.G.
2. Hariraj (Dead)
3. Megha (Dead)
4. Smt. Sheelmati (Dead)
5. Kanhaiya Lal (Dead) [Irs Of Non- Applicant No. 2 To 5 Already Record As Non- Applicant No. 6]
6. Amit Kumari D/o Jaipaldas Sindhi R/o Risaipara, Behind Vimal Talkies, Dhamtari C.G.

7. Smt. Krishna W/o Shobharam R/o Anandpur, P.O. Chitoud, Tah. Gurur, Distt. Balod C.G.
8. Lakhanlal S/o Shobharam R/o Anandpur, P.O. Chitoud, Tah. Gurur, Distt. Balod C.G.
9. Champi Bai W/o Bihari R/o Nipani, P.O. Nipani, Tah. And Distt. Balod C.G.
10. Bisari Bai W/o Bihari R/o Nipani, P.O. Nipani, Tah. And Distt. Balod C.G.

---- Non-applicants

For Petitioners/ : Mr. H.B. Agrawal, Sr. Advocate with Mrs.
Applicants Meera Jaiswal, Advocate.

For Respondent / : Mr. P.P. Sahu, Advocate.
Non-applicant No.1

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

(16-06-2016)

1. By the impugned order dated 13-1-2014, the trial Court has allowed the application filed under Section 152 of the Code of Civil Procedure by the respondent No.1/decree holder for correction of the decree which has been assailed in this revision.
2. Mr. H.B. Agrawal, learned Sr. Advocate would submit that the correction in the impugned decree dated 13-1-2014 is not permissible as it is barred by limitation and same is not passed by the court having jurisdiction, therefore, the impugned order deserves to be set aside.
3. Mr. P.P. Sahu, learned counsel appearing for respondent No.1 would submit that only correction of ministerial nature committed by the

court is that in exercise of power conferred under Section 152 of the CPC can be corrected and the executing Court has rightly corrected the decree and no jurisdictional error has been committed by the trial Court as such revision deserves to be dismissed.

4. I have heard learned counsel appearing for the parties and have gone through the record of the court below including the impugned order.
5. The impugned judgment and decree was passed on 23-03-1982 in a suit filed by Smt. Ramkunwar which is affirmed by the First Appellate Court as well as by the High Court of Madhya Pradesh vide order dated 29-02-1988 in Second Appeal No. 442 of 1987 and the application for execution was filed in the year 1992. The first objection raised by learned counsel for the the applicants is that the application for correction of the impugned judgment and decree is barred by limitation.
6. It is pertinent to mention here that the this correction has been made in case duly constituted miscellaneous civil case registered upon filing an application under Section 152 of the CPC, therefore, it cannot be held to be barred by limitation, therefore, this objection is rejected. Second objection is that the impugned judgment and decree was passed by Civil Judge, Class-2, Balod whereas the correction has been made under Section 152 of the CPC by Civil Judge, Class-1, Balod. It appears from the record that the application for correction which was filed in the year 1995 was dismissed in default. When the second application for correction of decree was filed under

Section 152 of the CPC on 8-9-2009, all the civil works of Civil Judge Class-2, Balod have been transferred to Civil Judge, Class-1, Balod therefore, the application for correction of decree was rightly considered by Civil Judge, Class-1, Balod.

7. In order to appreciate the arguments advanced by learned counsels for the applicant, Section 152 of the Code of Civil Procedure is reproduced below.

“Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties”.

8. Thus, a bare perusal of aforesaid section makes it clear that Section 152 of CPC can be invoked for the limited purpose of correcting clerical errors or arithmetical mistakes in the judgment.
9. In a decision rendered in **State of Punjab Vs. Darshan Singh** reported in (2004) 1 SCC 328, while considering scope of limitation of jurisdiction of the trial Court under Section 152 of the CPC., Hon'ble Supreme Court has held that the power should be exercised by the trial Court in correction of mistakes of its ministerial actions and does not contemplate passing of effective judicial orders after the judgment, decree or order. It has been further held in paras 12 and 13 which read as under:

“12 - Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power

contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very Court or the tribunal cannot, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party if at all is to file appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the Section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151 and 152 of Code even after passing of effective orders in the lis pending before them. No Court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or order. Similar view was expressed by this Court in *Dwaraka Das v. State of Madhya Pradesh and Anr.* (1999 (3) SCC 500) and *Jayalakshmi Coelho v. Oswald Joseph Coelho* (2001 (4) SCC 181)

13. The basis of the provision under Section 152 of the Code is founded on the maxim '*actus curiae neminem gravabit*' i.e. an act of Court shall prejudice no man. The maxim "is founded upon justice and good sense, and affords a safe and certain guide for

the administration of the law", said Cresswell J. in *Freeman v. Tranah* (12 C.B. 406). An unintentional mistake of the Court which may prejudice the cause of any party must and alone could be rectified. In *Master Construction Co. (P) Ltd. v. State of Orissa* (AIR 1966 SC 1047) it was observed 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. To illustrate this point it was said that 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".

10. Applying the the aforesaid principles of law laid down by Hon'ble the Supreme Court, considering the facts and circumstances of the case and the correction made in the impugned judgment is only in the ministerial nature which has been passed by the trial Court, I do not find any illegality or infirmity in the impugned judgment warranting interference of this Court.
11. Accordingly, the instant appeal being devoid of merit is liable to be dismissed and is accordingly dismissed, leaving the parties to bear their own costs.

Sd/-

(Sanjay K. Agrawal)

Judge

Raju