

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 97 OF 2021

Pratap Chandra Patra and others *Petitioners*

Mr. Manoj Kumar Mohanty, Advocate

-versus-

Parbati Patra and others *Opp. Parties*

Mr. Amlan Mishra, Advocate
(For Opp. Party No.4)

AFR

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

30.06.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. This CMP has been filed assailing the order dated 28th January, 2021 (Annexure-7) passed by learned Civil Judge (Senior Division), Baripada in Execution Case No.12 of 2009 (arising out of T.S. No.150 of 1992), whereby an application under Section 152 C.P.C. filed by the Petitioners-D.Hrs. for correction of the clerical mistake in the plaint as well as judgment and decree has been rejected.
3. Mr. Mohanty, learned counsel for the Petitioners submits that T.S. No.150 of 1992 was filed for declaration of right, title and interest as well as for recovery of possession and permanent injunction over Schedule 'A' land, description of which is as under:

"SCHEDULE – 'A'

Lands in mouza Barudihi, P.S. Barasahi.

<u>Khata No.</u>	<u>Plot No.</u>	<u>Area</u>	<u>Kissam</u>
55	831	0.31	Gharabari (Ghara)
	832	0.88	Sarad-II
	833	0.29	Asu
Total A 1.48 decimals			

4. The suit was decreed in favour of Plaintiffs-Petitioners. Being aggrieved, the unsuccessful Defendants preferred T.A. No. 52/49 of 2001/1997, which was dismissed on contest. Thereafter, the Petitioners-D.Hrs. filed Execution Case No. 12 of 2009 for execution of the decree passed in T.S. No. 150 of 1992. During pendency of the execution proceeding, the Petitioners-D.Hrs could point out that the decree has been passed in respect of Plot Nos.831, 832 and 833 of Khata No. 55 instead of Plot Nos. 531, 532 and 533. Accordingly, they filed an application under Section 152 C.P.C. for correction of the clerical error in the schedule of the plaint and also for consequential correction in the judgment and decree passed in T.S. No. 150 of 1992. Learned Civil Judge (Senior Division), Baripada holding that provision under Section 152 C.P.C. is not applicable to the correction of clerical error in the plaint rejected the same. Hence, this CMP has been filed.

5. Mr. Mohanty, learned counsel for the Petitioners submits that the Court has inherent power to correct the error crept in due to accidental slip or omission, so that the judgment and decree passed by the Court is implemented, failing which the entire endeavour made by the Civil Court both in trial as well as appellate stage will be futile. In the instant case, such clerical error could not be pointed out till filing of the execution case. It happened due to oversight. The contesting Defendants have never raised objection with regard to incorrect description of the property in Schedule 'A'. They were also under an impression that the suit lands are as per the description in the Schedule 'A'.

Since both the parties have contested the suit as well as the appeal on a *bona fide* impression that description of the property in Schedule 'A' of the plaint is correct, there is no impediment on the part of the learned executing Court to entertain an application under Section 152 C.P.C. and correct the clerical error to see that the Plaintiffs enjoy the fruit of the decree. He, therefore, prays for setting aside the impugned order and to permit the Plaintiffs-Petitioners to correct the Schedule 'A' of the plaint and also for a direction to correct the judgment and decree accordingly, which is put into execution. In support of his case, he relied upon the decisions in the cases of ***Santosh Kumar Sahoo –v- Radhanath Sahoo and four others***, reported in 2013 (I) OLR 363, ***Kastura Sahu and another –v- Sushila Seth and others***, reported in 2009 (I) CLR 90, ***Maheswar Pati –v- Golam Rasul and others***, reported in 2014 (Supp.-I) OLR 1017, ***Dinabandhu Mohanty –v- Smt. Ramamani Pattnaik and others***, reported in 2008 (II) OLR 125 and ***Hari Prasad Bhuyan –v- Durga Prasad Bhuyan and others***, reported in 2008 (I) OLR (SC) 497.

6. Mr. Mishra, learned counsel for the Opposite Party No.4 vehemently objected to the same and contended that the executing Court has no jurisdiction to entertain an application under Section 152 C.P.C. It is only the Court whose judgment and decree is put into execution, can entertain such an application. Further, the error or omission in the plaint cannot at all be corrected in an execution proceeding. The case laws relied upon by learned counsel for the Petitioners have no application to the case at hand as the ratio decided therein do not deal with a

situation as in the present case. He relied upon the decision in the case of *Netrananda Dalai –v- Ratnabati Nayak (Dead) and another*, 2016 (II) ILR-CUT 372 in which this Court relying upon the decision in the case of *Jayanta Kumar Rath (since dead) through L.Rs. –v- Pravas Kumar Rath (since dead) through L.Rs.*, reported 2016 (I) ILR-CUT 969 held that Section 152 C.P.C. cannot be used for correction of an error in the Schedule of the plaint when both the parties contested the case on their respective pleadings and on such pleadings, the judgment and decree has already been passed. Although a presumption may arise that the Defendants contested the case assuming the suit property to be Plot Nos.831, 832 and 833, that does not confer a right on the Plaintiffs to correct the plaint in an execution proceeding. He, therefore, prays for dismissal of CMP.

7. Section 152 C.P.C. reads as under:

“152. Amendment of judgments, decrees or orders- 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 motor or on the application of any of the parties.”

8. On a plain reading of the provision, it is manifest that clerical or arithmetical mistake in the judgment and decree 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 made by any of the parties to the said suit of proceeding. In the case at hand, it is admitted by the Plaintiffs-Petitioners that the mistake was in the description of Schedule ‘A’ of the plaint. It is the case of the Petitioners that in

view of such mistake in the schedule of the plaint, the mistake/error has crept in the judgment and decree.

8.1. Section 152 C.P.C. does not provide a mechanism to deal with such a situation. It is the admitted case of the parties that the suit as well as appeal were disposed of on contest. Thus, it appears that on the available pleadings including the description of the property in the plaint, parties contested the suit as well as appeal and ultimately, the decree passed in the suit is put into execution. It is held in *Netrananda Dalai* (supra) that the executing court has no jurisdiction to amend any mistake in the plaint as it cannot go behind the decree, relevant portion of which reads as under:

“5. xxx xxx xxx

“11. *The case of the Petitioners may be examined on the anvil of the decisions cited (supra). On a bare perusal of Section 152 C.P.C., it is evident that clerical or arithmetical mistakes in judgment, 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 the application of any of the parties. If clerical or arithmetical mistakes in the judgments, decrees or orders or errors arising therein from the accidental slip or omission has been committed by the court, then the court may correct the same on its own motion or on the application of any of the parties. It does not comprehend the correction of any error on the part of any of the litigating parties. The error must be on the part of the court. In an application under Section 152 C.P.C., the Court cannot ascertain the intention of the parties making the compromise and filing the application. The said section cannot be invoked for the purpose of explaining as to what was the intention of the parties in arriving at the compromise. Since the parties have filed a compromise petition admitting the contents to be correct and thereafter the court has*

recorded the same. Section 152 C.P.C. cannot be pressed into service to correct the compromise petition and decree.” (Emphasis supplied)

7. Much emphasis has been laid by Mr. Pattnaik, learned Advocate for the Petitioner, on a decision of this Court in the case of *Santosh Kumar Sahoo* (supra), wherein a Bench of this Court held that a decree can be amended and corrected in exercise of power under Sections 151 and 152 C.P.C. even if a mistake is committed by the parties. On a bare perusal of the said judgment, it is evident that the judgment was rendered on concession. Both parties agreed in that case for correction of the decree. Accordingly, a direction was issued to the learned trial court. The question does arise whether the same is a binding precedent? The answer is emphatically no.”

9. In view of the discussion made in the aforesaid case law, there remains no iota of doubt that an application under Section 152 C.P.C. cannot be entertained in an execution proceeding. Further, an error in the judgment or order committed by the Court due to accidental slip or omission can be corrected by the said Court. It is based on the principle *‘actus curiae neminem gravabit* that *‘An act of court can prejudice no one’* (see *U.P.SRTC vrs. Imtiaz Hussain*, reported in AIR 2006 SC 649). It further appears that there is no concession from the part of the Defendants to correct the alleged error in the judgment and decree or in the schedule of the plaint. In that view of the matter, the case law cited in *Santosh Kumar Sahoo* (supra) has no application to the case at hand. Further, rest of the case laws as relied upon by learned counsel for the Petitioners deal with general principles of Section 152 C.P.C. and do not also deal with the situation as in the present case.

10. In view of the above, I find no infirmity in the impugned order. Accordingly, this CMP being devoid of any merit stands dismissed.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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