

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

317

CR No.5425 of 2019

Date of Decision : 28.07.2022

Kaur Singh

....Petitioner

VERSUS

Manohar Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sandeep K. Sharma, Advocate for the petitioner.

Mr. Himanshu Chhabra, Advocate for
Mr. Jaideep Verma, Advocate for the respondent.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 16.08.2019 whereby the Trial Court has dismissed an application filed under Sections 151 and 152 of the Code of Civil Procedure, 1908 (for short 'CPC') for correction of the plaint.

Learned counsel for the petitioner would contend that inadvertently Khasra No.30 of Khata No.181/197 was not mentioned in the original plaint at the time of filing of the suit for specific performance. On the basis of pleadings of the parties and the evidence on record the suit was decreed vide judgment and decree dated 08.08.2017. Appeal preferred by the defendant-respondent was dismissed vide judgment and decree dated 19.07.2018. It is further the contention that it is only at the time of execution of the decree that it came to the notice of the petitioner that Khasra No.30 of Khata No.181/197 had inadvertently not been mentioned in the plaint.

Learned counsel for the petitioner further submits that the said Khasra No.30

of Khata No.181/197 stands duly mentioned in the agreement to sell dated 01.12.2010. It has further been pointed out that even in the impugned order dated 16.08.2019, it has been noticed that Khasra No.30 of Khata No.181/197 finds mention in the agreement to sell dated 01.12.2010.

Learned counsel for the petitioner has placed reliance on the judgments of this Court in cases of **Sampuran Singh (deceased) through LR's vs. Satbir Singh and Ors. [2019(1) CivCC 42]; Kulwinder Kaur vs. Paramjit Singh & Ors. [2016(2) RCR (Civil) 908]; Pradeep Kapoor vs. Laxmi Narain Kapoor & Ors. [2011(6) RCR (Civil) 2102]; Saudagar Singh vs. Amir Singh & Ors. [2009(4) RCR (Civil) 638] and Mohinder Singh & Ors. vs. Teja Singh & Ors. [1978 PLR 728]** to contend that an error arising out of an accidental slip or omission in the plaint can be rectified under Section 152 CPC.

The learned counsel for the respondent has vehemently argued that correction cannot be carried out in the plaint under Sections 151/152 CPC.

I have heard learned counsel for the parties.

In the present case, as noticed in the impugned order, Khasra No.30 of Khata No.181/197 finds mention in the agreement to sell dated 01.12.2010. However, due to an inadvertent omission the said Khasra number was not mentioned in the plaint. The total area qua which the suit was filed was 1 Bigha 9 Biswas and 17 Biswansis. The suit was filed qua the following land :

- (i) Land measuring 0B-4B-7B, Khata No.118/134, Khasra No.670 (2-0-0), 671 (2-0-0),

- (ii) Land measuring 0B-1B-10B, having 30/800 share of 2B-0B-0B, Khata No.121/137, Khasra No.878 (2-0-0),
- (iii) Land measuring 0B-1B-12B, having 32/240 share from 0B-12B, Khata No.124/140, Khasra No.677 (0-12-0),
- (iv) Land measuring 0B-9B-1B, having 181/300 share from 0B-15B-0B, Khata No.179/195, Khasra No.40 (0-15-0),
- (v) Land measuring 0B-4B-0B, having 88/3133 share from 7B-16B-13B, Khata No.181/197, Khasra No.29 (2-0-0), 38 (2-0-0), 44 (1-16-13),
- (vi) Land measuring 0B-9B-7B, having 187/1798 share from 4B-9B-18B, Khata No.115/131, Khasra No.652 (1-16-5), 654 (1-14-18), 655 (0-18-15), as per jamabandi for the year 2007-08 situated in village Dudhaal, Tehsil Payal, District Ludhiana.

If Khasra No.30 of Khata no.181/197 is added only then the total of the suit land would come to 1 Bigha 9 Biswas and 17 Biswansis.

In the case of **Saudagar Singh** (*supra*), it has been held as under :

“5. A Full Bench of this Court had actually dealt with a situation where the amendment was sought at lower Appellate Court when the matter had earlier been dismissed on merits by the High Court. The decision was Dayawanti Vs. Yadvindra Public School 1996(1) RRR 111 in which Full Bench was answering a reference of the power of a lower court to entertain an

application for amendment when the case had been concluded in the higher forum. The mistake in the order of District Court was pointed out by the High Court under two circumstances namely, that the matter had been sent to the District Court for consideration of the amendment petition only by the High Court and under such circumstances, the District Court ought not to have abdicated its powers and found itself as having no power to dispose of the case. Secondly the power to correct accidental error or omission under Section 152 empowers the Court to correct any such mistake at any time either on its own motion or on the application of any of the parties. According to the Full Bench any such order passed by the Court does not amount to passing a decree and such an amendment does not in any way affect the merit of controversy, which has been determined by the Court and so even when such an unamended judgment has been affirmed by the superior court, it does not preclude the Court which passed the decree from correcting such an order. The Full Bench ruled that the doctrine of merger in such a situation was clearly misplaced.

6. The obvious fall out of the decision of the Full Bench is that the principles that could govern amendment of a decree where a decision of lower Court

gets merged with an Appellate Court decision would be different from cases where there is merely an amendment through correction of accident slip or omission or an arithmetical mistake found in the decree of the lower court. This mistake could be either by the court or it could result out of a mistake inadvertently originating in the pleadings that gets transported to all other proceedings right from the judgment and decree at the trial Court to the higher forum. A party who applies for amendment in such a case does not really substitute a different property nor does he claim any new right to any property not already in suit. He does what the judgment even otherwise provides but the judgment does not give a proper expression by its inherent error or omission.

7. Applying the above principle what the plaintiff was trying to do was an inclusion of reference to Khasra No.14 of an extent of 8 kanals which was obviously an accidental omission in the plaint and therefore, in the decree and the plaintiff was not introducing the said item which had in any way been rejected in the judgment. The definite case which found favour with all the Courts is the plaintiff's entitlement to secure a decree for 48 kanals and the 48 kanals itself could not have been obtained except with reference to Khasra

No.14 of an extent of 8 kanals. The plaintiff was making a correction to conform to what the trial Court expressly found in his favour and affirmed upto the High Court. The decision of the Court below allowing the application for amendment under such circumstances conforms to law.”

In view of the above, I deem it appropriate to allow the present revision petition and to set aside the impugned order dated 16.08.2019. The application filed by the petitioner under Sections 151 and 152 CPC for correction of the plaint stands allowed.

Disposed off in the above terms. Pending applications, if any, also stand disposed off.

28.07.2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO