

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 3742 OF 2022

Kamlabai Hiralal Barethiya and others -- Petitioners

Vs.

Girdharilal Govindmal Ramnani and others -- Respondents

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. V.B. Bhise, Advocate for Petitioners
Mr. Anup Gilda, Advocate with Mr. Ranande, Advocate h/f
Mr. Kamal Anandani, Advocate for Respondent No.1

CORAM : MANISH PITALE, J.

DATE : 11th JULY, 2022

This petition has come up for consideration for the first time before this Court, but, since the contesting respondent No.1 has appeared on caveat before this Court, the petition is taken up for consideration and disposal.

2. By this writ petition, the petitioners have challenged order dated 05/05/2022, passed by the Court of Joint Civil Judge, Junior Division, Akot, in an application at Exh.1. By the impugned order, the application has been allowed and the judgment and decree passed in Regular Civil Suit No.189/1993, is directed to be corrected to the extent of stating Nazul Sheet No.19-D, instead of 19-B.

3. The aforesaid application was filed under Section 152 of the Code of Civil Procedure (CPC) on behalf of the contesting respondent No.1, contending that there had been a mistake in the description of the property as being located in Nazul Sheet No.19-B at Akot, District Akola, while the property in question, which was subject matter of decree was actually located in Nazul Sheet No.19-D. It was submitted in the said application that since the said mistake could be said to be a clerical mistake, the Court may exercise power under Section 152 of the CPC to grant such an application. The said application was opposed on behalf of the petitioners, contending that power under Section 152 of CPC could not be exercised in the facts and circumstances of the case.

4. The Court below in the impugned order found that the mistake had crept in the decree on account of mistake in description of the property in the plaint itself. It was recorded that although such a mistake in the decree did not appear to be a clerical or an arithmetical mistake, but, by referring to Sections 151, 152 and 153 of the CPC, the Court below exercised power and allowed the said application.

5. Mr. Bhise, learned counsel assisted by Mr. Ranande, learned counsel appearing for the petitioners submitted that the mistake which stood corrected by the impugned order, could not qualify as merely a clerical mistake and, therefore,

there was a jurisdictional error in the impugned order, particularly for the reason that the application filed by the respondent No.1 specifically invoked Section 152 of the CPC. It was submitted that since there was a mistake in the description of the property in the plaint itself, it could not be said to be a mistake on the part of the Court and that, therefore, such a substantial mistake could not be corrected under Section 152 of CPC. Reliance was placed on the judgment of Orissa High Court in the case of **Natrananda Dalai Vs. Ratnabati Nayak (dead) and Anr.** reported in **AIR 2016 ORISSA 138**.

6. On the other hand, Mr. A.J. Gilda, learned counsel appearing for Mr. Anandani, learned counsel for the respondent, submitted that the Court below had specifically invoked Sections 151, 152, 153 of the CPC, to grant relief claimed by respondent No.1. It was submitted that merely because the respondent No.1 had invoked Section 152 of the CPC in the application, it could not be a ground for the Court to reject the application. It was brought to the notice of this Court that the proceedings in the present case were initiated under the provisions of the C.P. and Berar Rent Control Order, wherein permission to issue quit notice was granted to respondent No.1 after a long drawn battle. The permission was granted in respect of a property as correctly described but, when the suit was filed for eviction, the mistake in the description of the property appears to have occurred. The

learned counsel placed reliance on the judgment of this Court in the case of **Narhari Balku Kawade and others Vs. Hanmanta Timma Pujari and others** reported in **2004(3) Mh.L.J. 782**, to submit that in similar circumstances, this Court had granted such an application for carrying out correction in the decree.

7. This Court has heard the learned counsel for the parties and perused the material on record. There is no doubt about the fact that the respondent No.1 has invoked only Section 152 of the CPC, while seeking the aforesaid correction in the decree. This Court is of the opinion that in the facts and circumstances of the present case, the application was correctly considered by the Court below under Sections 151, 152 and 153 of the CPC, for the reason that holding otherwise would have amounted to a hyper-technicality.

8. The Court below in the impugned order at para No.12 did find that the nature of correction sought on behalf of the respondent No.1 could not qualify as merely correction of only a clerical mistake. But, in paragraph No.13, the Court below proceeded to hold that powers under Sections 151, 152 and 153 of the CPC, ought to be invoked in the facts and circumstances of the present case. It was found that although the plaint incorrectly described the suit property as being located in Nazul sheet No.19-B, but, there were documents on record, including a registered sale deed, demonstrating that the property was indeed located in Nazul Sheet No.19-D.

9. This Court is of the opinion that having taken note of such undisputed facts, the Court below was justified in invoking Sections 151, 152 and 153 of the CPC to grant relief to respondent No.1. This was in consonance with the position of law elucidated by this Court in the case of **Narhari Balku Kawade and others Vs. Hanmanta Timma Pujari and others** (supra), where in similar circumstances, this Court held that merely because the applicants had purported to apply only under Section 152 of CPC, relief could not be denied. In the said case, there was a mistake in mentioning survey number of the property and correction was sought in the decree. Relevant portion of the said judgment reads as follows :

“11. The contention of the learned Counsel for the Defendants is that Section 152 of the said Code cannot be invoked to amend the plaint. This contention appears to be correct. The power of the Court to make corrections for correcting errors arising due to accidental slip which are necessary for the ends of justice is not confined only to the power exercisable under Section 152 of the said Code. Extensive powers can be exercised even under Section 151 and Section 153 of the said Code. It is eminently a case in which the accidental slip should be corrected as the correction is necessary for the ends of justice. It would be a blot upon the judicial administration if the Courts were powerless to do justice in a case of this sort where corrections are necessary in order to give effect to the intentions of the parties themselves. The correction is required to be made with a view to give true meaning to the decree for possession.

12. In the present case even the Defendants were aware all along about the correct survey number of the property in respect of which decree was prayed for by the original Plaintiff. Even the Defendants were aware about the description of the property in respect of which decree was being prayed for and passed. It appears that there is accidental error and/or slip in describing the survey number in the suit. The said error ought to have been permitted to be corrected by the learned trial Judge by exercising powers under Section 152 read with Section 151 and Section 153 of the said Code. Merely because the Petitioners have purported to apply only under Section 152 of the Code, relief cannot be denied to the Petitioners. Hence, the impugned order deserves to be quashed and set aside and the application made by the Petitioner deserves to be allowed.”

10. The said position of law applies to the facts and circumstances of the present case also and, therefore, it cannot be said that the Court below committed an error in allowing the application filed at Exh.1 on behalf of respondent No.1. No error can be attributed to the Court below in passing the impugned order and, therefore, interference at the hands of this Court in writ jurisdiction would not be justified. Accordingly, the writ petition is dismissed.

JUDGE