

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

133

CR-4377-2023(O&M)  
Date of Decision: 19.12.2023

Sarabjit Singh

....Petitioner

Versus

Joginder Singh and others

....Respondents

**CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. Amit Kumar Saini, Advocate for the petitioner.

Mr. Deepak Aggarwal, Advocate for respondent No.1.

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**SANJAY VASHISTH, J.(Oral)**

1. Present Civil revision petition has been filed by the Decree holder-plaintiff, challenging the order dated 20.05.2023 (Annexure P-10), passed by the Court of learned Civil Judge (Junior Division), Samrala, whereby prayer made by the decree holder-plaintiff for seeking amendment in the heading, para No.1 and in the prayer clause of the plaint, has been dismissed.

2. Civil Suit No.CS/110/2014 filed by the plaintiff in regard to Rectangle No.52//22/5 was decreed by learned trial Court, whereas infact, the correct details of the land was required to be mentioned as Rectangle No.37//22/5. Civil suit filed by the petitioner for seeking partition by metes and bounds and permanent injunction in regard to the land measuring 10 Kanals, 15 Marlas comprised in Khewat No.482, 483, 581, 595, Khatauni No.589, 590, 698, 712, Rect

No.37, Killa No.22/1/4/2, 23/1, 22/1/4/1, Rect. No.52, Killa No.22/5, 3/1/1, situated at Village Bondli, H.B. No.107, Tehsil Samrala, District Ludhiana, was partly decreed by holding that the plaintiffs and defendants are entitled to separate possession by way of partition to the extent of their shares as reflected in Jamabandi for the year, 2010-2011 in the suit property comprised in Khewat No.482, 483, 581, 595, Khatauni No.589, 590, 698, 712, Rect No.37, Killa No.22/1/4/2, 23/1, 22/1/4/1, Rect. No.52, Killa No.22/5, 3/1/1, situated at Village Bondli, H.B. No.107, Tehsil Samrala, District Ludhiana.

Accordingly, upon same number of land, learned trial Court prepared a decree dated 20.09.2019.

3. After passing of the preliminary decree of partition, petitioner-plaintiff filed a suit for final partition by metes and bounds of the suit property on the basis of preliminary judgment and decree dated 20.09.2019 (Annexure P-5). At this stage, it was realized that in the Jamabandi for the year 2010-2011, based upon which the plaint and the prayer therein was made, is reflecting a wrong number of the land i.e. Killa No.22/5 of Rectangle No.52 (52//22/5), whereas, actually, it was required to be mentioned in the Jamabandi as Killa No.22/5 of Rectangle No.37 (37//22/5).

Immediately, thereafter, petitioner moved an application for correction of Rectangle number before the Revenue Department and after conducting of inquiry, it was found that there is a mistake and accordingly, required correction was made in the Revenue entries

and Jamabandi. In the year 2015-16, petitioner again applied for a copy of Jamabandi, wherein, correct Killa number i.e. 37//22//5 was mentioned. After receiving the copy of the correct Jamabandi, petitioner moved an application under Section 152 read with Section 151 CPC for amendment of the plaint of Civil Suit No.110 of 2014 decided on 20.09.2019, titled as 'Sarabjit Singh Vs. Joginder Singh and others'. The prayer made in the said application is reproduced herebelow:

*'It is therefore, prayed that the present application may kindly be accepted and plaint of civil suit no.110, CIS No. CS No.227/2014 date of institution 05/07/2014, date of decision 20/9/2019 titled as Sarabjit Singh V/s Joginder Singh and others decided by the Hon'ble court of Ms.Riffi Bhatti, PCS, CJJD, Samrala may please be amended by amendment of Killa no.22/5 of Rect. No.37 instead of Killa no.22/5 of Rect. No.52 in the heading of the plaint and prayer clause and in para no.1 of the original plaint and thereafter new decree sheet and judgment may please be also prepared according to the amended plaint.'*

4. Respondents/defendants No. 2 and 3 made their statement before the learned lower Court through their counsel that they have no objection if the application is disposed off as per law. Statement of counsel representing respondent No.2 and 3 is reproduced hereunder:

*' Stated that I have no objection if the application filed by the applicant be disposed off as per law.*

RO & AC

sd/-  
11.07.2022'

However, without considering the prayer made by the petitioner-plaintiff, the said application was dismissed, hence, the petitioner has approached this Court, by way of present revision petition.

5. While issuing notice of motion on 03.08.2023, the following order was passed by this Court:

*1. Learned counsel for the petitioner relied upon the decision of this Court in **RSA No.925 of 2003** titled as **Gulzara Singh Vs. Devinder Singh, 2005(1) R.C.R. (Civil) 349, doc id # 79055** and referred to paragraph No.13 and 14, which reads as under:*

*'13. Now the question arises is whether the mistake in the judgment and decree which has arisen not account of any mistake of the court but in view of the mistake in the plaint can be corrected in exercise of the powers under Sections 152 and 153 of the Code. This question has been dealt with by a Division Bench of this Court In Pritam Singh's case wherein it has been held that a court can under Section 152 of the Civil Procedure Code amend clerical error in decree although the error may have first occurred in the pleadings and it is not necessary to first amend the pleading in such a case. It was held to the following effect:*

*“The learned counsel for the appellant next contended that the decree was correctly drawn in this case according to the Khasra numbers mentioned in the plaint and as such there was no clerical or accidental error in the decree. No amendment of the decree. therefore, could be ordered under Section 152 of the Civil Procedure Code unless the mistake was first corrected in the plaint which would necessarily attract the application of the provisions of Section*

*153 of the Code. The argument, however, has no merit. It is now almost a settled law that a Court can under Section 152 of the Code amend clerical errors in a decree although the error may have first occurred in the pleadings and it is not necessary to first amend the pleadings in such a case.*

*XXXX*

*We are, therefore, of the considered view that a mistake in the decree can be corrected by the Court under Section 152 of the Civil Procedure Code even though it may have been copied from the pleadings of the parties itself and it is not necessary for the correction of the decree to first amend the pleadings."*

*14. Subsequently, in Mohinder Singh's case (supra) this Court ordered the correction of khasra number wrongly mentioned in the plaint. Still later in Har Chand Singh's case (supra) this Court found that Section 152 of the Code deals with two kinds of situations - firstly correction of clerical or arithmetical mistake of judgments, decrees or orders and secondly errors arising in those judgments and decrees from any accidental slip or omission. Such mistake or slips may at any time be corrected by the court either on its own motion or on the application of any of the parties. The court held that errors in the plaint followed by the decree has occasioned from an accidental slip or omission may be at the time of drafting of the plaint on the basis of incorrect jamabandi provided by the revenue authorities. It was, thus, held that the second part of the section deals with an error which is not at the instance of the court but could have been occasioned by some outside agency as well."*

*2. Mr. Saini, learned counsel for the petitioner submits that the mistake in the plaint, where Rectangle No.52 was mentioned instead of Rectangle No.37 is because of the*

*entries recorded by the Revenue official(s) in the Jamabandi itself. He further submits that there is ample power with the Court under Section 152 CPC to correct such mistake/error by mentioning the correct Khasra/Rectangle number in the decree sheet.*

**3.** *Notice of motion for 17.08.2023.*

**4.** *Process dasti **only**.*

**5.** *To be shown in the urgent list.*

In pursuance thereto, Mr. Deepak Aggarwal, Advocate appeared for respondent No.1, and contested the prayer made by the petitioner by saying that the prayer sought to be introduced now in the plaint is highly belated, therefore, same cannot be accepted in the eyes of law. Rather, he argues that plaintiff is raising a new claim beyond period of limitation, thus, while defending the order submits that application has been rightly dismissed.

6. I have heard learned counsel for the parties and examined the facts and the documents appended with the present revision petition.

Presuming the chances of human error in judgments, decrees or orders due to one reason or the other, legislators have already introduced a provision in the Civil Procedure Code under Sections 151 and 152 CPC to correct such errors. For the sake of convenience, Sections 151 and 152 CPC are reproduced herebelow:-

***'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.*

***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.'*

7. It is not in dispute that in the judgment and the preliminary decree, the mistake erupted because of the mistake done in the draft of the plaint itself, therefore, now question which arose before this Court is *whether after passing of the preliminary decree, amendment of the plaint can be sought or not ?* so that consequential amendment can be introduced in the decree sheet also.

Learned counsel for the petitioner places reliance upon judgment of this Court (Punjab and Haryana High Court) titled as '**Gulzara Singh Vs. Devinder Singh**', 2005(1) R.C.R. (Civil) 349, **Law Finder Doc Id #79055** and refers to paragraph Nos. 13 and 14, which are as under:

*'13. Now the question arises is whether the mistake in the judgment and decree which has arisen not account of any mistake of the court but in view of the mistake in the plaint can be corrected in exercise of the powers under Sections 152 and 153 of the Code. This question has been dealt with by a Division Bench of this Court in Pritam Singh's case wherein it has been held that a court can under Section 152 of the Civil Procedure Code amend clerical error in decree although the error may have first occurred in the pleadings and it is not necessary to first amend the pleading in such a case. It was held to the following effect:*

*"The learned counsel for the appellant next contended that the decree was correctly drawn in this case according to the Khasra numbers mentioned in the plaint and as such there was no clerical or accidental error in the decree. No amendment of the decree, therefore, could be ordered under Section 152 of the Civil Procedure Code unless the mistake was first corrected in the plaint which would necessarily attract the application of the provisions of Section 153 of*

*the Code. The argument, however, has no merit. It is now almost a settled law that a Court can under Section 152 of the Code amend clerical errors in a decree although the error may have first occurred in the pleadings and it is not necessary to first amend the pleadings in such a case.*

*XXX XXX*

*We are, therefore, of the considered view that a mistake in the decree can be corrected by the Court under Section 152 of the Civil Procedure Code even though it may have been copied from the pleadings of the parties itself and it is not necessary for the correction of the decree to first amend the pleadings."*

**14.** *Subsequently, in Mohinder Singh's case (supra) this Court ordered the correction of khasra number wrongly mentioned in the plaint. Still later in Har Chand Singh's case (supra) this Court found that Section 152 of the Code deals with two kinds of situations firstly correction of clerical or arithmetical mistake of judgments, decrees or orders and secondly errors arising in those judgments and decrees from any accidental slip or omission. Such mistake or slips may at any time be corrected by the court either on its own motion or on the application of any of the parties. The court held that errors in the plaint followed by the decree has occasioned from an accidental slip or omission may be at the time of drafting of the plaint on the basis of incorrect jamabandi provided by the revenue authorities. It was, thus, held that the second part of the section deals with an error which is not at the instance of the court but could have been occasioned by some outside agency as well.'*

Learned counsel for the petitioner further relies upon a judgment passed by this Court (Punjab and Haryana High Court) titled as **'Kartar Singh Vs. Harchand Singh', 1994(1) PLR 25, Law Finder Doc Id # 39190**, and refers to paragraph No.4. The relevant part of paragraph No.4 is reproduced hereunder:

*'4. I have heard the learned Counsel for the parties and with their assistance have gone through the findings recorded by the executing Court in the application. Section 152 of the Code reads as under:-*

*"Clerical or arithmetical mistake 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."*

*A reading of the aforesaid Section indicates that it deals with two kinds of situations (1) correction of clerical or arithmetical mistake in judgments, decrees, or orders and (ii) errors arising in those judgments, decrees or orders from any accidental slip or omission. Mr. Hemant Kumar Gupta seems to be right when he says that his case is covered under the second part of the Section inasmuch as that the errors in the plaint followed by the decree had been occasioned from an accidental slip or omission made at the time of drafting of the plaint on the basis of the incorrect jamabandi provided by the revenue authority. It is, therefore, apparent that this part of the Section deals with an error which is not at the instance of the Court, but could have been occasioned by some outside agency as well. It would be noticed that both the judgments cited by Mr. Gupta pertain to the correction of khasra numbers and the mistakes in the decree sheet had occasioned due to the fact that incorrect jamabandi had been provided by the revenue authority, xxxxx.'*

Learned counsel for the petitioner also refers to another judgment passed by this Court (Punjab and Haryana High Court), titled as '**Mohinder Singh and others Vs. Teja Singh and others, 1978 PLR 728, Law Finder Doc Id # 67298**' and refers to paragraph No.12, which is reproduced herebelow:

*'12. In the instant case, the mistake in the judgment and the decree, occurred due to an accidental slip, by writing khasra No. '20' instead of khasra No. 24' in the plaint and its notice was not taken even by the defendants while contesting the suit. Infact there was no about the identity of the land in dispute, as the*

*same had been kept for establishing a school. The correction of the khasra number, thus will not affect the identity of the field in dispute, Justice, therefore, requires that the necessary correction be made in the plaint, judgment and decree, under Section 152, Civil Procedure Code. Thus I do not see any illegality in the order under revision. The result is that this civil revision petition is dismissed. No order as to costs.'*

8. This Court, has also come across the law in this regard laid down by Hon'ble Apex Court, titled as '**Tilak Raj Vs. Baikunthi Devi**', 2009(2) R.C.R. (Civil) 385, Law Finder Doc Id #182643.

Paragraph No.6, explaining the factual mistake in the civil suit is reproduced as under:

*'6. The appellant filed Civil Suit No. 149 of 1979 for a declaration that he is owner in possession as co-sharer of the two parcels of land, Le, the land of Datta Ram which was returned by the FCI to Smt. Baikunthi Devi and the land which was wrongly described in suit no. 306/1969. The Sub Judge, 1st Class, Anandpur Sahib by his judgment and order dated 31.8.1982 allowed the suit of the appellant by holding that he was entitled for decree for possession of the land which had been wrongly described as Khasra No. 25R/52 measuring 5 K8 Marlas as mentioned in para A of the plaint, in which he has been held to have ½ share as co-sharer in the entire land against the defendants. By the said judgment and order, possession of land measuring 13 Kanals 10 Marlas was also decreed in favour of appellant as mentioned in para B of the plaint in which the appellant has been held to have share as co-sharers in the land comprised of Khewat No. 129. Khatoni No. 181. Suit of the plaintiff was further decreed against the defendants through a decree for declaration that the plaintiff is owner in possession as co- sharer of land measuring 9 Kanals 17 Marlas in which plaintiff has ½ share as co-sharer in the entire land as fully detailed in Part C of the plaint. '*

A long discussion has been done by the Hon'ble Apex Court in paragraph Nos.12 to 17, and the same is reproduced hereunder:

*'12. Mr. M.L. Verma learned senior counsel appearing for the respondents summarised his submissions by submitting that legal remedies which were available to the appellant were not resorted to by him and having not done so at the appropriate stage, the High Court was justified in coming to the findings and the present appeals are required to be dismissed. It was also submitted by him that since the appellant had failed to move an application as required under Section 152 of the Civil Procedure Code for rectification of error regarding Khasra Number and having not filed any application under Order 6 Rule 17 Civil Procedure Code for amendment of pleadings, which options were although available and the same having not been exercised by the appellant, therefore, these appeals are liable to be dismissed. He also submitted that the respondent had re-purchased the said property on 28.5.1969 by paying an amount of Rs. 4047.06 to the FCI and got possession of the land from the said FCI and therefore the said action amounted to re-purchase of the land by the respondent and therefore the respondent could be treated as owner of the entire land.*

*13. We have perused the submissions made by the counsel appearing for both the parties and scrutinised the whole record. On appreciation of the records, we are of the opinion that the Patwari had issued a wrong certified copy of Jamabandi incorporating therein Khasra No. 25R/52 against Khewat No. 50 Khatoni No60 of jamabandi for the year 1966-67 of village Mojowal. In fact there was no Khasra No. 25R/52 whereas it was actually 26R/52. On the basis of and on account of such wrong supply of materials in the certified copy of Jamabandi, the appellant had sued by wrongly mentioning identity of land as Khasra No. 25R/52. There was no dispute that the parties in the earlier suit were agitating regarding the Estate of Datta Ram. In that view of the matter the appellant was not at fault at all for suing the land as mentioned in the para A of the plaint filed in suit no. 149 of 1979. Actually, this was a mistake on the part of the Patwari or some*

*Revenue Officer, who had issued the aforesaid Khasra Girdawari. It was nowhere disputed that Khasra No. 268/52 was owned by Datta Ram and there was no Khasra Number described as 25R/52. More 368/52 was owned by Dale of the respondent was made in the written submissions in Civil Suit No. 306 of 1969 or otherwise that it was not Khasra No. 25R/52.*

**14.** *The aforesaid mistake was of clerical nature which could have been corrected by applying the provisions of Section 152 of the CPC. Counsel appearing for the respondents also during his submissions fairly accepted the aforesaid position. The remedy that was available to the appellant was to file an application seeking for amendment of the decree by way of correcting the clerical mistake in respect of Khasra Number. Since the mistake was clerical in nature and the appellant being not responsible for the said clerical mistake which had occurred due to wrong recording of Khasra Number in Khasra Girdawari, we find no reason as to why such a genuine and bona fide mistake cannot be allowed to be corrected by exercising the powers under Section 152 of the CPC. In **K. Rajamouli v. A.V.K.N. Swamy, 2001(3) RCR (Civil) 194 : (2001)5 SCC 37**, this Court held as follows :-*

*"Section 152 provides that a clerical or arithmetical mistake 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".*

**15.** *Since the court exists to dispense justice, any mistake which is found to be clerical in nature should be allowed to be rectified by exercising inherent power vested in the court for sub-serving the cause of justice. The principle behind the provision is that no party should suffer due to bona fide mistake. Whatever is intended by the court while passing the order or decree must be properly reflected therein otherwise it would only be destructive of the principle of advancing the cause of justice. In such matters, the courts should not bind itself by the shackles of technicalities.*

**16.** *In **S. Satnam Singh and Ors. v. Surender Kaur and Anr.**, reported in 2009(1) RCR (Civil) 600: 2009(1) RAJ 287: 2008(15) SCLAE 626 Court held as follows:-*

*"21. The court may not have a suo moto power to amend a decree but the same would not mean that the court cannot rectify a mistake. If a property was subject matter of pleadings and the court did not frame an issue which it ought to have done, it can, at a later stage, when pointed out, may amend the decree.*

*22. The power of amendment, in a case of this nature, as notice hereinbefore, would not only be dependent upon the power of the court but also the principle that a court shall always be ready and willing to rectify the mistake it has committed."*

*17. We feel that if we direct the appellant to seek remedy under the provisions of Section 152 of the Civil Procedure Code, it will only delay and prolong the litigation between the parties. In order to cut short the litigation and to save precious time of the court as also to give quietus to the entire dispute, we direct in exercise of the powers under Section 152 of the Civil Procedure Code that the decree be corrected by giving the correct Khasra No. 26R/52 in place of Khasra Number 25R/52. Having decided so, in the aforesaid manner, we are not required to go into the arguments advanced before us and adjudicate as to whether Order 2 Rule 2 Civil Procedure Code would be applicable in the facts and circumstances of the present case and whether or not the subsequent suit was barred.'*

9. This Court has deeply examined all the judgments and in more specific the dictum given by Hon'ble Apex Court in **Tilak Raj's case (supra)**, wherein, the factual situation is almost identical. In the said case also, because of wrong supply of materials in the certified copy of Jamabandi, appellant wrongly filed the suit by mentioning the identity of land as Khasra No.25/R/52, whereas in actual, it was required to be mentioned as 26/R/52. Court realized that infact, it was mistake on the part of the Patwari or some revenue officer, who had

issued the Khasra Girdawri. If the factual situation and the principal laid down therein is applied to the present case, it almost stands at *pari materia* .

This Court do not find any reason to accept the submission addressed by the respondent No.1 herein that the prayer of amendment cannot be entertained because of the delay part. It is settled theory that to diagnose the fault/mistake and to find out a permanent solution to it, one requires to go to the root of the cause . In the present case, the root of error lies in the office of the Revenue Department, wherein wrong entries were introduced in the Jamabandi for the year 2010-2011 and copies were also supplied to the petitioner/plaintiff. It has been well explained by the petitioner in the present revision petition also that after realizing the mistake of mentioning of wrong number of the land, same was brought to the notice of Revenue Authorities/Department, wherein, after conducting inquiry, the correction was introduced and fresh Jamabandi was issued in the year, 2015-2016 by mentioning the correct number of land as Rectangle No.37/22/5 by removing Rectangle No.52/22/5.

10. This Court is well conscious of the law that existence of the Courts lies in its purpose i.e. dispensation of justice, and in performing its duty, any mistake which is clerical in nature should be allowed to be rectified at the earliest and also by ignoring all technical hindrances. Accordingly, by following the dictum of the Hon'ble Apex Court and also being guided by judgment passed by this Court

(referred hereabove) and finding force in the submissions addressed by the counsel for the petitioner, the order dated 20.05.2023 (Annexure P-10) **is hereby set aside** and the present revision petition is allowed.

Pending Civil Miscellaneous, if any, also stand disposed of.

December 19, 2023

*rashmi*

Whether speaking/reasoned

Whether reportable?

[SANJAY VASHISTH]

JUDGE

yes/no

yes/no