

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.1585 of 2015

1.B.Jothi
2.N.Kanchana

...

Petitioners

Vs

1.S.Ranganayaki
2.Sarangapani Chettiar

...

Respondents

Civil Revision Petition is filed under Section 151 CPC against the order dated 28.01.2015 in I.A.No.860 of 2014 in O.S.No.710 of 1996 on the file of the Additional District Munsif Court, Cuddalore.

For Petitioners : Mr.R.Yasod Vardhan
Senior Counsel for
M/s.R.Sunil Kumar

For Respondents : Ms.G.Sumitra for
M/s.I.Abrar MD.Abdullah
for R2
No appearance for R1

ORDER

This Civil Revision Petition is filed against the order dated 28.01.2015 in I.A.No.860 of 2014 in O.S.No.710 of 1996 on the file of the Additional District Munsif Court, Cuddalore.

2. The petitioners are plaintiffs and respondents are the defendants in the suit in O.S.No.710 of 1996 on the file of the Additional District Munsif Court, Cuddalore. The petitioners filed the above suit against the respondents for delivery of vacant possession of the suit property and for damages till delivery of possession. The said suit was dismissed on 30.11.1999 and A.S.No.11 of 2000 filed by the petitioners was also dismissed on 16.10.2001. In S.A.No.1103 of 2002, this Court, by judgment and decree dated 22.08.2011 partly allowed the Second Appeal granting decree of possession and dismissing the relief with respect to claim of damages. The petitioners filed E.P.No.210 of 2012 for taking possession of the suit property. The respondents filed counter and contested the said execution petition. The Executing Court, by order dated 11.09.2014 ordered delivery.

2(a) At the time of taking delivery through court amin, the Village Administrative Officer who accompanied the court amin informed that Town Survey Number of the property does not tally with the Town Survey Number mentioned in the delivery order. The petitioners filed I.A.No.860 of 2014 in O.S.No.710 of 19976 for amending the mistake in describing the Town Survey Number in the plaint, decree as well as in the execution petition. The petitioners

prayed for deleting T.S.No.1543 and substituting T.S.No.443 in the plaint, decree and execution petition. According to the petitioners, the first respondent is the step-sister of their father G.Nagarathina Chettiar and she was the permissive occupant of the suit property. The suit property was given to the petitioners' father in the partition suit in O.S.No.9 of 1958 on the file of Sub Court, Cuddalore. The correct survey number of the suit property is 443 and by mistake, it was typed as 1543 which is a typographical error and the mistake was not noticed till the Village Administrative Officer pointed out the same, at the time of taking delivery of the property. There is no dispute with regard to the existence of the suit property. The door number of the suit property is correctly given. The respondents did not state about the mistake and description of the Town Survey Number during the trial. The mistake originated in the plaint is carried away in the decree as well as execution petition. No prejudice will be caused to the respondents. Unless the mistake in Town Survey Number is rectified, the very purpose of filing of the suit will be lost.

2(b) The second respondent filed counter and the same was adopted by the first respondent. The respondents denied various averments made by the petitioners in the affidavit filed in support of

the above application. According to the respondents, the petitioners specifically and in clear terms filed suit for a specific property and obtained decree in respect of specific Survey Number. Now, they cannot contend that they are the owners of properties of some other survey numbers which is not the subject matter of the suit. They are attempting to grab all together different property other than the property comprised in the decree. The Court can order delivery of the property only in regard to the property mentioned in the decree. It is not correct to state that the respondents have erased the door number put up in the front door.

2(c) The Village Administrative Officer has stated that there is no door number and therefore, the property could not be identified and Town Survey Number cannot be substituted and fixed on a particular property so as to take delivery of the same. The amendment sought for cannot be allowed after a decree was passed and in the process of execution. Sections 152 & 153 of CPC are not attracted to amend the Survey Number. By amendment, the petitioners are introducing a new survey number and it is not correct to state that wrong survey number is given due to typographical error and there is no dispute about the identity of particular property.

2(d) The learned Judge, considering the averments in the affidavit, counter affidavit and judgments relied on by the parties, dismissed the application holding that amendment as per Sections 152 & 153 CPC could be made only if the mistake is due to typographical or spelling and as per Sections 152 & 153 CPC, no corrections can be made in the plaint and decree and that will introduce a new case.

3. Against the said order of dismissal dated 28.01.2015 in I.A.No.860 of 2014 in O.S.No.710 of 1996, the present civil Revision Petition is filed by the petitioners.

4. The learned Senior Counsel for the petitioners contended that the learned Judge misconstrued the amendment sought for as amendment of pleading, while amendment is only with regard to survey number in the schedule. The objection of the respondent is hypertechnical. The Executing Court has power to allow the amendment sought for. There is no dispute with regard to identity of the property. The respondents are only permissive occupants and PW2, the blood brother of respondents admitted the said fact. The amendment does not change the character and nature of the suit. If amendment is not allowed, the petitioners will suffer great

loss and inconvenience inspite of the fact of succeeding in a long drawn legal action initiated for recovery of possession as early in 1996.

4(a) The learned Senior Counsel further contended that the suit property is the only property allotted to the father of the petitioner in O.S.No.9 of 1958 by Sub Court, Cuddalore. The parties knew about the identity of the property and in the proceedings, that was contested. There was no dispute with regard to identity of the property. The Executing Court, in the circumstances, has power to order the amendment sought for. In support of his contention, the learned Senior Counsel relied on the following judgments -

(1) Order of this Court dated 30.08.2011 made in CRP (NPD) Nos.2946 & 2947 of 2011 [Shanthi & Ors. v. Palanivelu & Ors.]

17. However, at the time of execution, it was found out by the first respondent/decreed holder that the Cadastre Number was 24 Part and R.S.No. Was 155/5 Part. In other words, the mistake laid only in the inter-change of the Cadastre Number and the Resurvey Number. What was Cadastre Number was wrongly indicated as R.S. Number and what was R.S. Number was wrongly indicated as Cadastre Number. It is this mistake that was sought to be corrected by way of amendment without changing the actual description of the property.

18. It is pertinent to point out that the suit schedule property is the only property, which is in dispute between the parties. The parties understood the dispute to be only in respect of that property and fought the litigation from 1985 onwards. In any case, there is no discrepancy with regard to the four boundaries. When there is no description with regard to the four boundaries, the amendment seeking only the correction of a mistake due to the inter-change of the Cadastre Number and Resurvey Number, cannot be said to be something, which goes to the root of the matter, entitling the petitioners to object to the correction of the same by way of an amendment. Therefore, I find no justification to interfere with the orders of the court below. Hence, the Civil Revision Petitions are dismissed. No costs. M.P.No.1 of 2011 is closed.

(2) 2003 (2) SCC 330 [Pratibha and anr. v. Shanti Devi and anr.]

17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the CPC depending on the facts and circumstances of each case-which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the CPC by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case we think it

would be more appropriate to invoke Section 47 of the CPC.

4(b) The learned Senior Counsel further submitted that the order of this Court dated 30.08.2011 in CRP (NPD) Nos.2946 & 2947 of 2011 was confirmed by the Hon'ble Apex Court in SLP (C) Nos.30032 to 30033 of 2011 dated 19.07.2016.

5. Per contra, the learned counsel appearing for the respondents submitted that the petitioners have not stated the extent of the suit property in the schedule to the plaint. The learned counsel for the respondents further submitted that as per Section 152 & 153 of CPC, only a typographical error which crept in the decree can be corrected, if committed by the court and Executing Court has no power to amend the plaint, decree or execution petition. The present application is not for correcting any typographical error. The petitioners are introducing a new case to grab the property of the respondents. The proper remedy available to the petitioners is to file a fresh suit. As per Order VII Rule 3 CPC, when the subject matter of the suit is immovable property, the plaint should contain correct description of the property sufficient to identify the same and if the property can be identified by the boundaries or numbers in settlement records or survey number, the

plaint shall specify such boundaries or numbers. In the present case, the petitioners have not given correct description of the property in the suit. The learned counsel for the respondents, in support of his contention, relied on the judgment reported in **2011 (1) L.W. 858 [Maruthai & others v. Visalakshi Ammal & ors.]** wherein it has been held as follows -

27. *In Dwaraka Das v. State of M.P and another* reported in (1999) 3 Supreme Court Cases 500, at page Nos.501 & 502, the Honourable Supreme Court has held as follows:

"The exercise of power under Section 152, CPC contemplates the correction of mistakes by the court of its ministerial actions and does not contemplate passing of effective judicial orders after the judgment, decree or order. After the passing of the judgment, decree or order, the court or the tribunal becomes functus officio and thus being not entitled to vary the terms of the judgments, decrees and orders earlier passed. The corrections contemplated are correcting of 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 for which the proper remedy for the aggrieved party is to file an appeal or a review application. 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 the CPC 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. In the instant case, the

trial court had specifically held the respondent-State liable to pay future interest only despite the prayer of the appellant for grant of interest with effect from the date of alleged breach which impliedly meant that the Court had rejected the claim of the appellant insofar as pendente lite interest was concerned. The omission in not granting the pendente lite interest could not be held to be accidental omission or mistake as was wrongly done by the trial court. The High Court was, therefore, justified in setting aside the aforesaid order by accepting the revision petition filed by the State."

6. Heard the learned counsel appearing for the petitioners as well as respondents and perused the materials available on record.

7. From the materials on record, it is seen that the petitioners have filed the suit for recovery of possession of suit property and for damages. According to the petitioners, the suit property was allotted to their father, by judgment and decree dated 24.10.1959 in O.S.No.9 of 1958 by Sub Court, Cuddalore. The said suit was decreed after contest. The learned Senior Counsel for the respondents referred to the decree passed in the said suit wherein the property in Ward No.1, Block No.9, Door No.27, T.S No.443 measuring 1566 sq.ft. was allotted to the share of the father of the petitioners. In the description of the property in the plaint filed in the present suit, the petitioners have given street name, door

number and town survey number. The door number mentioned in the schedule to the plaint in the present suit tally with decree passed in O.S.No.9 of 1958 and only T.S. Number differs.

7(a) According to the learned Senior Counsel for the petitioners, the respondents erased the door number in the front of the house. The said contention is denied by the learned counsel for the respondents. Considering the fact that the petitioners have given the correct street name, door number where the suit property is situated, the contention of the learned Senior Counsel for the petitioners is acceptable and petitioners are seeking to take delivery of the suit property situated in Door No.27. The learned counsel for the respondents denied that respondents have erased the door number but they have not stated what is the door number of the property under their occupation.

7(b) It is pertinent to note that the address of the respondents in the plaint is given as Door No.27, Clive street, Cuddalore OT, Cuddalore Taluk and the said address is only the address given in the description of the property in the plaint. The respondents have received the summons in the said address and it is not their case that they are not residing in the said address. The

learned Senior Counsel for the petitioners has contended that the suit is with regard to only one property allotted to the father of the petitioners and respondents are permitted to reside there as the first respondent is the step-sister of their father. It is not the case of the respondents that the petitioners' father was allotted some other property and property in Door No.27 mentioned in the schedule was not allotted to petitioners' father. In view of the above facts, the contention of the learned Senior Counsel for the respondents that only one property is involved in the legal proceedings and as per the judgment and decree of Hon'ble Apex Court reported in **2003 (2) SCC 330 [Pratibha singh v. Shanti Devi Prasad]** and **AIR 2004 SC 904 [Ravinder Kaur v. Ashok Kumar]** which was followed by this Court in the order dated 30.08.2011 made in CRP (NPD) Nos.2946 & 2947 of 2011, the contention of the learned Senior Counsel for the petitioners that Executing Court has power to amend the plaint, decree and execution petition has considerable force. The judgments relied on by the learned Senior Counsel for the petitioners are squarely applicable to the facts of the present case.

7(c) It is also well stated that by judicial pronouncement that a decree holder cannot be deprived off fruits of the decree by mistake in the plaint which was reflected in the decree drawn in favour of the decree holder. It is also well settled that decree holder is left without any remedy to amend the plaint, documents or decree in any legal proceedings. In the present case, the petitioners are seeking correction of survey number and not the door number, street name and town in which the property is situated. In view of the said relief, the contention of the learned counsel for the respondents that petitioners are introducing a new case is without merits. In the said circumstances, the judgment relied on by the learned counsel for the respondents does not advance the case of the respondents to the facts of the present case.

7(d) As far as Order VII Rule 3 CPC is concerned, the petitioners have given door number, street name and town in which the suit property is situated. These particulars are sufficient to identify the suit property so as to effect delivery to the petitioners. The reasoning of the learned Judge for dismissing the application for amendment are not valid and the impugned order of the learned

Judge is liable to be set aside for the reasons stated above. Accordingly the impugned order of the learned Judge dated 28.01.2015 in I.A.No.860 of 2014 in O.S.No.710 of 1996 is hereby set aside.

8. In the result, this Civil Revision Petition is allowed. No costs.

22.12.2017

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To

The Additional District Munsif,
Cuddalore.



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V.M.VELUMANI, J.

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C.R.P.(NPD) No.1585 of 2015

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