

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 70 of 2013**

(Arising out of order dated 10.12.2012 in M.J.C. No. 5 of 2012 of the learned Additional District Judge, Sakti, District – Janjgir-Champa)

- Firtu Ram S/o Janakram Aged About 55 Years R/o Village Kaitha, Tah & Ps Jaijaipur, Distt Janjgir Champa, CG

---- **Petitioner****Versus**

1. Firatram Kashyap, aged about 51 years, S/o Shankarlal, R/o Village & Post Kaitha, Tah & Ps Jaijaipur, Distt Janjgir Champa, CG
2. State of Chhattisgarh, through The Collector Distt Janjgir Champa, CG

---- **Respondents**

For Petitioner	:	Shri D. N. Prajapati, Advocate
For Respondent No.1	:	Shri Syed Majid Ali, Advocate
For Respondent No.2/State	:	Shri R.K. Gupta, Deputy Advocate General

Hon'ble Thottathil B. Radhakrishnan, Chief Justice

Order on Board**04.12.2017**

1. This is an application under Article 227 of the Constitution of India.
2. Heard the learned Counsel for the Petitioner/Plaintiff and the Respondent/Defendant.
3. The Plaintiff sued the Respondent for specific performance of contract for sale of immovable property. He was granted a decree. He initially filed an appeal against that decree. That appeal was withdrawn. Thereafter, he filed an application invoking Section 153 of the Code of Civil Procedure, 1908; for short, 'CPC', before the Court below seeking correction of the decree so as to include the four corners or boundaries as mentioned in the contract for sale.
4. The learned Counsel for the Petitioner argued that the application for correction of decree filed under Section 153 CPC was eligible to be allowed in view of the fact that the amendment sought for was only to make the decree in conformity

with the description of the property in the plaint. He further argued that such amendment is also in conformity with the description of the property in the suit document which is the contract for sale. He argued that the description of an item of property with reference to the corners or boundaries is relevant to give effect to the decree granted by the Court to the plaintiff. In support of his submission as regards the power to amend, the learned Counsel made reference to the law laid by the Hon'ble Supreme Court in **Pratibha Singh & Another Vs. Shanti Devi Prasad & Another**; 2003(1) C.G.L.J. 239 and the decision of the Himachal High Court in **Devi Roop Vs. Smt. Devku and Ors.**; AIR 2006 HP 114.

5. Per contra, the learned Counsel for the 1st Respondent / Defendant argued that there was dispute between the parties at the trial, as to the extent of the property and it has been found that the extent is 0.18 acres though the plaint and the suit document proceeds as if the extent is 0.16 acres.
6. Section 153 CPC is wide enough to take within its sweep such corrections which could be carried down even to the stage of the plaint. The fact of the matter remains that the bargain between the parties is reflected by the contract document which is the suit document. That contract for sale is for an item of property shown as measuring 0.16 acres of land bound by four corners or boundaries, which are stated in that documents. However, there appears to be a controversy between the parties as to whether the extent of that property which lies between the four corners or boundaries, as stated in the contract for sale, is 0.18 acres or 0.16 acres. The trial Court rendered a finding on the issue taking that the extent is 0.18 acres by measurement, though the record reflects 0.16 acres. With that, the identity of the property with reference to the boundaries is not in dispute. The question whether the extent of land agreed to be sold is 0.16 acres or 0.18 acres does not survive the judgment and decree. The identification of the property for the purpose of execution is something that would follow the identification of the property, if any, carried out during trial.

7. In exercise of power under Section 153 CPC, the trial Court ought to have rendered justice to the decree holder plaintiff by incorporating boundary or the four corners of the property as stated in the suit document as well as in the plaint, in the decree so as to make the decree to be in conformity with the full and complete description of the suit property in the plaint and the suit document. This could be done having regard to the principles of law stated in **Pratibha Singh** (supra) and **Devi Roop** (supra).
8. For the aforesaid reasons, ends of justice require that the impugned order is set aside and the application of the Plaintiff before the Court below is allowed correcting the decree by including in it the four corners or boundaries of the property as described in the plaint and the contract for sale which was the subject matter of the suit. This is necessary to secure the ends of justice.
9. In the result the writ petition is allowed setting aside the impugned order and directing that the Court below shall correct the decree passed in the suit from which this writ petition arises by including in it the four corners or boundaries of the property as described in the plaint and the contract for sale which was the subject matter of the suit.
10. It is ordered accordingly. No costs.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice