

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.343 of 2019**

Md. Akbar Ali Khan, Son of Yar Ali Khan, Resident of Village-Rambagh,
Police Station -Sadar, District-Purnea.

... .. Defendant-Petitioner-Petitioner

Versus

Mostt. Parasmani Devi, Wife of Late Anant Lal Yadav, Resident of Village-
Rajni, Police Station-Bihariganj, District-Madhepura at present residing at
Village- Rambagh, Police Station-Sadar, District-Purnea

... .. Plaintiff-Opposite Party-Respondent

Appearance :

For the Petitioner : Mr. Rajeeva Roy, Advocate
For the Respondent : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 20-06-2019

Heard learned counsel for the petitioner and learned
counsel for the State.

2. This application has been filed under Article 227 of
the Constitution of India has been filed by the petitioner for setting
aside the order dated 20.02.2018 passed by the learned Sub-Judge-
1, Purnea in Misc. Case No.3 of 2016 whereby the application of
the petitioner for making certain corrections in the decree passed
in Title Suit No.267 of 1999 has been rejected.

3. Learned counsel for the petitioner contended that
there is discrepancy in the area of plots mentioned in the decree
passed in Title Suit No.267 of 1999. He has contended plaintiff-
opposite parties (respondent herein) did not appear in Misc. Case
No.3 of 2016 despite repeated notices and substituted services



effected upon him. Hence, the Misc. Case No.3 of 2016 proceeded *ex parte* for hearing. In absence of any objection with regard to the proposed correction in the decree by the plaintiff-opposite parties, the court below ought to have allowed the application filed by the petitioner. It has erred in exercising the jurisdiction conferred upon it in effecting correction in clerical errors crept in regard to description of the land in the decree.

4. It would be evident from the perusal of the materials available on record that Title Suit No.267 of 1999 was decreed on 14.10.1999 in terms of compromise between the parties to the said title suit arrived at on 10.09.1999. The decree was prepared in terms of the compromise. The petitioner in his petition claimed that due to clerical mistake certain errors crept into the decree and the same required correction. The court below had called for the original record of Title Suit No.267 of 1999 and examined the same. Upon examination, it found that there was no discrepancy in the area of plots mentioned in the decree.

5. The operative part of the order impugned reads as under:-

“4. The original record of title suit no.267 of 1999 has been called for. Perused the plaint, evidence of witnesses and decree of title suit no.267 of 1999. The plaint no where mention that the total area of plot no.543 and 544 is 31 decimals. Similarly,



neither the compromise petition nor the evidences of the parties recorded in original title suit no.267 of 1999 mention the fact that the total area of plot no. 543 and 544 is 31 decimals. Even the present application does not aver any where that the total area of plot no.543 and 544 is 31 decimals. Therefore, the evidence on affidavit of the petitioner Akbar Ali is beyond the pleading and hence not admissible. The learned advocate appearing on behalf the petitioner has argued that the clerical error has caused immense loss and damage to the petitioner. He has also argued that the correction is required in the decree show that confusion of the petitioner may be cured and removed in the interest of justice. The same ground has been taken in the petition for the correction of the decree. The petition does not disclose as to how the petitioner has suffered loss or damage. It has also not disclosed the reason for confusion to the petitioner. The perusal of the plaint and decree of original title suit no.267 of 1999 does not show any discrepancy in the area of the plots. The perusal of the old record also shows that the petitioner filed misc. no.13 of 1999 on 16th of November 1999 for rejecting the compromise petition and also for setting aside the order dated 30th of September 1999 passed in title suit no.267 of 1999 which was later on compromise and dismissed vide order dated 14th of July 2000. This fact creates doubt on the truthfulness of the statement of petitioner that he got knowledge of the clerical mistake only after



more than 15 years of disposal of original suit no.267 of 1999.

5. The contention of the petitioner that there is discrepancy in the area of plots does not find support from the material available on the record. As the suit has been disposed of in terms of compromise; decree can not and should not be read in isolation rather it should be read only in conjunction with the compromise petition. There is no explanation of reason requiring filing of this misc. petition and also no ground has been mentioned in the petition raising confusion in the mind of petitioner. It is settled law that the executing court can not go behind the decree. Considering the above facts this court finds this Misc. Petition groundless and accordingly, it is rejected.”

6. Section 152 of the Code of Civil Procedure, 1908 provides that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties. The said provision beholds that after passing the judgment, decree or order, the court becomes *functus officio* and thus not entitled to modify or vary the terms of the judgments, decrees and orders earlier passed. The corrections permitted are of accidental slip or omission or clerical or arithmetical mistakes and not any other omission or



mistakes which the court might have been committed while passing the judgment, decree or order.

7. In the instant case, after perusal of the original record of Title Suit No.267 of 1999, the court has found no discrepancy in the area of plots mentioned in the decree and, thus, it has dismissed the application for correction filed by the petitioner after lapse of more than 16 years from the date of passing of the decree.

8. The order impugned is neither illegal nor perverse.

9. In that view of the matter, I am not inclined to interfere with the same in exercise of powers conferred under Article 227 of the Constitution of India.

10. The application of dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.07.2019
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