

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.374 of 2018

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Sudhan Chandra Das @ Sudhant Chandra Das, S/o Late Haradhan Chandra Das Wrongly Stated in the Plaint as Late Harchan Chandra Das Resident of Purnea City, P.S.-Sadar, Distt.-Purnea. Petitioner/s

Versus

Hannan Mian, S/o late Ismail, Resident of Chimni Bazar, Behind the Masjid, Purnea, P.S.-Sadar, Dist.-Purnea. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uday Shankar Pandey, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

14 19-06-2023 This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 13.12.2017 passed by learned Munsif Sadar, Purnea in Miscellaneous Case No. 01 of 2017 filed by the decree holder under Section 152 of the Code of Civil Procedure which was partly allowed and partly rejected.

2. The brief fact of the case is that the petitioner was plaintiff who filed Title Suit bearing Title Suit No. 67 of 2011 in the Court of learned Munsif Sadar, Purnea for declaration of title, restoration of possession and for grant of mandatory injunction etc. The claim of the petitioner is that he purchased the suit land vide sale deed dated 17.12.1974 and came in possession thereafter and his name got mutated in the Sherista of the State of Bihar followed with grant of rent receipt and his name also stood recorded in the municipal record of right. The



petitioner's further case is that for the purpose of marriage of his daughter in year 2008 he was in need of money and he had given the original sale deed and other documents to the defendants, the same was not returned by the defendant and defendant took possession of the suit land. The defendant appeared in the suit but not filed written statement and the trial Court vide judgment dated 07.09.2016 decreed the suit under the provision of Order 8 Rule 10 of C.P.C and the same was followed with the decree dated 21.09.2016.

3. The petitioner after obtaining decree dated 21.09.2016 passed in Title Suit No. 67 of 2011 came to know the mistake that in place of correct Mauza that is Maharajganj, the wrong Mauza as Alam Nagar was mentioned and also the name of his father wrongly mentioned as Harchan Chandra Das in place of correct name Hardhan Chandra Das in the cause title of the plaint. The judgment date was also wrongly mentioned as 07.09.2016 instead of correct date 07.11.2016.

4. Accordingly, on 04.01.2017, the petitioner filed an application under Section 152 of Code of Civil Procedure for seeking amendment to correct the name of Mauza of the said property, name of the father of the petitioner and the date of the judgment in the decree and on the said petition filed by the



petitioner Miscellaneous Case No. 01 of 2017 was registered. The petitioner had filed the rent receipt, M.S. Khatriyan issued consequent upon the order of mutation based on sale deed dated 17.12.1974 which clearly mentioned Mauza Maharajganj. The learned Court below vide the impugned order dated 13.12.2017 partly allowed the same and directed the office to correct the month on the decree as mentioned in the judgment considering that the same was the clerical mistake but rest part of the amendment that is amendment with respect to Mauza of the suit land and the name of the father of the petitioner in the cause title of the plaint which crept in the decree were not accepted to be clerical mistake.

5. Learned counsel for the petitioner submits that the trial Court failed to appreciate that the provision of Order 6 Rule 17 of C.P.C. is not applicable once the suit itself stood decreed and thereafter only provisions of Section 152 of the C.P.C. remain the enabling provision not only for the amendment of the clerical or arithmetical mistake which stood crept into the decree but is also applicable in the pleading of the party and the only exception is introduction of new identity of the property or the pleading. In the instant case, the documentary evidences lead by the petitioner including the document of title mentioned



the name of correct Mauza and the correct name of the father of the petitioner which are due to mistake got wrongly typed in the Schedule A and in the cause title of the plaint. The identity of the suit land and the correct name of the father of the petitioner had already been on record which is evident and, therefore, for the ends of justice the said amendments ought to have been allowed by the learned Court below since it did not change the nature or introduce the new case. The defendant-respondent neither filed written statement nor cross-examined any witness produced by the petitioner in the trial and, therefore, the oral and documentary evidence led by the petitioner have been unrebutted and the amendments sought for by the petitioner in no manner is to prejudice the defendant-respondent. In the present Miscellaneous case also despite the service of the notice on respondent no one appeared.

6. It is beneficial to refer Sections 151, 152 and 153 of C.P.C.

Section 151 of the Code reads thus:

“151. Saving of inherent powers of Court. - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.

Section 152 of the said Code reads thus:



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 of its own motion or on the application of any of the parties.

Section 153 of the Code reads thus:

153. General power to amend.- 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 for the purpose of determining the real question or issue raised by or depending on such proceeding.”

7. Section 152 gives power to the Civil Court to correct accidental errors and omissions in the judgment, order or decree of the Court whereas Section 153 of the Code is a general power vesting in the Civil Court to allow amendments to the proceedings of a suit at any stage. The said power includes power to allow amendment of pleadings.

8. The learned counsel for the petitioner has referred and relied on the judgment of **Bombay High Court in Narhari Balku Kavade (Deceased by Lrs.) and Others Vs. Hanmanta Timma Pujari (Deceased by Lrs.) and Others** reported in **AIR 2004 Bombay 342**. In Paragraph 11 it was observed that:

“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.”

9. This Court in the case of **Ayodhi Yadav and Anr. Vs. Gobind Yadav and Ors.** reported in **2006 SCC Online Pat 313 : (2006) 3 PLJR 353** referred various judgments of High Courts and Apex Court and observed that even at the stage of execution if there was some clerical error, arithmetical error or accidental slip even in plaint, the same could be corrected and consequently the judgment and decree would stand corrected.

10. It is well settled that Section 152, Civil Procedure Code, gives power to rectify any mistake in the judgment, decree or order or errors arising therein from accidental slip or omission and in my opinion it must include an accidental slip or omission traceable to the conduct of the parties themselves. No



doubt the Court cannot go into the disputed questions regarding the principle in dispute, but if a mistake is so palpable that nobody can possibly have any doubt as to what the parties meant or what the Court meant when it passed judgment, decree or order, such correction can be made even under S. 152, Civil Procedure Code.

11. It is also well settled law that inherent power is not only confined to the amendment of the judgment or decree as envisaged under Section 152 of C.P.C. but also inherent power in general.

12. Having heard the learned counsel for the petitioner and on perusal of the record, it appears that the name of the father and the name of Mauza has been already mentioned in the documents filed by the petitioner on the record as evidence and he has not brought the new fact or the identity of the name of his father or the description of the property. Mere perusal of the said document on record, it appears that the same was a typing mistake which can be corrected by the Court in the interest of justice under Section 152 read with Sections 153 and 151 C.P.C. for doing the complete justice. It appears that there is accidental error in describing the said error ought to have been permitted to be corrected by the learned trial Court by



exercising powers under Section 152 read with Sections 153 and 151 of the C.P.C. Merely because petitioner has filed the application under Section 152 of the Code relief cannot be denied to the petitioner. Hence, the impugned order to that extent is set aside and the application made by the petitioner is allowed.

13. Accordingly, the Civil Miscellaneous application is allowed.

14. The necessary amendment be carried out within period of two months from the date on which the order is received / produced before the trial Court.

(Sunil Dutta Mishra, J)

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