

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

CR-2642-2021 (O&M)

Date of decision: 10.02.2022

Tarlok Singh and another

...Petitioners

Versus

Jasbir Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Namit Gautam, Advocate for the petitioners
Mr. Atul Goyal, Advocate for respondent no.1, 2 and 4

ANIL KSHETARPAL, J (Oral)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

The petitioners are decree-holders. Their suit for grant of decree of joint possession was decreed on 07.05.2008. The aforesaid judgment and decree dated 07.05.2008 has been affirmed in First Appeal, Regular Second Appeal as well as Special Leave to Appeal. The plaintiffs filed an application under Section 151, 152 of Code of Civil Procedure, 1908, for correction of the judgment and decree sheet. It was pointed out that due to oversight or typographical error 2/15th share of the land measuring 9 kanals 15 marlas has been decreed in their favour whereas it should be 94 kanals 15 marlas. The typographical error is patent from reading of the relevant part of the caption of the suit, which is extracted as under:-

- (i) Land measuring 12K-12 ½ M i.e
2/15 share of land measuring 9K-15M comprised in
Khewat No.107, 120, 121, 122, Khatauni no.164,

178, 179, 180, Rect. No.23 Killa No.13, Rect.no.32, Killa no.21, Rect.No.43, Killa No.5,6/1, 7/3, 8, 9, 15, 24/1, 24/2, 24/3, 25, Rect.No.32 Killa no.24, Rect.No.44, Killa No.1, 10, 11, Rect.no.43, Killa No.12/2, 13/3, 14, Rect.No.23, Killa No.18, Rect.no.43, Killa No.1.”

It is evident that the plaintiffs have claimed that they are entitled to joint possession of land measuring 12 kanals and 12 ½ marlas being 2/15th share of land measuring 94 kanals 15 marlas. The total land cannot be 9 kanals 15 marlas because the plaintiffs claim that they are in joint possession of the land measuring 12 kanals 12 ½ marlas. Moreover, the complete and correct description of the land with reference to khewat, khatoni, rectangle and killa numbers has been given. The total area of the aforesaid land described in the caption comes to 94 kanals and 15 marlas.

The trial court has dismissed the application on the ground that the errors in the pleadings cannot be permitted to be corrected in exercise of powers under Section 152 Code of Civil Procedure, 1908.

Heard learned counsel for the parties at length and with their able assistance perused the paper book. Learned counsel representing the petitioners contends that there is a clerical error in the plaint and they could not be deprived of the fruits of the decree only on that account. He further contends that Section 152 and 153 of the Code of Civil Procedure, 1908, enable the court to correct the clerical or arithmetical mistakes, not only in the judgments and decrees, but also permit the parties to carry out such corrections, which are a result of any

accidental slip or omission, in the pleadings, which ultimately travel to the judgment and the decree. Per contra, learned counsel representing the judgment debtor has, vehemently, opposed the prayer on the ground that at this stage, the omission in the plaint cannot be permitted to be corrected.

From the reading of the caption of the plaint, it is obvious that there is a clerical error due to an accidental slip/omission. There is also no dispute that the complete description of land measuring 94 kanals 15 marlas has itself been given in para reproduced above. It is also obvious that the plaintiffs claim for joint possession measuring 12 kanals and 12 ½ marlas in caption no.1, which cannot be 2/15th share of land measuring 9 kanals 15 marlas. If we make a simple arithmetical calculation, the total land would be 94 kanals and 15 marlas, so as to give effective meaning to 2/15th share of land which is equivalent to 12 kanals and 12 ½ marlas. Further, the plaintiff has already given the complete details of the land involved in the suit. The sum total of various khasra numbers also come to 94 kanals 15 marlas.

At this stage, it is considered appropriate to carefully examine Section 152 and 153 of the Code of Civil Procedure, 1908, which are extracted as 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 of its own motion or on the application of any of the parties.

Section 153- The Court may at any time and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any

proceeding in a suit, and all necessary amendments shall be made of the purpose of determining the real question or issue raised by or depending on such proceeding.]”

From a perusal of the above mentioned provisions, it is evident that the court may, at any time, amend any defect or error in any proceedings in a suit. Section 153 is not only confined to judgments , decrees or orders passed. Section 153 does enable the court to permit amendment of any defect or error in any pleadings in a suit. Such amendment is required to be allowed to determine the real question or the issue raised by the parties.

Keeping in view the aforesaid facts, this Bench does not find it appropriate to accept the objection of the learned counsel representing the respondent. Learned trial court has also erred in ignoring Section 153 of the Code of Civil Procedure, 1908.

Consequently, the revision petition is allowed. The order under challenge is set aside. The application filed for permission to amend the plaint is allowed. The lower court is directed to amend the the judgment and decree so as to rectify the error and give true effect to its meaning.

All the pending miscellaneous applications, if any, are also disposed of.

10.02.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE