

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.5719 of 2017 (O&M)
Date of decision : 18.04.2018

Parmila Devi

...Petitioner

Versus

Ramesh Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Verma, Advocate for the petitioner.

Ms. Divya Mahlawat, Advocate for respondent Nos.1 to 3.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-petitioner has filed this revision petition against the order passed by the learned trial Court dismissing the application filed under Sections 151 and 152 of CPC for correction of the names of defendant Nos.6 and 7 in the plaint as well as in the judgment and decree.

The plaintiff had filed a suit for declaration with consequential relief of permanent injunction. He impleaded defendant Nos.6 and 7 as Khushi Ram and Babbu Ram minor sons of Sarjant Singh through their mother Sarvjit Kaur. The relevant extract of the memo of parties before the trial Court is extracted as under:-

“6. Khushi Ram and 7. Babbu Ram, minor sons of Sarjant Singh, minor through their mother Sarvjit Kaur, who is next friend and natural guardian of the minor.”

The suit was contested by all the defendants including Smt. Sarvjit Kaur who was, otherwise also, defendant No.4 in the suit. The suit after contest was decreed vide judgment and decree dated 08.07.2013.

The defendants filed the first appeal. In the first appeal, defendants Nos.6 and 7 were impleaded as appellant Nos.6 and 7 and both were named as Khushi Ram and Babbu Ram. The relevant extract of the memo of parties before the First Appellate Court is extracted as under:-

“6. *Khushi Ram,*

7. *Babbu Ram minor children of Sarjant Singh, minors through their mother Sarvjit Kaur being next friend and natural guardian of the minors.”*

However, when the execution petition was filed, the objection was taken that in fact the names of the sons of Sarjant Singh are Khuspreet Sharma and Lovepreet Sharma instead of Khushi Ram and Babbu Ram.

Learned trial Court dismissed the application on the ground that such application is not maintainable before the trial Court as the decree passed by the learned trial Court has merged in the judgment passed by the First Appellate Court. The Court relied upon certain judgments passed by this Court as well as by the Himachal Pradesh High Court and Andhra Pradesh High Court.

It is not in dispute that the mother of Khushi Ram and Babbu Ram was defendant No.4 in the suit. She was also defendant No.4 in the suit apart from being impleaded as a natural guardian of minor sons. Another major son of Sarjant Singh was defendant No.5 in the suit. He also jointly contested the suit but at no point of time, during the pendency of the suit, objection in this regard was taken. The defendants jointly filed the first

appeal and impleaded defendant Nos.6 and 7 as appellant Nos.6 and 7 with the same names. It is not in dispute that Sarjant Singh is having three sons namely Jaspreet, Khushi Ram @ Khushpreet Sharma, Babbu Ram @ Lovepreet Sharma. In this situation, there was only a typographical mistake/omissions in the memo of parties.

Learned trial Court has overlooked the judgment passed by the Full Bench of this Court reported as 1996 (1) PLR 208, *Dayawanti Vs. Yadvindra Public School*. It has been held that the application under Sections 151 and 152 of CPC for correction of the name or correction of a typographical error can be filed even if the first appeal has been decided. The Full Bench has drawn the distinction between the jurisdiction to review the judgment and the jurisdiction to correct the typographical errors or omissions. The relevant extract of the aforesaid Full Bench Judgment is extracted as under:-

“In the other revision petition bearing No. 140 of 1993, the Additional District Judge has ordered for the correction of errors which crept in the Judgment on account of some accidental slip or omission. Section 152 Civil Procedure Code empowers the Court to correct any such accidental slip or omission at, any time either of its own motion or on the application of any of the parties. Any order passed by the Court does not amount to passing of a decree hence not appealable. Any such amendment does not in any way affect the merit of the controversy which has been determined by the Court and so even when such unamended judgment has been affirmed by a superior Court it does not preclude the Court which passed by decree from correcting such an order. Reliance on the doctrine of merger was thus wholly

mis-placed. Accordingly we hold that (i) the dismissal of an appeal or revision by a superior court has the effect of merging of the decision of the inferior court with that of the superior court and (ii) the doctrine of merger applies, it be a decision in a revision petition or appeal or dismissal of a writ petition in limine by the court.”

In view of what has been observed by the Hon'ble Full Bench, learned trial Court committed material error in dismissing the application for correction of the accidental slip on the ground that such application is not maintainable before the trial Court. Respectfully following the judgment passed by the Hon'ble Full Bench, the order under challenge is set aside. The correction as prayed for is ordered to be granted.

Revision petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

18.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No