

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

CR 1758 of 2021 (O&M)

Date of Decision: December 07, 2021

Nirmal Singh and another ...Petitioners
Versus
Kewal Singh and others ... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Vivek Salathia, Advocate
for the petitioners.

Mr. Manish Prabhaker, Advocate
for respondent No. 1

Mr. Vikas Gupta, Advocate
for respondents No. 2 and 3.

FATEH DEEP SINGH, J. (Oral)

A suit for possession and mesne profits/damages was filed by the then plaintiff Kewal Singh (now respondent) against Pal Singh and others and the Court of learned Civil Judge (Senior Division) Amritsar vide judgment and decree dated 10.02.2011 and which suit of the plaintiff of possession by way of specific performance stood decreed with costs. The

Court in the decree as per the pleadings had detailed the property besides other khasra No. 4//15 (6-10) and which was there in the plaint of the plaintiff and which finding was upheld in first appeal by the Court of learned additional District Judge, Amritsar who through judgment and decree dated 27.04.2012 dismissed the appeal. In regular second appeal, this Court dismissed the same vide judgment dated 14.12.2016 followed by an execution application by the decree holder. The Court of learned Civil Judge, Senior Division, Amritsar directed its reader to be the local commissioner and execute sale deed in favour of the decree holder. As a consequence of which, the sale deed of land measuring 7 kanal 7 marlas as per the judgment and decree was registered and a sum of Rs. 3,90,500/- was paid as the market value and mutation was duly incorporated. It was during the course of entry in the revenue record objection was raised over one of the khasra number being wrongly mentioned. It is, thereafter, a prayer for amendment of the decree was made to incorporate Khasra No. 41//15 (6-10) in stead of khasra

No. 4//15 (6-10) and vide order dated 13.08.2021 the Executing Court of learned Civil Judge, Senior Division Amritsar an application under Section 151 read with Section 152 CPC for amendment of the judgment and decree which was moved by the decree holder stood allowed. The same is the subject matter of the instant revision.

Heard Mr. Vivek Salathia, Advocate for the petitioners, Mr. Manish Prabhaker, Advocate for respondent No. 1 and Mr. Vikas Gupta, Advocate for respondents No. 2 and 3 and perused the records.

Section 152 and 153 A deals with amendment of the decree or order. Section 152 CPC as per plain reading of the provisions shows that it is limited to amendment which is clerical or arithmetical in nature and to the mind of this Court power of the Court under Section 152 CPC is limited to rectification of clerical and arithmetical errors arising from any incidental slip or omission, which is based on the principle/maxim “actus curiae neminem gravabit” which

means that act of the Court shall prejudice no man and thus limits the powers of the Court under Section 152 CPC to rectify its own errors/mistakes.

Reverting back to the instant case, it is in the pleadings of the then plaintiff decree holder that this khasra number stands mentioned and, thus, was there in the judgement and decree so passed by the Court which has since then attained finality and is not attributable to the Court.

Section 153(a) provides for power to amend decree or order where appeal is summarily dismissed and which has been introduced w.e.f. 01.02.1977. Though on behalf of revisionist reference has been made to hammer home the point that a Court can allow amendment after even passing of final judgment and decree.

The Supreme Court in Civil Misc. No. 1443/C of 1978, regular second appeal No. 1009 of 1968 titled as **Bawa Singh and others Vs. Banu Singh** cited by the respondent counsel lays down that amendment in the pleadings can be

allowed even after passing of judgment and decree, if no prejudice is caused to the parties and wherein similar proposition had arisen as due to inadvertence wrong details of the property were given by mistake and which were clerical in nature and the Court had allowed the same. It was held that by declining such a prayer would occasion failure of justice.

In the present application moved by the decree holder under Section 151 CPC for amendment of the judgment and decree does not seeks to amend the plaint where in fact the actual error has occurred and which falls within the ambit of Section 152 CPC.

In Collector of Customs, Calcutta Vs. East India Commercial Co. Ltd, Calcutta and others, 1963 AIR (Supreme Court) 1124, the Apex Court has held as follows:-

“We therefore feel that on principle when once an order of an original authority is taken in appeal to the appellate authority which is located beyond the territorial jurisdiction of the High Court, it is the order of the latter authority which is the operative

order after the appeal is disposed of; and as the High Court cannot issue a writ against the appellate authority for want of territorial jurisdiction, it would not be open to it to issue a writ to the original authority which may be within its territorial jurisdiction once the appeal is disposed of, though it may be that the appellate authority has merely confirmed the order of the original authority and dismissed the appeal”.

So from the same, it is amply clear that once an appeal is disposed off though the appellate authority might have merely confirmed the order of the original authority and dismissed the appeal and it is order of the appellate authority which becomes operative and, thus, by that analogy, the learned Sub Judge had no authority to amend the decree and the only recourse available was for the decree holder to have moved the Supreme Court which finally dismissed the appeal and not the Executing Court and moreover, it was not an error of the Court but by the plaintiff who could have moved proper application for amendment of his pleadings.

In the light of what has been detailed and discussed above, there is no justifiable reasons necessitating the Executing Court to pass impugned order dated 13.08.2021 rectifying what was sought by the decree holder without having resort to the provided provisions and jurisdiction.

The instant revision is hereby allowed and the impugned orders are thereby set-aside.

December 07, 2021
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No