

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P.(NPD).Nos.4456 & 4577 of 2014
and C.M.P.No.1 of 2014

Dasaradha Reddy

.... Petitioner
in both CRPs

Vs.

Veera Reddy

... Respondent
in both CRPs**Prayer in CRP.No.4456 of 2014**

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure praying to set aside the orders of the learned District Munsif Cum Judicial Magistrate No.1, Hosur dated 08.01.2014 in R.E.A.No.87 of 2011 in R.E.P.No.73 of 2010 in O.S.No.431 of 2006 and allow the CRP.

Prayer in CRP.No.4577 of 2014

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure praying to set aside the orders of the learned District Munsif Cum Judicial Magistrate No.1, Hosur dated 08.01.2014 in I.A.No.320 of 2013 in O.S.No.431 of 2006 and allow the CRP.

For Petitioner : Mr.V.Nicholas

For Respondent : Mr.M.V.Krishnan

COMMON ORDER

Challenging the fair and decretal orders passed by the learned District Munsif Cum Judicial Magistrate No.1, Hosur, dated 08.01.2014 in R.E.A.No.87 of 2011 in R.E.P.No.73 of 2010 in O.S.No.431 of 2006 and I.A.No.320 of 2014 in O.S.No.431 of 2006.

2. Both the applications filed before the court below are filed for the purpose of amending some typographical error in respect of Survey Number in the plaint stating that due to the typographical error in the plaint, the same was carried out in the judgment and decree also.

3. The learned counsel for the petitioner/defendant submitted that the court below failed to see that the defendant is in possession of the house property at Survey No.130, Zuzuvadi Village. The Plaintiff's application is intended to get the relief in respect of the property, which is not the subject matter in the suit.

4. Per contra, the learned counsel for the respondent/Plaintiff submitted that in the Petition filed for amending the decree as the respondent/plaintiff wrongly mentioned the Survey number as 130/1 instead of Survey number 130/38. According to the plaintiff he had given

the correct door number to the suit property. Therefore the respondent/plaintiff filed I.A.No.320 of 2013 in O.S.No.431 of 2006 to correct the plaint, decree and judgment in O.S.No.431 of 2006. Further, at the time of noticing the same error in the REP.No.73/2010, REA.No.87/2011 was filed once again, to amend the survey number.

5. According to the counsel for the respondent/Plaintiff, the change of amendment in the survey number is necessary and if not altered, irreparable loss would be caused to the plaintiff and further the allowing of the said applications for the amendment by the court below will not in any way affect the interest of the petitioner herein., viz., the defendant. So in these circumstances, the petition in R.E.A.No.87 of 2011 in R.E.P.No.73 of 2010 in O.S.No.431 of 2006 and I.A.No.320 of 2014 in O.S.No.431 of 2006, were allowed by the lower Court by order dated 08.01.2014.

6. Further, in support of the above contention of the respondent that the error in the records of the Court can be rectified at any point of time even at the time of pronouncement of the Judgment and signed by Court, he has produced judgment passed by the Hon'ble Supreme Court reported in ***AIR 1967 Supreme Court 1440 [Samarendra Nath Sinha and another Vs. Krishna Kumar Nag]*** which are extracted hereunder:-

“ 11. Now, it is well settled that there is an inherent power in the court which passed the judgment to correct a clerical mistake or an error arising from an accidental slip or omission and to vary its judgment so as to give effect to its meaning and intention.

“Every court”, said Bowen L.J. in Mellor v. Swire, (1885) 30 Ch.D.239, “has inherent power over its own records so long as those records are within its power and that it can set right any mistake in them. An order even when passed and entered may be amended by the Court so as to carry out its intention and express the meaning of the court when the order was made.”

7. On perusal of the judgment, it is clear that the Court had inherent power over its own records so long as those records are within its power and that it can set right any mistake or error arising from an accidental slip or omission and to vary its judgment so as to give effect to its meaning and intention. Therefore this Court also is of the view that lower Court has correctly allowed the petitions in R.E.A.No.87 of 2011 in R.E.P.No.73 of 2010 in O.S.No.431 of 2006 and I.A.No.320 of 2014 in O.S.No.431 of 2006, after considering the pleadings and averments of both the parties and as

such allowed the applications for the amendment.

8. Further, the learned counsel for the respondent/Plaintiff, in support of his contentions submitted before this Court, also relied upon the decision of this court reported in **AIR 1980 Madras 116 [Abdul Kader Vs. Chinnaswamy Padayachi]** which are extracted hereunder:-

“ Order 6, R.17 relates only to the amendment of pleadings. Such an amendment can be made even before the appellate court when it is not of such a character as to be objectionable either as changing the subject matter of the suit or as being otherwise unfair. In this matter, there was no pleading to be amended, for the proceedings are under the Land Acquisition Act. Section 151 C.P.C. however, in my view, is wide enough to provide for such amendment, as have been prayed for. In fact, it has been held that even the inherent powers of the court are not limited to Secs.151 and 152. Dealing with the powers of the court under Section 546 of the Code of 1882, Woodroffe J. observed as follows:-

“Court has an inherent power ex debito justitiae to consolidate, postpone, pending the decision of a selected action and to advance the hearing of suits; to stay on the ground of convenience cross-

suits; to ascertain whether proper parties are before it; to enquire whether the plaintiff is entitled to sue as an adult; to entertain application of a third person to be made a party, to add a party, to allow defence in forma pauperis etc.”

*Of course, the inherent powers are intended for exceptional cases and are not intended to enable courts to ignore the provisions of law which govern procedure, nor could all the inherent powers of a court be used in order to relieve a party from the consequences of his own mistake or to enable him to evade the law of limitation. The code has reserved to every court under Section 151 the inherent power to make such orders as should be made *ex debito justitiae*, and every court should have in view, the shortening of litigation preventing duplication of proceedings, and saving the parties from harassment and expenses. Where a purely clerical error is brought to the notice of a High Court when it is seized of the matter as court of appeal, it can correct the error; and extensive powers of amendment may be exercised under Sections 151 and 153. The provisions of Section 152 give power to the court not only to correct clerical or arithmetical mistakes in judgment, decrees or orders but also*

errors arising therein from any accidental slip or omission and such correction may be done at any time by the court, even without an application by any of the parties (vide (1941) 2 Mad LJ 452). The court's powers of amendment are not restricted to errors that have crept in the judgment or decree but extend to errors that have crept in plaint, decree, sale certificate etc. Where a property was wrongly described in a plaint in mortgage suit and the mistake is repeated in the preliminary and final decrees, without being either by the parties or by the court, the court has ample powers to amend the plaint, decrees and the judgment and correct the mistakes. Under Section 153, the court has extensive powers to correct mistakes in applications or plaints and it was held that where in a suit on a mortgage the name of the village in which the mortgaged property was situated was misdescribed and the mistake is discovered on appeal it is the duty of the appellate court to allow an amendment of the plaint and thus rectify clerical mistake".

9. On a perusal of the above cited judgment, it is clear that the Court has ample power to pass an order to make any correction of the errors of the judgment. Hence, in these circumstances, there is no error

KRISHNAN RAMASAMY, J.

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committed by the lower Court in allowing the applications filed before it by the Plaintiff.

10. For the foregoing reasons, I do not find any error or irregularity in the orders passed by the Court below. The Civil Revision Petitions are devoid of merits and the same are liable to be dismissed. Accordingly, the Civil Revision Petitions are dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

29.06.2018

Index : No
Internet : Yes
Speaking order/Non-speaking order

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To

1.The District Munsif Cum Judicial Magistrate No.1,
Hosur

C.R.P.(NPD).Nos.4456 & 4577 of 2014
and C.M.P.No.1 of 2014