

S/L 59
17.02.2023
Court No.652
SD

CO 922 of 2020

Abhishek Developers Private Limited
Vs.
Bandana Sen & Ors.

Mr. Chayan Gupta
Mr. Souvik Kundu

...for the Petitioner.

Affidavit of service filed by the petitioner is taken on record.

It shows from the affidavit of service that the envelop which was sent to opposite party, namely, Mainu Sen has returned with postal endorsement 'deceased'.

In spite of service, opposite parties are not represented.

This revisional application has been directed against the order dated 05.12.2019 passed by the learned Civil Judge (Junior Division), 2nd Additional Court, Alipore, South 24 Parganas in Title Suit No.227 of 2011 renumbered as Title Suit No.24 of 2016, Title Suit No.228 of 2011 renumbered as Title Suit No.25 of 2016 and Title Suit No.229 of 2011 renumbered as Title Suit No.23 of 2016.

The petitioner contended that all these three suits were taken up for analogous hearing and the parties had led extensive evidence both oral or documentary and thereafter, a common judgment and decree was passed in the said three suits. Petitioner's main contention is in the said judgment

and decree due to accidental mistake committed by the Judge, subject matter and final decision of Title Suit No.25 of 2016 has been mistakenly described as Title Suit No.23 of 2016 and by the same accidental mistake Title Suit No.23 of 2016 has been wrongly described as Title Suit No.25 of 2016.

Petitioner after getting certified copy of the said decree, have discovered that there are errors in connection with the name of the parties and description of the suit number due to accidental typographical errors committed by the court below inadvertently and as such, they filed application under Section 151 and 152 of the Code of Civil Procedure for making correction in the said judgment and decree. Learned court on March 30, 2019 had taken up the said application under Section 151 read with Section 152 of the Code but was pleased to dismiss after hearing.

Being aggrieved by the said order, the petitioner preferred revisional application before this Court being CO3015 of 2019. A coordinate Bench of this Court while disposing of the said revisional application was pleased to observe that *‘as such, apparently, the trial court acted without jurisdiction in rejecting the application filed by the petitioner under Section 152 of the Code of Civil Procedure for correction of such errors in the judgment and decree. The trial court could very well have considered the said application in conjunction with the provisions of Order XX of the Code of Civil Procedure along with Sections 152 and 153 of the same, in allowing such application of the petitioner and thereby rectifying the errors pointed out. Accordingly, the order impugned was set aside with a direction to the court below to reconsider the application*

filed by the petitioner for correction on merit and effect all the rectifications necessary, as indicated in the application.'

Subsequently, after remand the said application was again taken up for hearing by the court below on 05.12.2019 and learned court below was pleased to reject the said application again on the ground that the plaintiff has sought to change the observation made in the judgment as well as merit of the respective suits and if the application is allowed then the court will have to modify or alter observation in the said judgment and in doing so, the court will have to come to a new conclusion after giving a second thought on merit with regard to Title Suit No.25 of 2016 which is not permissible under the provisions of Sections 151, 152 or 153 of the Code, when such mistakes are not clerical or arithmetical mistake or omission in the judgment.

On perusal of the schedule of correction as has been noted in the revisional application, it appears that the petitioner has sought to make the correction that wherever in judgment and decree in Title Suit No.25 of 2016, is appearing the name of the parties would be 'Abhishek Developers Private Limited vs. Benu Sen' instead of 'Abhishek Developers Private Limited vs. Mrs. Bandana Sen and another' and in the final decision it should be noted "that the said Title Suit No.25 of 2016 has been dismissed on contest against the defendant without any order of cost" instead of "Title Suit No.25 of 2016 be and the same stands abated".

Similarly, in the same tune in Title Suit No.23 of 2016 the name of the parties should be written as 'Abhishek Developers Private Limited vs. Mainu Sen' instead of 'Abhishek Developers Private Limited vs. Mrs. Bandana Sen and another' and in the final decision the words 'the Title Suit No.23 of 2016 be and the same stands abated' would be written in place of the wrong writing that 'the Title Suit No.23 of 2016 be and the same is dismissed on contest against the defendant without any order of cost'.

On perusal of paragraph 1 of the judgment passed in the aforesaid three suits analogously, it appears that Title Suit No.227 of 2011 has been renumbered as Title Suit No.24 of 2016 and Title Suit No.228 of 2011 is renumbered as Title Suit No.25 of 2016 and Title Suit No.229 of 2011 is renumbered as Title Suit No.23 of 2016. Now, on perusal of the copy of the plaint it appears that Title Suit No.228 of 2011 is a suit in between Abhishek Developers Private Limited vs. Sri Benu Sen which was subsequently renumbered as Title Suit No.25 of 2016 but said suit has been wrongly described by court below as Title Suit 23 of 2016. It is also asserted that Sri Benu Sen is still alive and as such, being the sole defendant suit cannot be abated against him. It is purely an accidental mistake. In fact, Title Suit No.25 of 2016 which was renumbered from erstwhile Title Suit No.228 of 2011 was intended to be order as dismissed on contest.

Similarly, Title Suit No.229 of 2011 has been renumbered as Title Suit No.23 of 2016 and on perusal of the plaint of Title Suit No.229 of 2011 which was renumbered as Title Suit No.23 of 2016, it appears that it was a suit between Abhishek Developers Private Limited vs. Mainu Sen. It is submitted that said Mainu Sen died and it reflects from the postal endorsement received and filed as a part of affidavit of service that said Mainu Sen is deceased and accordingly, Mainu Sen, being the sole defendant, the suit is abated for non-substitution of his legal heirs and it is in connection with Title Suit No.23 of 2016 and that suit cannot be “dismissed on contest against the defendant”.

It is settled law that test to determine whether errors occurred from accidental slip/omission or not is to see whether the order as it stands represents the intention of the Judge at the time he made it. In the present case it is apparent that it was never the intention of the Judge to change the name of the parties in the cause title of the said suit nor it was the intention of the Judge to declare that Title Suit No.25 of 2016 stands abated since there is no question of substitution of Benu Sen’s legal heirs within time as said defendant Benu Sen is alive and on the other hand Title Suit No.23 of 2016 intended to have been declared as abated by the Judge, since sole defendant of that suit Mainu Sen died and his legal heirs might not have been substituted in time. Accordingly, what was required to be noted in the judgment and decree in Title Suit No.23 of 2016 has been accidentally

noted in Title Suit No.25 of 2016 and what was intended to be noted by the Judge in Title Suit No.25 of 2016 has been noted in Title Suit No.23 of 2016 accidentally and such accidental error might have occurred due to renumbering of suits.

Needless to say section 152 is based on two important principles the first is the maxim *actus curiae neminum gravabil*, i.e. an act of the court shall prejudice no man and the other is that the courts have a duty to see that their records are true and they represent the correct stage of affairs. Where there is an accidental slip or omission in manifesting the intention of the court by couching the reliefs to which the party is entitled in the event of their succeeding in the suit, section 152 enables the court to vary its order so as to give effect to its meaning and intention. Of course, accidental errors which are not legal errors and which requires no review and crept in through inadvertence, comes within the purview of section 152 and I find that the present case squarely falls within that scope and does not involve question relating to review.

In view of the above, the said correction though relates to the nature of disposal but it is purely a typographical mistake occurred due to accidental omission inadvertently and learned court below ought not to have held that if such application is allowed, it would amount to modify or alter the observation of the said judgment or it would amount to come to a new conclusion after giving

second thought on merits, specially when in CO 3016 of 2019, the court below was directed to rethink the issue on its merit.

In view of the above, CO 922 of 2020 is allowed.

The court below is directed to make correction wherever it appears in the judgment/decreed dated 30.3.2019 in connection with Title Suit No.25 of 2016 wherein the parties name would be corrected as 'Abhishek Developers Private Limited vs. Benu Sen' in place of 'Abhishek Developers Private Limited vs. Bandana Sen and another' and in the relevant portions as well as ordering portion it would be noted as 'that the Title Suit No.25 of 2016 be and the same is dismissed on contest against the defendant without order of cost' instead of 'that the Title Suit No.25 of 2016 be and the same stands abated'.

Similarly, in connection with Title Suit No.23 of 2016 the name of the parties would be corrected as 'Abhishek Developers Private Limited vs. Mainu Sen' instead of 'Abhishek Developers Private Limited vs. Bandana Sen and another' and in the relevant portions as well as ordering portion the order would be 'that the Title Suit No.23 of 2016 be and the same stands abated' in place of 'that the Title Suit No.23 of 2016 be and the same be dismissed on contest against the defendant without any order of costs'. Such correction will be made by the court below within 15 days from the date of communication of the order.

With theses above observations, CO 922 of 2020 is disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)