

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No. 5485 OF 2015

ORDER:

This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 by the unsuccessful petitioner/second defendant is directed against the orders dated 25.07.2015 of the learned III Senior Civil Judge, City Civil Court, Secunderabad passed in I.A.No.920 of 2014 in O.S.No.243 of 1994 filed by the second defendant under Sections 152 and 153 of CPC requesting to correct the accidental slips and omissions in the judgment and decree dated 30.06.2003 in the aforementioned suit as stated in the petition.

2. Heard the submissions of the learned counsel for the revision petitioner/second defendant ('the second defendant', for brevity) and the learned counsel for the first respondent/sole plaintiff ('the plaintiff', for brevity).

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The first respondent/sole plaintiff brought the suit against the defendants 1 to 5 for partition and rendition of accounts. On the death of the first defendant, his legal representatives were brought on record as defendants 6 to 8. However, they had remained *ex parte* in the suit. The first defendant filed a written statement admitting the plaint averments and had stated no objection for passing a decree as prayed for by the plaintiff. The third defendant filed written statement resisting the suit.

The Defendants 2 and 4 had remained *ex parte*. After full-fledged trial, the trial court had decreed the suit in part. The operative portion of the preliminary decree reads as under:

“1. that the suit be and the same is hereby partly decreed passing a preliminary decree granting 1/6th share to the plaintiffs, and 1/6th

share to defendants 2 to 5 and 1/6th share to LRs of D1 who are D6 to D8 in item No.1 of the plaint schedule.

2. that the claim in respect of other properties be and the same is hereby dismissed.

3. that both the parties are directed to bear their own costs.”

After the preliminary decree has become final, the second defendant filed the aforementioned application before the trial court for amendment of the judgment and the decree. That application was resisted by the plaintiff by filing a counter. On merits, and by the order impugned, the trial court had dismissed the petition. Therefore, the second defendant had filed this revision.

4. At the hearing, the learned counsel for the second defendant while narrating the events that lead to the stage of the passing of the preliminary decree, which had become final, and also the case of the 2nd defendant in the present matter would submit as follows:

Admittedly, the suit is decreed declaring that the plaintiff is entitled for a share in item no.1 of the plaint schedule; and as a sequel, a preliminary decree was passed awarding 1/6th share to her and 1/6th share each to the defendants 2 to 5 and also to the legal representatives of defendant no.1 together. It is also admitted, and the court below had also come to a conclusion that item no.1 of the plaint schedule is under mortgage to the State Bank of Hyderabad, Chikkadpally Branch, and that the partition is subject to the clearing of the mortgage debt. But, in the judgment, it is mentioned as follows: “with regard to item no.2 of the plaint schedule i.e., mortgaged to State Bank of Hyderabad, Chikkadpally Branch, is subject to clearing the debt”. Therefore, in the above sentence of the judgment, in the place of item no.2, item no.1 is to be substituted by amendment. The said aspect was not incorporated in the operative portions of the judgment and the decree. In the said circumstances, the decree and judgment are to be amended as follows:

1. At page 10 of the Judgment in line 11, ‘item No.2’ is to be corrected as ‘item No.1’.

2. At page 11 of the Judgment in the 12th line after the words, 'and L.Rs of D1', the following words 'subject to clearing the debt', are to be added.
3. At page 12 of the judgment in the 5th line, after the words 'plaint schedule' the following words subject to clearing the debt' are to be added.

5. Per contra, the case of the plaintiff and the submissions of the learned counsel appearing for the first respondent/plaintiff, in brief, are as follows:

The matter went upto the Supreme Court and the judgment and decree are confirmed by the Supreme Court. The amendment sought for changes the nature of the decree. If the amendment is permitted, the decree becomes a conditional decree. The loan was already cleared and the purchaser from the second defendant is not raising any objection. The second defendant has no *locus standi* to file the petition for amendment, when he had already sold away the property. The omission being sought to be corrected goes to the merits of the case and is beyond the scope of the provision of the Section 152 of the Code. Under the said provision no Court can modify or alter the terms of its original judgment and the decree. The shares were allotted as per exhibits A1 and A2, which were admitted and exhibit A1 was acted upon and the same was mentioned in the judgment. It was clearly mentioned that the plaintiff is entitled to a 1/6th share in item no. 1 of the plaint schedule property. Hence, the trial court rightly dismissed the petition. There is no merit in the present revision petition and the revision is liable to be dismissed.

6. I have given earnest consideration to the facts and the submissions and I have carefully gone through the pleadings of the parties in the interlocutory application and also the judgment and the preliminary decree of the court below, which are admittedly confirmed by the Supreme Court.

7. The parties are not disputing that item no.1 of the plaint schedule is subject to mortgage and that the said property was mortgaged to State Bank of Hyderabad, Chikkadpally Branch. Therefore, the accidental slip need not be directed to be corrected as none of the parties are disputing the said aspect. Further, it is the specific contention of the plaintiff that the mortgage debt is already discharged and that the purchaser from the second defendant is not disputing the said fact. It is not the case of the 2nd defendant that the mortgage debt due to the bank is not yet discharged. If the amendment is being sought for only for the limited purpose of making it clear that the said item of property is subject to mortgage, then there is no need to order amendment and no useful purpose would be served by ordering the present petition of the second defendant as the existence of the mortgage debt and the fact that the said debt is already discharged are not in dispute.

8. Further, in the decree and the judgment, there is no finding or term whereby the responsibility to discharge of the mortgage debt is fixed on any one of the sharers or parties. The property is already sold and the purchaser is not raising any objection before the Court. Now this Court by way of amendment cannot specifically direct any one of the parties/sharers to discharge the mortgage debt by fixing the responsibility of discharging the mortgage debt of the Bank as it would amount to making the preliminary decree, a conditional decree by changing its nature. Such a course is impermissible under facts and in law.

9. Before parting with the matter, it is necessary to mention that the learned counsel for the revision petitioner/second defendant placed reliance on the following decisions:

1. R.Jayaprada Bai v. Bondili Jayasri Bai {2005(6) ALT 775 (D.B.)}

2. T.Satyanarayana Rao v. T.Papa Rao {1997(2) ALT 474}
3. Samarendra Nath Sinha v. Krishna Kumar Nag {AIR 1967 SC 1440}
4. Syed Maqdoom Shah v. Basheer Khatoon {2005(5) ALT 619}

In R.Jayaprada Bai (1st supra), the issue is in regard to ascertainment of mesne profits and the amendment of plaint schedule attached to the decree. On facts, it was held that past mesne profits cannot be granted unless a definite prayer is made in the plaint by paying necessary court fee. However, it was held that future mesne profits can be ascertained by the trial court at its discretion at a later point of time after the trial of the suit and even after preliminary decree but before final decree is passed. On facts, it was also held that the trial court was correct in adding item nos.2 and 3 in the plaint schedule. In T.Satyanarayana Rao (2nd supra), the facts disclose that in a suit for partition though a specific finding is given on issue that second defendant is entitled to a 1/5th share in certain items of plaint Schedule, such finding was not given effect to in the operative portion of the judgment and in the preliminary decree that was passed in the suit. This Court found that the same is an accidental slip or omission and can be corrected by the trial court on an application filed under Section 152 CPC for an amendment and that no appeal or revision or review was needed to be filed to correct such a mistake. The decision in Samarendra Nath Sinha (3rd supra) is relied upon in support of the proposition that errors arising from accidental slip can be corrected subsequently not only in decree drawn up by ministerial officer but even in the judgment pronounced and signed by the Court. In Syed Maqdoom Shah (4th supra), it was held that intentional omissions cannot be corrected by way of amendment and law of limitation does not apply for correcting errors arising from any accidental slips or omissions or clerical or arithmetical mistakes or defects or errors in proceedings and such power of court is not diluted by lapse of time. I have gone

through the decisions. Having regard to the facts of the instant case and the reasons assigned supra in support of the findings of this Court, this Court is of the view that the decisions cited are not helpful to the petitioner/second defendant and the said decisions do not advance his case any further.

10. In the facts and circumstances of the case, it follows that no valid and sufficient grounds are urged by the second defendant for seeking the amendment of the judgment and the decree at this stage. For the reasons aforementioned, this Court finds that it is impermissible at this stage to direct the amendment of the decree and the judgment as sought for by the second defendant. Viewed thus, this Court finds that the order impugned does not warrant any interference of this Court.

11. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

As a sequel, the miscellaneous applications, pending if any, in this revision shall stand closed.

JUSTICE M.SEETHARAMA MURTI

15th June, 2016

LMV