

IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 12853 / 2019

1. Jagannath More
Age : 85 years, Occupation : Business.
2. Ramesh Shankar More
Age : 51 years, Occupation : Business.
3. Alka Prakash More
Age : 53 years, Occupation : Household,
4. Sachin Prakash More,
Age : 35 years, Occupation : Business,
5. Suresh Govind More,
Age : 63 years, Occupation : Business,
6. Sunil Govind More,
Age : 46, Occupation : Business,
7. Chitalee Deepak Pawar,
Age : 26 years, Occupation : Household,

All R/o – Municipal House No.434,
More-Wada Vakilwadi,

Ashok-stambh Nashik.

.. Petitioners

Versus

1. Ramesh Mahadu Bhagvat,
Age : 68 years, Occupation : Business,

2. Hemant Ramesh Bhagvat,
Age : 40 years, Occupation : Business,

Both R/o : 8, Surya Society,
Kaushalya Nagar, Ramwadi,
Panchavati, Nashik – 3

.. Respondents

Mr. Milind M. Sathaye, Advocate for Petitioner.

Mr. Shriram S. Kulkarni, Advocate for Respondent No.2.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 23rd MARCH, 2021.
PRONOUNCED ON : 30th APRIL, 2021.

JUDGMENT :-

1. Rule.

2. Rule made returnable forthwith. Heard. finally with the consent of the parties.

3. Petitioners-Landlords are decree holders. Their Civil Miscellaneous Application No.184 / 2018, seeking for corrections in the decree was rejected on 12th July, 2019 by learned District Judge – I, Nashik. Against this order, Petition under Article 227 of the Constitution of India is preferred.

4. Briefly stated Petitioners' case is;

Petitioners-Landlords sought decree to recover possession of the suit property ad-measuring 5 x 3 square meters, of house no. 434 at Nashik, for their bonafide and reasonable need. Landlords alleged the tenant/ respondent, encroached upon and erected permanent structure, beyond the area of suit property. Thus alleged tenant was found occupying area ad-

measuring 33.45 square meters of house no. 434, as against the 15 square meters. The bonafide need of the Landlords was upheld by the trial and Appellate Court. Civil Revision Application preferred by the tenant was dismissed. The Special Leave Petition (SLP) was also dismissed.

5. The Courts below rendered a finding, the property let out to the tenant was ad-measuring 20 x 20 square feet and not just 15 square meters. Reliance was placed on a document, Usanwar Pavti (Rent note Exhibit-49) executed between the parties. Courts below held thus;

“From this documentary evidence, it is crystal clear that Defendant (tenant) is in possession of area ad-measuring 400 square feet, since inception of the tenancy. (*Emphasis supplied*).

. The learned trial Court framed following issue; ‘whether plaintiffs proved that Defendant encroached over the rest of the premises of the plaintiffs and thereby breached the terms and conditions of the tenancy’ and answered as follows;

“Issue No.3 : The next ground for eviction is that the defendant encroached over the adjoining premises of the plaintiffs and thereby breached the terms and conditions of the tenancy. P.W.1 Jagannath More disc“The learned Advocate of the appellant has argued that the learned lower court held that there was no encroachment and the findings were given with proper reasoning. There is an admission by the Plaintiffs about Usanwar patra Exh.49 which is dated 9.9.1974 and the Municipal Record is for the year 1975-76 after the said Usanwar Patra was executed, but the Plaintiffs have not made any grievance at the relevant time when Usanwar patra was executed. Therefore, at this juncture, what is demised premises in the possession of appellant is since the time when they entered into the contract of tenancy and the possession is to be taken into consideration and the learned lower court

was rightly held that appellant is in possession of 20 x 20 Sq.Feets premises. Hence, it need not to answer the issue of encroachment in the affirmative as submitted by learned Advocate of the respondents in cross objection."losed in his evidence that the area of 15 sq. mts. was let out to defendant, but at present he is in possession of area admeasuring 33.45 sq.mts. Admittedly there was no written rent note between the parties. P.W.1 has also not disclosed in his evidence that on which date, month and year the defendant encroached over the adjoining premises. The plaintiffs have also not produced the counter part of the rent receipt in order to establish that what area was let out to the defendant. The learned advocate for the defendant urged that approximately area admeasuring 20' x 20' was let out to the defendant on monthly rent of Rs. 160/-. There was a Usanwar Pavti between the plaintiffs and defendant wherein the measurement of the demised premises was mentioned. The defendant has produced the original Usanwar Pavti at Exh.49 which was in between the present defendant and present plaintiff No.1 Jagannath and father of the plaintiff Nos. 2 to 5. The learned advocate for the plaintiffs urged that such type of Usanwar Pavti was never executed between the

parties. It is significant to note that it was specifically questioned to P.W.1 during his cross examination about Usanwar Pavti Exh. 49. P.W.1 admitted in the cross-examination that he and his brother had executed usanwar pavti on 9/9/1974, Usanwar Pavti Exh.49 was also shown to him during the cross-examination, he admitted signature of him and his brother appearing in exh.49. He also admitted the recitals therein to be true and correct. Thus, it is established from the aforesaid admission that said Usanwar Pavti was executed in between the parties. I have gone through the recitals of Exh.49 wherein it is specifically mentioned that the premises i.e. House No. 434 admeasuring 20' x 20' is let out to Ramesh Bhagat i.e. the present defendant. From this documentary evidence it is crystal clear that the defendant is in possession of the area admeasuring 400 sq.ft. Since inception of the tenancy. Thus, the plaintiffs have failed to establish that the defendant encroached over adjoining premises and hence, I answer Issue No.3 in the Negative.”

5. Tenant preferred the Regular Civil Appeal, wherein Landlords had preferred cross-objections, against the finding

on issue no. 1 to 3. The Appellate Court dismissed the cross-objections and vide Paragraph No. 8 of its judgment confirmed of all the findings of facts rendered by the trial Court. In Paragraph No.8, Appellate Court has held thus;

“The learned Advocate of the appellant has argued that the learned lower court held that there was no encroachment and the findings were given with proper reasoning. There is an admission by the Plaintiffs about Usanwar patra Exh.49 which is dated 9.9.1974 and the Municipal Record is for the year 1975-76 after the said Usanwar Patra was executed, but the Plaintiffs have not made any grievance at the relevant time when Usanwar patra was executed. Therefore, at this juncture, what is demised premises in the possession of appellant is since the time when they entered into the contract of tenancy and the possession is to be taken into consideration and the learned lower court was rightly held that appellant is in possession of 20 x 20 Sq.Feets premises. Hence, it need nor to answer the issue of encroachment in the affirmative as submitted by learned

Advocate of the respondents in cross objection.”
(Emphasis supplied)

6. Thus, fact-finding Courts held, since inception of the tenancy, premises ad-measuring 20 x 20 feet, was in possession of the tenant. This finding was based on Exh.-48 and admission of the tenant. As a consequence, both the Courts, held, tenant had not encroached over the area in excess of area of suit premises.

7. Petitioners-Landlords put the decree to execution. In the schedule of property, they described, suit property, as Municipal House No. 434, ground floor area ad-measuring 5 x 3 meters. The execution was obstructed by, Hemant Bhagwat (Son of Judgment Debtor-tenant- hereinafter, called ‘Obstructionist’). Ignoring the findings of two Courts, as stated above, in relation to area of suit property, Obstructionist claimed his possession over an area admeasuring 168 sq.ft of House No.434; may be because,

landlord was claiming possession, of property admeasuring 5 x 5 meters. Two Courts below rejected his claim. The Civil Revision Application No. 686 / 2013 preferred by the Obstructionist was also dismissed, wherein this Court had observed thus;

“Mr. Agrawal also did not contend before me that the Petitioner has any right, title or interest in respect of the suit premises in Regular Civil Suit No. 66 / 2000. In my opinion, having regard to this, the application made by the Petitioner under Order-21, Rule-97, itself was misconceived. A person claiming some semblance of interest in respect of the suit property can obstruct the decree and in such situation, the proceedings under Order-21, Rule-97 can be taken out. In the present case, the Petitioner is not claiming any interest in the suit property. In view thereof, I do not find that the Courts below committed any error in dismissing the application made by the Petitioner under Order-21 Rule-97. In the result, no case is made out for invocation of powers under Section 115 of CPC. The Civil Revision Application falls and same is dismissed.”

8. In January, 2016, Petitioners-Landlords filed an application in Darkhast No. 113 / 2013 for seeking amendment of the plaint and correction in decree, qua area of suit property i.e. area ad-measuring 20 x 20 square feet instead of 5 x 3 meters. Civil Judge, Senior Division, vide order dated 22nd June, 2018, permitted corrections in decree subject to cost of Rs. 1000/-. This order was challenged in Writ Petition No. 9251/2018 before this Court. The Order granting amendment was challenged on the ground that the application for amendment was not maintainable before the trial Court, since its decree had merged in Decree in Civil Appeal. The learned Counsel appearing for the Landlords in the said Petition, made a concession and sought leave withdraw the application preferred before the Civil Judge, Senior Division, Nashik, with liberty to file application before the District/ Appellate Court. Whereafter, the Landlords –

Decree Holder filed Miscellaneous Application No. 184/2018, seeking amendment in plaint and corrections in the decree passed in RCS No. 66 / 2000. The learned District Court rejected the said application, on the ground, that eviction decree has been drawn for an area ad-measuring 5 x 3 square meter of house No. 434 and there is nothing on record to show that it was clerical or arithmetical mistake, arising from any accidental slip or omission. Thus, Appellate Court declined to exercise of powers under Section 152 of CPC, but observed, since the terms of the decree are vague and ambiguous, it is the duty of the executing Court to interpret the same and ascertain the exact meaning thereof. The learned Judge concluded the order by observing thus;

“Whether the particular property is or is not included in the decree will have to be considered by the executing Court and not by the Court passing the decree. Therefore, in my humble opinion, the

applicants are having equally efficacious alternative remedy under Order-21 Rule-10 and Section 47 of the CPC. This Court being not executing Court cannot interpret the decree. The application stands rejected.”

9. It is against this order, the Landlords have preferred this Petition under Article 227 of the Constitution of India.

10. Heard. learned Counsel for the parties.

11. Mr. Sathaye, learned Counsel for the Petitioners submitted that the trial Court as well as the Appellate Court have conclusively held that property let out to the tenant was 20 x 20 feet of house no. 434, as was evident from the Rent-note, a document at Exhibit-49. Mr. Sathaye submitted reasoning of the trial Court in Paragraph No. 15 of its judgment indicates this finding has been rendered, in view of

the admission by tenant that he was inducted in the premises i.e. House No. 434 ad-measuring 20 x 20 at monthly Rent of Rs. 160/-. Submission, is that once finding is recorded that tenanted area was ad-measuring 20 x 20 feet of house no. 434, decree, ought to have been drawn, in terms of finding and therefore, Landlord cannot be denied right to execute the decree to the extent of area let-out to tenant, merely because lesser area was described in the plaint and in the decree.

. Mr. Sathaye submitted that when the Court conclusively and finally determined the rights of the parties with regard to all or any of the matter in controversy in suit, a decree is to be drawn in terms, of rights determined by the Courts. In support of his contention Mr. Sathaye relied on the definitions of the 'decree' and of 'judgment' in Civil Procedure Code, 1973. Besides, he submits the provision of Section 153 is enabling in character which permits the Court

of first instance also to correct an error in the decree irrespective of the fact, that the decree had merged in the decree of a superior Court. On this proposition, Mr. Sathaye relied on the judgment of Allahabad High Court, in the case of **Ram Bharosey Lal Revisionist Vs. Rameshwar Dayal Chakkiwala and Anr.** (*AIR 984 Allahabad 167*). Mr. Sathaye submitted that rules of procedure are intended to be a handmaid to the administration of justice and thus a party cannot be refused just relief merely because of some mistake, negligence, inadvertance or even infraction of rules of procedure. He relied on the judgment of Hon'ble Apex Court in the case of **Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon** (*1969 (1) SCC 869*). On these grounds, he seeks the correction in the decree.

12. Per-contra, Mr. Kulkarni, learned Counsel for the Obstructionist and Judgment-Debtor, submits that after the trial Court had rendered the finding that the Plaintiff could not establish encroachment by the tenant over premises beyond the suit premises, the Landlord had preferred the cross-objections and persisted his stand that property let out to the tenant was ad-measuring 5 x 3 meters. Mr. Kulkarni submitted, though the decree was passed in 2005 and although the finding was rendered that property ad-measuring 20 x 20 feet was let out, since inception, the Landlords instituted the execution proceedings and described the suit property, as house no. 434 ad-measuring 5 x 3 meters. Mr. Kulkarni submitted nearly after nine years i.e. in 2016 for the first time, an application was moved seeking correction in decree and amendment to the plaint qua area of suit property. Mr. Kulkarni submits, since from institution of the

suit (in 2005), in all proceedings landlord asserted his claim to recover area ad-measuring 5 x 3 square meters and therefore now he cannot claim that premises let-out, was 20 x 20 feet ant not 5 x 5 meters. Mr. Kulkarni submitts the Obstructionist, has instituted the suit to establish his rights over the property ad-measuring 9 x 18 feet of house no. 434. He therefore, submits recourse cannot be taken to provisions of Section 152 and/ ore 153, to correct the decree, since mistake of which correction is sought is neither accidental or clerical.

13. Discussions and Reasons : As the object of an amendment is to harmonise the decree with judgment sought to be enforced question is; Whether both the Court were justified in rejecting Petitioners' application for seeking correction in the decree as sought therein?

14. Section 2 (9) of Civil Procedure Code, 1908 says judgment means the statement given by the Judge on the grounds of a decree or order. Therefore judgment must contain the grounds of the decision. Yet judgment stands on a different footing from the decree. The legislature has avoided the use of words 'formal expression' in the definition of judgment, though the words 'formal expression' have been used in the definition of 'order' in Section 2(14). Conversely, it is not necessary that in a decree, there should be a statement of reasons given by the judge. Statement of reasons is to be given by the judge, only in the judgment. The decree is the formal expression of conclusions arrived at in the judgment.

. What a judgment should contain is indicated in Order-20, Rule-4(2); which says that a judgment, shall contain a

concise statement of the case; the points for determination, the decision thereon, and the reasons for such decision. It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. It is settled law that the process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.

15. The meaning, attributes and contents of the judgment have been explained by the Hon'ble Apex Court in the case of **Smt. Swaran Lata Ghosh Vs. Harendra Kumar Banerjee AIR 1969 SC 1167 : (1969) 1 SCC 709.**

“Trial of a civil dispute in Court is intended to achieve, according to law and the procedure of the Court, a judicial determination between the contesting parties of the matter in controversy. Opportunity to the parties interested in the dispute

to present their respective cases on question of law as well as fact, ascertainment of facts by means of evidence tendered by the parties and adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial. In a judicial trial, the judge not only reach must a conclusion which he regards as just, but, unless otherwise permitted, by the practice of the Court or by law, he must record the ultimate mental process leading from the dispute to its resolution. A judicial determination of a disputed claim where substantial question of law or fact arise is satisfactorily reached, only if it be supported by the most cogent reasons that suggest themselves to the Judge; a mere order deciding the matter in dispute but not supported by reasons is no judgment at all.”

16. The expression decree is defined in Section 2(2) of the Code of Civil Procedure, 1908.

“ ‘Decree’ means the formal expression of an adjudication which, so far as regards the Court

expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within ⁷⁴***] Section 144, but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

Explanation – A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.”

17. The Definition of Decree has the following essential elements:

- (i) there should be adjudication;
- (ii) the adjudication should determine the rights of parties regarding the matter in controversy;

(iii) the adjudication should be in a suit and the adjudication should be formal and conclusively so far as that court is concerned;

. Expression conclusively determines must be one, which is complete and final as regards the court which passed it. The another essential element is rights of parties with regard to all or any of the matters in controversy in the suit. The expression matter in controversy in the suit means such matter as has been brought up for adjudication by the court through the pleadings. Hence, the conclusive determination in order to amount to a decree must be on matters in controversy in the suit.

18. In the case of **Kanji Hirji Vs. Jivraj Dharamshi, AIR 1976 Gujarat 152**; it is held that a decision on the question of possession as between the landlord and his tenant

in a suit under the Rent Act is a decision on the rights of the parties and is a decree. Further held that if a decree is not drawn up, it does not mean that the order of the Court by which rights of the parties are finally adjudicated upon, is not a decree.

. In the case at hand, the trial Court, as well as the Appellate Court have conclusively held tenanted area was 400 square feet, since inception of tenancy. Therefore, rights of the parties with regard to matter in controversy has been conclusively determined, which is a “statement of reasons” given by the Judge. In the backdrop of these facts, another question is; whether the provision of Section 33 of the C.P.C. were correctly followed and applied? Section 33 of C.P.C. says the Court after the case has been heard, shall pronounce judgment and ‘on such judgment’ a decree shall follow. Under the section, 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 matter in controversy and decree follows the judgment. As such scheme of Civil Procedure Code does not admit inconsistency in rights concluded in judgment and decree drawn. Herein, two fact finding Courts, conclusively determined the rights of the parties with regard to suit property by rendering the finding, that tenant was in possession of the suit property ad-measuring 400 square feet since the inception of tenancy, and too in accordance with document at Exhibit-49. This finding was confirmed in a revision by this Court and Special Leave Petition (SLP) preferred by the tenant, was dismissed. Therefore, in terms of Section 33 of CPC, decree ought to have been drawn in terms of finding rendered by the trial Court, while answering issue no.3 and reasoning articulated in paragraph no.8 of the

Appellate Court.

19. Therefore once, Courts have conclusively determined the rights of the parties in respect of the suit property, it was imperative that a decree must follow the judgment. However if not followed or failed to follow or omitted to follow for whatever reason, the question is; whether the Court is empowered to correct the decree in exercise of powers under Sections 151 and 152 of C.P.C. In the case of **Namdeo Amrut Gohane Vs. Narayan Shamrao Deshmukh AIR 1971 Bombay 121**, the facts were, the plaintiff-respondent therein had filed the suit for recovery of Rs. 6136/- and also for a charge on the suit field for this sum. The plaintiff therein had sold a field to the defendant for Rs. 5,500/-. A sum of Rs. 300/- was paid on the date of executing the agreement as earnest money by the defendant. Under the

agreement, the defendant was to pay the balance consideration by installments. He was to pay first installment of a sum of Rs.1300/- on 15-02-1960 and to go on paying Rs.1300/- every year till the last installment on 15-02-1963. Because he had not paid any installment, the plaintiffs had filed the suit for the unpaid price of the field. The trial Court dismissed the plaintiffs' suit. Therefore, they went in appeal before the District Court, Nagpur. The District Court passed the decree in favour of the plaintiffs. However, there was an omission in the decree drawn regarding the charge on the field which was the subject matter of the sale and on account of which the unpaid amount was not paid. The plaintiffs had, therefore, applied under Sections 151 and 152 of the C.P.C. stating that they had filed a suit not only for the recovery of an unpaid price but also claimed a charge decree on the property. Their contention in the application

was the Appellate Court had allowed the appeal and decreed the suit but the decree drawn up, did not mention that the decretal amount would be a charge on the property in suit. In the backdrop of these facts, it was held;

“Under Section 151, the Court in interests of justice, can pass an order even correcting the decree, unless it is prohibited by Code or other Statutes. Where there has been a clerical or arithmetical mistake or an error arising from accidental slip or omission Court can amend or vary a decree under Section 152. A decree though formal, must reflect all the adjudication by Court. It should be drawn up in such a way as to make it self-contained and a reflection of all important relief’s given by judgment. Where the decree did not conform to judgment intended to be enforced by it, decree could certainly be amended under Section 152 to bring it in conformity with intention that was expressed in judgment. The amendment of course, will not be allowed if it is not in furtherance of judgment. As the object of amendment is to harmonise decree with judgment sought to be enforced by it test for deciding whether an amendment should be allowed or not is whether

the decree represents the intention of the judge who made it. Even otherwise judge could allow amendment under Section 151 if in the interests of justice he had to make the decree in conformity with the judgment.”

20. In the case of **Jet Ply Wood Pvt. Ltd. Vs. Madhukar Nowlakha Ltd. AIR 2006 SC 1260**, the Hon’ble Apex Court has held thus;

“the provisions of the C.P.C. is not a exhaustive for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. The principle is well established that when C.P.C. is silent regulating the procedural aspect, the inherent powers of the Court can come to its aid for doing real and substantial just between the parties. However, the power under this Section relates to the matter of procedure and if the rule of procedure

resorts in justice and there is no remedy. Let can resort the Provision of Sections 151 and 152 of CPC. Section 151, however does not confer any powers to only indicate that there is a power to need such order as may be necessary for achieving the ends of justice and also to prevent an abuse of process of the Court.”

21. The Hon’ble Apex Court in the case of **Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal AIR 1962 SC 527**, has held thus;

“Section 151 itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to

do justice between the parties before it. Further, when the Code itself recognizes the existence of the inherent power of the Court, there is no question of implying any powers outside the limits of the Code.”

22. Herein, two fact-finding Courts have rendered a finding of fact that the tenant was in possession of suit premises ad-measuring 400 square feet, since inception of the tenancy. This finding was in accordance with Rent note. Yet the decree was not drawn in accordance, with finding, which was otherwise imperative in terms of Section 33 of C.P.C. Thus, in the circumstances, the petitioner has correctly applied under Section 151 read with 152 of CPC to contend, where the decree did not conform to judgment intended to be enforced by it, decree should be amended under Section 152 to bring it in conformity with intention that was expressed in the judgment. At the cost of repetition, it may be stated that both the Courts by rendering finding that tenant was in

possession of premises ad-measuring 400 square feet and since ordered eviction, it was intended that eviction decree would be of the premises, ad-measuring 400 square feet. It may also be stated that the Petitioner is not seeking more, in furtherance of the judgment. His prayer is to say let decree, be drawn in conformity with the intention expressed in the judgment. The object of amendment as held in Gohanes' case (supra), is to harmonise the decree with the judgment which represents the intention of the judgment who made it. Therefore, in my view the Courts below ought to have corrected/ amended the decree, in the interest of justice to harmonise it with judgment, for doing real and substantial justice between the parties.

23. It is settled law of 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. In the Case of **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 has expired. As such, in this case though the application for amendment of the decree was made in 2016, it was a maintainable.

24. In consideration of the facts of the case and for the reasons stated, Writ Petition is allowed in terms of prayer clause (b) and Rule is made absolute in terms thereof, with no order as to cost.

25. At the request of Mr. Kulkarni, learned Counsel for respondent no.2, the operation of order is stayed for a period of 8 weeks.

(SANDEEP K SHINDE J)