

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1194 OF 2014

1. Sumanbai Sitaram Kahane,
Aged: 57 years, Occu: Agricultural,
R/o: Taklimiya, Tal – Rahuri,
Dist. Ahmednagar

2. Hirabai Dhondya Ghodke
Aged: 33 years, Occu: Agricultural,
R/o: Ashvi (Kd), Tal – Dangamner,
Dist. Ahmednagar

... Petitioners

(Orig. Applicants & Plaintiffs No. 2 & 3
in RCS No.17/1989)

VERSUS

1. Sadashiv Shankar Kahane
Aged: 68 years,
Occu: Agricultural
R/o: Loni Kd,
Tal. Rahata, Dist. Ahmednagar

2. Sugandhabai Savleram Kahane
Aged: 64 years,
Occu: Agricultural

3. Pravin Savleram Kahane
Aged: 46 years,
Occu: Agricultural

4. Gorakh Savleram Kahane
Aged: 32 years,
Occu: Agricultural

5. Sagar Savleram Kahane
Aged: 30 years,
Occu: Agricultural

6. Lata @ Smita Suryakant Saindre
Aged: 48 years,
Occu: Agricultural

7. Ujwala Shankar Gunjal
Aged: 44 years,
Occu: Agricultural

8. Mangal Raju Lande
Aged: 35 years,
Occu: Agricultural,

R/o Resp. Nos.2 to 8:
Chas, Tal-Akole,
Dist. Ahmednagar.

9. Leelabai @ Janabai Kashinath Karpe
Aged: 35 years,
Occu: Agricultural,
R/o: Rumbhodi, Tal – Akole,
Dist. Ahmednagar

10. Bebi @ Vishrantabai Baban Diwate,
Aged: 48 years,
Occu: Agricultural
R/o: Loni Kd,
Tal. Rahata, Dist. Ahmednagar

11. Mandabai Gangadhar Durgude,
Aged: 49 years, Occu: Agricultural,
R/o: Chas, Tal-Akole,
Dist. Ahmednagar.

... Respondents

WITH WRIT PETITION NO.1258 OF 2014

Mandabai Gangadhar Durgude,
Aged: 49 years, Occu: Agricultural,
Permanent R/o: Chas Pimpaldari,
Tal- Akole, Dist – Ahmednagar,
Presently R/o- Gaurave Colony,
Shivaji Nagar, PO & Tal – Sangamner,
Dist: Ahmednagar.

... Petitioners
(Orig. Applicant)

VERSUS

1. Sugandhabai Savleram Kahane
Aged: 64 years,
Occu: Agricultural

2. Pravin Savleram Kahane
Aged: 46 years,
Occu: Agricultural
3. Gorakh Savleram Kahane
Aged: 32 years,
Occu: Agricultural
4. Sagar Savleram Kahane
Aged: 30 years,
Occu: Agricultural
5. Lata @ Smita Suryakant Saindre
Aged: 48 years,
Occu: Agricultural
6. Ujwala Shankar Gunjal
Aged: 44 years,
Occu: Agricultural

Resp. Nos.1 to 6 R/o: Chas Pimpaldari,
Tal – Akole, Dist – Ahmednagar

7. Mangal Raju Lande
Aged: 35 years,
Occu: Agricultural,
R/o: Otur, Tal – Junnar,
Dist. Pune.
8. Sadashiv Shankar Kahane
Aged: 68 years,
Occu: Agricultural
R/o: Sai Colony,
At & Po. Loni (Kd) Tal. Rahata
Dist. Ahmednagar
9. Suman Sadashiv Kahane
Aged: 56 years,
Occu: Agricultural,
R/o: Ashvi Kd, Tal- Sangamner,
Dist. Ahmednagar

10. Hirabai D/o Sitaram Kahane @
Hirabai W/o Dhondyabapu Ghodke
Aged: Major,
Occu: Agricultural,
R/o: Taklimiya, Tal – Rahuri,
Dist. Ahmednagar

11. Leelabai @ Janabai Kashinath Karpe
Aged: 35 years,
Occu: Agricultural,
R/o: Rumbhodi, Tal – Akole,
Dist. Ahmednagar

12. Bebi @ Vishrantabai Baban Diwate,
Aged: 48 years,
Occu: Agricultural
R/o: Oppo. Maruti Temple,
At & Po. Loni (Bk) Tal. Rahata,
Dist. Ahmednagar.

... Respondents

(Orig. Non-Applicants No.1 to 12)

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Mr. Vinod Y. Bhide, Advocate for the Petitioners in both petitions

Mr. Anant Devkate, Advocate for Respondent Nos.2 to 7

Mr. A. N. Nagargoje, Advocate for Respondent No.1 in WP/1194/2014

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 30th November, 2021

PRONOUNCED ON : 16th December, 2021

JUDGMENT :

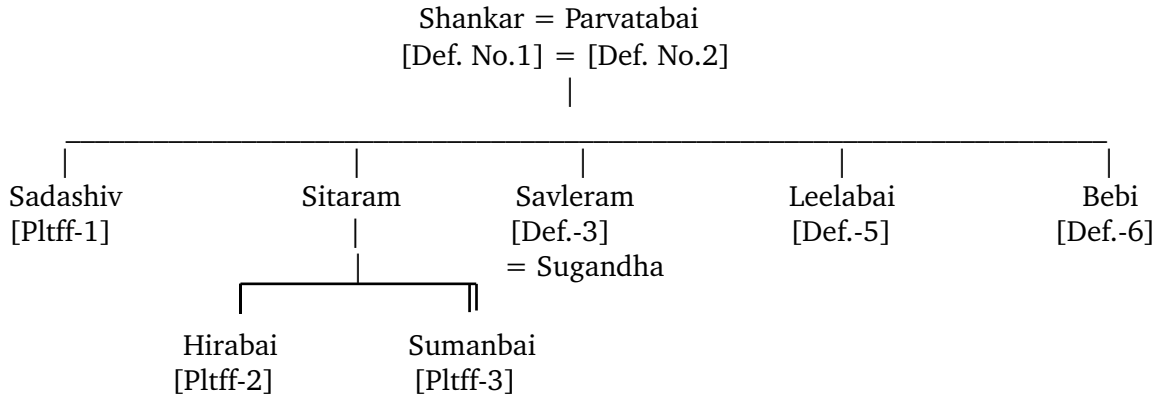
1. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. Since these petitions raise similar questions of law and facts, they were heard together and are being decided by this common judgment.

3. Writ Petition No.1194/2014 is filed by original plaintiff Nos.2 & 3 in R.C.S No.17/1989, challenging the judgment and order dated 30-09-2013, passed by the learned Joint Civil Judge, Junior Division, Akole, in M.C.A. No.02/2008, thereby rejecting the said application filed by original plaintiff Nos.2 & 3 in R.C.S No.17/1989, seeking correction of the judgment and decree in RCS No.17/1989, claiming that in terms of the finding recorded by the Trial Court, they should have been given 6/20th share, however, in the operative order of the judgment, they were given 1/4th share. Hence, they prayed that, the judgment be corrected and separate preliminary decree be passed accordingly.

Writ Petition No.1258/2014 is directed against the order passed by the Joint Civil Judge, Junior Division, Akole, below Exhibit-1 in M.C.A. No.7/2008, thereby rejecting the application of the petitioner seeking correction of preliminary decree. The petitioner herein purchased undivided 6/20th share of the original plaintiff Nos.2 & 3 in R.C.S. No.17/1989, by way of registered sale deed. On the basis of that, she sought correction in the judgment and decree.

4. Sadanshiv/original plaintiff No.1, Hirabai (daughter of Sitaram)/plaintiff No.2 and Sumanbai (wife of Sitaram)/plaintiff No.3 filed Regular Civil Suit No.17/1989 against respondent Nos.2 to 11 for partition and separate possession of ancestral property, by giving following genealogy:



5. The suit was decreed on 31-03-1993 and a preliminary decree was passed.

6. Regular Darkhast No.83/1998 was filed on 17-09-1998 seeking execution of the preliminary decree. The plaintiff Nos.2 & 3 filed M.C.A. No.02/2008 seeking correction in the judgment and decree, praying for giving them 6/20th share jointly. The application was opposed by respondent No.1-Sadashiv. The Trial Court rejected the said application. This order is impugned in Writ Petition No.1194/2014.

The petitioner in Writ Petition No.1258/2014 claiming to be purchaser of undivided 6/20th share of the petitioners in Writ Petition No.1194/2014 filed M.C.A. No.07/2008 seeking correction of judgment and decree. The said application is rejected and the rejection order is impugned in Writ Petition No.1258/2014.

7. Heard the learned advocate for the respective petitioners and learned advocate for the respective respondents.

8. Shri. Bhide, the learned advocate for the petitioners in both petitions, submitted that, the Trial Court has erred in rejecting the application by ignoring provisions of Order 20 Rule 18 (1) (2) and Section 152 of the Code of Civil Procedure (for short "C.P.C."). He submits that, the situation prevailing at the time of passing of the preliminary decree, ought to have been taken into consideration by the Trial Court for considering the relief of correction in decree. However, the Court has erred in considering subsequent events which rendered the impugned order unsustainable. He submits that, though the Trial Court has observed in the judgment that on the death of father - Shankar, his share will have to be distributed amongst his three sons and two daughters, thus, the share of plaintiff No.1 – Sadashiv will be his individual $\frac{1}{4}^{\text{th}}$ share + $\frac{1}{20}^{\text{th}}$ share from the share of his father, therefore, his share will be $\frac{6}{20}^{\text{th}}$. Similarly, the original plaintiff Nos.2 & 3 are jointly granted $\frac{1}{4}^{\text{th}}$ share + $\frac{1}{20}^{\text{th}}$ share which would go to the share of deceased – Sitaram. Thus, they will be entitled to $\frac{6}{20}^{\text{th}}$ share.

In respect of Writ Petition No.1258/2004, he submitted that since the petitioner has purchased undivided $\frac{6}{20}^{\text{th}}$ share of the original plaintiffs, she was right in seeking correction of judgment and decree and the Trial Court has erred in rejecting her application seeking

correction of the judgment and decree. He, therefore, submitted that both the petitions deserves to be allowed.

9. In support of his submissions, he placed reliance in **Ajabrao S/o Kisanrao Ingole Vs. Dnyaneshwar Kisanrao Ingole** reported in 2009 (4) ALL MR 773, **Shrihari (Dead) through LR. Smt. Ch. Niveditha Reddy Vs. Syed Maqdoom Shah and Others** reported in 2014 AIR SCW 6068, **Samarendra Nath Sinha & Another Vs. Krishna Kumar Nag** reported in AIR 1967 Supreme Court 1440, **Lakshmi Ram Bhuyan Vs. Hari Prasad Bhuyan and Others** reported in AIR 2003 Supreme Court 351 and **Jagannath More and Another Vs. Ramesh Mahadu Bhagwat & Others** reported in 2021 (4) ALL MR 360.

10. Per contra, the learned advocate for respondent No.1/Sadashiv vehemently opposed the prayer of the petitioners. He submits that, the petitioners have sold entire property from Survey No.26/5 i.e. 1 Hectare 87 R, thus they cannot claim that they have sold their 6/20th share, which is not permissible. He further submitted that, petitioner in Writ Petition No.1258/2014 has already filed R.C.S. No.58/2007, seeking declaration and injunction in respect of the suit property. According to him, the application filed by the petitioner was under Section 47 of C.P.C. and not under Order 20 Rule 18 (1) (2) and Section 152 of C.P.C.. He, therefore, submits that there is no substance in the petition filed by the petitioner and the same is liable to be dismissed.

11. The learned advocate for respondent Nos.2 to 7 submits that, final decree is yet to be passed in the present matter and the petitioners have an alternate remedy.

12. Perusal of the record reveals that the Trial Court, while allowing the suit, has made following observations in Para-4 of the judgment:

“Hence, I hold that the suit claim is proved by the evidence of this witness of the plaintiffs. There will be 4 equal shares for the partition of the suit property i.e. $\frac{1}{4}$ th to each brother and $\frac{1}{4}$ th to their father. Now the father being dead his share will be inherited by his sons and daughters. There will be no share to the Defendant No.4 as she is the wife of Defendant No.3. Hence plaintiff No.1 will be granted his individual $\frac{1}{4}$ th share plus $\frac{1}{20}$ th from the share of his father. Hence his share will be $\frac{6}{20}$ th and $\frac{1}{4}$ th share will be jointly granted to the Plaintiff Nos.2 and 3.”

13. It is clear from the above observations that the trial court has partitioned the suit property by giving respective shares admissible to the plaintiffs and defendants. The Trial Court taking into consideration the death of father Shankar (defendant No.1) and his wife (defendant No.2) concluded that plaintiff No.1 is entitled to $\frac{6}{20}$ th share i.e. his individual $\frac{1}{4}$ th share + $\frac{1}{20}$ th share from the share of his father. The same ought to have been applied in the case of plaintiff nos.2 and 3. The Trial Court granted $\frac{1}{4}$ th share jointly to the plaintiff nos.2 & 3. However, it failed to grant $\frac{1}{20}$ th share of defendant No.1 which would have fallen to the share of deceased Sitaram, father of plaintiff No.2 and husband of

plaintiff No.3. Thus, plaintiff Nos.2 and 3 were entitled for 6/20th share jointly. The said mistake on the part of the Trial Court while deciding the share of plaintiff Nos.2 and 3 appears to be inadvertent and bonafide mistake.

14. Section 33 of CPC provides that after hearing the case, the Court shall pronounce judgment, and on such judgment a decree shall follow.

15. Section 152 of CPC 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.”

16. In view of Section 152 of C.P.C., plaintiff Nos.2 & 3 were right in filing Regular Inquiry Application No.2/2008 before the Trial Court, seeking a declaration that in the suit properties of Regular Suit No.17/1989, it be declared that plaintiff Nos.2 & 3 were having 6/20th share instead of 1/4th and a separate preliminary decree be passed accordingly. The inadvertent omission on the part of the Trial Court in specifying 6/20th share to be allotted to the Plaintiff Nos.2 & 3, needs to be corrected by invoking Section 152 of C.P.C.

17. In **Samarendra Nath Sinha & Another** (Supra), the Hon’ble Apex Court held thus;

“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. Swira*(1) "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."

In *Janakirama Iyer v. Nilakanta Iyer*, AIR 1962 SC 633 the decree as drawn up in the High Court had used the words "mesne profits" instead of "net profits". Infact the use of the words " mesne profits" came to be made probably because while narrating the facts, those words were inadvertently used in the judgment. This court held that the use of the words "mesne profits" in the context was obviously the result of inadvertence in view of the fact that the decree of the Trial Court had specifically used the words " net profits" and therefore the decretal order drawn up in the High Court through mistake could be corrected under sections 151 and 152 of the Code even after the High Court had granted certificate and appeals were admitted in this court before the date of the correction. It is true that under O. 20 R. 3 of the Code once a judgment is signed by the Judge it cannot be altered or added to but the rule expressly provides that a correction can be made under section 152. The Rule does not also affect the court's inherent power under section 151. Under section 152, 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 on its own motion or on an application by any of the parties. It is thus manifest that errors arising from an accidental slip can be corrected subsequently not only in a decree drawn up by a ministerial officer of the court but even in a judgment pronounced and signed by the court.

18. In **Lakshmi Ram Bhuyan** (Supra), the Hon'ble Supreme Court held that if the decree drawn by the Trial Court does not clearly specify the extent and manner of relief qua intention expressed in the judgment,

the successful party can move the High Court under Section 152 of C.P.C. seeking appropriate rectification of judgment. Section 152 of C.P.C. provides for clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission being corrected at any time by the Court either on its own motion or in the application of any of the parties. In that case, the Supreme Court found that there is an accidental slip or omission in manifesting the intention of the Court by couching the reliefs to which the plaintiff were entitled, in the event of their succeeding in the suit. It was held that Section 152 enables the Court to vary its judgment so as to give effect to its meaning and intention. The Hon'ble Apex Court, therefore, set aside the Trial Court's order or drawing up the decree which did not specifically set the relief. Liberty was granted to the parties to move the High Court under Section 152 of C.P.C., seeking appropriate rectification in the judgment of the High Court.

19. In **Jagannath More and Another** (Supra), the learned Single Judge of this Court held that under Section 33 it is imperative that a decree must follow the judgment. Therefore, by statement of reason, once judge conclusively determines rights of the parties, with regard to the matter in controversy and the decree follows the judgment. It is further held that there is no dispute as to fact that there is no period of limitation for filing an application under Section 152 which is an inherent power of

the Court to vary, amend the decree. It is therefore held that it is settled law that every Court has inherent power to vary amend the decree, so as to carry out its own meaning. In so doing, it does nothing but exercise a power to correct the mistake in the decree or order that was drawn up. As well, there is no dispute as to fact that there is no period of limitation for filing an application under Section 152.

20. In **Shamlal Vs. Girish AIR 1962 Pat. 116**, it is held that the decree may be amended under this Section at any time, although the time for appealing from the decree was expired. As such, in this case though the application for amendment of the decree was made in 2016 the same is maintainable and can be entertained.

21. The principles laid down in the above ratio's support the case of plaintiff Nos.2 & 3/petitioner in Writ Petition No.1194/2014.

22. The Trial Court, while rejecting the application filed by plaintiff Nos.2 & 3, has erroneously proceeded to take into consideration the subsequent events/developments which were not relevant for deciding M.C.A. No.2/2008. The Trial Court ought to have considered the said application strictly within the parameters of Sections 33 and 152 of C.P.C. The impugned judgment of the Trial Court rejecting the application filed by original plaintiff Nos.2 & 3 is, therefore, unsustainable in law and facts of the present case. The matter is required to be remanded back to

the Court for consideration of M.C.A. No.2/2008 by keeping in mind the ratio in the aforestated rulings and the observations made herein above.

23. Admittedly, the petitioner in Writ Petition No.1258/2014 was not a party to R.C.S. No.17/1989 and merely because, she has purchased 6/20th share from the plaintiff Nos.2 & 3, she is not entitled to seek correction in the decree. It is not possible to accept the submission of the learned advocate for the petitioner that since she has purchased the undivided 6/20th share of original plaintiffs Nos.2 & 3, she has a right to seek correction in the decree. The petitioner has already filed R.C.S. No.58/2007 in respect of the suit property, which the petitioner may prosecute. The petitioner is also entitled to avail any other remedies as may be available in law. The application filed by the petitioner seeking correction in the decree, in my opinion, is rightly rejected by the Trial Court. I do not find any illegality or perversity in the order impugned in the present petition. There is no substance in the petition filed by the petitioner.

24. In the result, the following order:

(a) Writ Petition No.1194/2014 is allowed.

(b) The impugned order passed by the Joint Civil Judge, Junior Division, Akole in M.C.A. No.02/2008. is hereby quashed and set aside.

(c) The M.C.A. No.2/2008 is remanded back to the Trial Court which the Trial Court shall decide by keeping in view the provisions of Sections 33 and 152 of CPC and the observations made here-in-above. The application shall be decided, as expeditiously as possible, in any case within a period of three months from the date of receipt of the writ of this order.

(d) Writ Petition No.1258/2014 is dismissed.

(e) Rule is made absolute to the above extent. No order as to costs.

(NITIN B. SURYAWANSHI, J.)