



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the First day of August Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice M.SUNDAR

CMP(MD) No.7200 of 2018

IN

AS No.219 of 1999

V.KRISHNAMURTHY

... PETITIONER/ 1st RESPONDENT/
PLAINTIFF

Vs

1 V.CHACKRAPANI

... RESPONDENT/ APPELLANT/
1st DEFENDANT

2 R.NAGARATHINAM

3 R.SITHALAKSHMI

4 M.MEENAKSHI

5 G.CHITHRALEKHA

... RESPONDENTS/ RESPONDENTS/
DEFENDANTS 2 TO 5

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to amend the preliminary decree dated 16.10.1998 in O.S.No.71 / 1985 passed by the Subordinate Judge, Kumbakonam, which is more fully described in petition.

Prayer in AS. 219/ 1999 :

To present this memorandum of regular appeal in this honourable court against the judgment and decree dated 16/10/1998 passed by the subordinate judge, Kumbakonam in O.S.No.71/1985.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.P.VADIVEL, Advocate for the petitioner and of Mr.S.RAMESH, Advocate for R1, Mr.T.SATHIYANATHAN, Advocate for R2 & R3 and Mr.S.ARAVIND SANAR, Advocate for Mr.D.RAJKUMAR, Advocate for R4 & R5, the court made the following order:-

First respondent in the main first appeal (plaintiff in the Trial Court) is the petitioner in the instant 'Civil Miscellaneous Petition'(herein after referred to as 'CMP' for brevity).

2.Sole appellant in the main first appeal (first defendant in the Trial Court) is the first respondent in the instant CMP.



Respondents 2 to 5 in the main first appeal (defendants 2 to 5 in the Trial Court) are respondents 2 to 5 in the instant CMP.

3. For the sake of convenience and clarity, the parties shall be referred to by their respective ranks in the instant CMP.

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4. In the Course of hearing the main first appeal, it came to light that there is mis-description of one of the parties to the lis in the decree of Trial Court and on the face of it, it was obvious that it was a clerical mistake.

5. Second defendant in the Trial Court is Tmt.R.Nagarathnam (second defendant in the instant CMP). She is Venkatasubba Roa's daughter and V.Rajappa's wife. Instead of describing Tmt.R.Nagarathnam as wife of V.Rajappa, owing to obvious clerical mistake, in the decree in Trial Court the description reads as 'R.Nagarathnam, Son of Rajappa'.

6. Therefore, the instant CMP has been taken out with a prayer seeking amendment of the decree of the Trial Court, so as to correct the aforesaid clerical mistake.

7. Mr.P.Vadivel, learned Counsel is before this Court on behalf of the petitioner. Mr.S.Ramesh, learned Counsel is before this Court on behalf of first respondent in the instant CMP. Mr.T.Sathiyathan, learned Counsel is before this Court on behalf of respondent Nos.2 and 3 and Mr.S.Aravind Sankar, learned Counsel representing the Counsel on record for respondent Nos.4 and 5, is before this Court.

8. There is no dispute or disagreement between the aforesaid learned Counsel that the aforesaid clerical mistake in the decree in the Trial Court is an inadvertent clerical mistake.

9. Be that as it may, for the purpose of satisfying this Court that such a clerical mistake which has crept into the decree in the Trial Court can be corrected even by the appellate Court, learned Counsel for petitioner Mr.P.Vadivel, pressed into service the judgment of a Division Bench of Allahabad High Court in Alliance Bank of Simla Ltd's Case, reported in AIR 1928 Allahabad 458.

10. Learned Counsel drew my attention to relevant paragraph in the aforesaid case, which reads as follows:

'We are of opinion that, as we are seised of the case, in view of the provisions S.107, read with S.152, Civil P.C, we are entitled to correct any clerical or arithmetical mistake apparent on the face of the record. Mr.Muhammad Husaid admits that some Court must have power to do so, but in accepting his contention all that will happen is that we will have to send the record to the Court below to examine and see whether there was an



apparent error to the face of the record. As we have stated we have examined the record and there is the mistake. We, therefore, direct that in the decree the name of the Rashid Uddin be deleted and the name of Bashir Uddin substituted.'

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11.A perusal of the above, brings to light the position that a clerical mistake that has crept into the decree in the Trial Court can be corrected even by the appellate Court.

12.To bolster his submission, another judgment of Andhra Pradesh High Court in Narkulla Venkayya's case reported in AIR 1959 ANDHRA PRADESH 360 was pressed into service.

13.However, a perusal of the aforesaid judgment reveals that the said case pertains to correction of error that occurred in plaint.

14.Besides the aforesaid two case laws, a judgment of a Division Bench of our High Court in Kodaikanal Motor Union (P) Ltd's case, reported in AIR 1979 MADRAS 14 was also pressed into service. Relevant paragraphs are, paragraph Nos. 8 and 9, and this Court deems it appropriate to extract the same, which read as follows:

'8.The appeals were before this Court. If the Court had adverted to the terms of the policy, the error would not have occurred. That the decision is clearly erroneous cannot be gainsaid. Counsel should have brought the terms of the policy to the notice of the Court. It must have been due to an accidental slip or omission that it was not so brought to the notice of the Court. We have no doubt at all the advertence to the policies would have avoided the error. In these circumstances, we consider that this Court cannot only rectify the error but has even a duty to rectify the error because on the basis of the terms of the policy, the liability of the Insurance Co.could not have been limited to Rs.2000 in each of the cases. It would have been graceful on the part of the cases and such undertaking was to cover such eventualities as that occurred as a result of the accident to which we made reference at the beginning of this order. It is regrettable that such a step had not been chosen. However, we do not consider the Court to be helpless in the matter. As we stated it is the duty of the Court to rectify the error in the circumstances.

9. We accordingly allow these petitions as falling under Section 152, C. P. C. and direct that the limitation or the liability of the Insurance Co. will be corrected to Rupees 20000 and the figures Rs. 2000 in the passage will be referred to as Rs. 20000 as



substituted. Corresponding corrections will also be made in the decree as well. These petitions are disposed of in the above terms. We direct the parties to bear their respective costs'.

15. A perusal of paragraph Nos. 8 and 9 supra, would reveal that the Division Bench of this Court has held that a clerical mistake that has crept into the records in the Court below can be corrected by the appellate Court.

16. Further to be noted, in Kodaikanal Motor Union (P) Ltd's case, the Division Bench also followed the judgment of the Supreme Court in Master Construction Company's case, reported in AIR 1966 SC 1047 for testing what would qualify as a clerical mistake.

17. The Supreme Court in Master Construction Company's case held that a mistake should be apparent on the face of record and it should not depend for its discovery on elaborate arguments on questions of law and fact in exercise of power under Section 152.

18. To be noted, it is the submission of the learned Counsel for the petitioner that the powers under Section 152 should be read with Section 107 of the Code of Civil Procedure qua powers of the appellate Court.

19. Relevant paragraph regarding Master Construction Company's case in Kodaikanal Motor Union (P) Ltd's case is paragraph 7 and the same reads as follows:

'7. The Supreme Court in Master Construction Co. v. State of Orissa, observed that an arithmetical mistake is a mistake of calculation while a clerical mistake of calculation while a clerical mistake is of writing or typing, that an accidental slip or error is an error due to a careless mistake or omission unintentionally made, that such mistake should be apparent on the face of the record and that it should not depend for its discovery on elaborate arguments on questions of law and fact.'

20. In the instant case, a perusal of the records in the Court below including the judgment of the Court below, reveals that Tmt. R. Nagarathnam is Venkatasubba Rao's daughter and Rajappas's wife. As alluded to supra, there is no dispute or disagreement between the parties to the lis before this Court about the obtaining position.

21. Therefore, it is obvious and clear as daylight, on the face of the record or in other words, it is apparent on the face of record that the aforesaid mistake that has crept into the decree is a clerical mistake, which has crept into the decree owing to inadvertence.



22. Obviously no elaborate arguments on questions of law or facts are required for discovery of the same.

23. Further to be noted, all the respondents in the CMP have no objection or opposition to the prayer in the instant CMP being acceded to.

24. In the light of the narrative supra, the instant CMP is ordered as prayed for.

25. Registry of this Court to carry out necessary and consequential amendments in the decree of the Trial Court, within a fortnight from today, ie., on or before 14.08.2018.

26. Post amendment within a fortnight, Registry to send a copy of this order to the Trial Court for necessary and consequential corrections in its records, if any and if required.

27. List the main first appeal thereafter.

sd/-
01/08/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE SUBORDINATE JUDGE, KUMBAKONAM.

COPY TO:

THE SECTION OFFICER,
JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CMP (MD) No.7200 of 2018
IN
AS No.219 of 1999
Date : 01/08/2018

MS/RR/SAR-4/16.08.2018/5P.3C