



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2593 OF 2023

Balasaheb Bhaskarrao More

VERSUS

Prasad Yashwantrao More And Others

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Mr. V. P. Latange, Advocate for the Petitioner

Mr. P. U. Gujrathi, Advocate for Respondent No. 2

Mr. S. K. Chavan, Advocate for Respondent No. 3

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CORAM : R.M. JOSHI, J

DATE : JUNE 20, 2024

PER COURT :

1. This Petition depicts peculiar facts. Petitioner is Plaintiff in RCS No. 58/2010. He filed suit against three defendants i.e., Prasad More, Dagadu Paradwar and Gajanan More. In this suit, order came to be passed on 06.10.2011 of dismissal of the suit against Defendant No. 2 for failure on the part of the Plaintiff to take steps to serve him. In spite of this order, the learned trial Court decreed the suit against Defendants, however it is mentioned in the cause title that the suit stands dismissed against Defendant No. 2 – Dagadu Paradwar. This decree was assailed in the first appeal successfully. Plaintiff being aggrieved by the judgment of the First Appellate Court has preferred

Second Appeal before this Court bearing stamp no. 1004/2020. During the course of the said proceeding, on the basis of objection raised by learned Registrar of this Court, it is revealed to the Plaintiff that though suit was already dismissed against the Defendant No. 2, in operative part of the judgment records that the decree is passed against all Defendants.

2. An application, therefore, was moved before the Trial Court for correcting the judgment and decree to the effect that the suit is dismissed against Defendant No. 2 and decreed against Defendant Nos. 1 and 3. This application was rejected by the learned trial Court essentially for the reason that the judgment and decree passed by the trial Court was challenged before the First Appellate Court and First Appellate Court has caused interference therein.

3. Learned Counsel for the Petitioner placed reliance on the judgment of the Hon'ble Supreme Court in case of Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan and Others, AIR 2003 SC 351, which according to him deals with the issue involved in the present proceedings.

4. Learned Counsel for the Respondent/Defendant Nos. 1 and 3 opposed the Petition on the ground that after passing of judgment in First Appeal, original decree is merged into the said decree and hence, no correction would be permissible in the judgment and decree passed by Trial Court. It is their further submission that the correction of said decree may not become adverse to the interest of these Defendant.

5. Undisputed facts as they depict from the record indicates that the suit RCS No. 58/2010 was dismissed against Defendant No. 2 on 06.01.2011 on account of failure on the part of the Plaintiff to take steps to serve him and specific order is passed to that effect by Trial Court. Once the suit is dismissed against Defendant No. 2, there was no question of passing of any decree against him by the impugned judgment. In such circumstances, it was an inadvertent error committed by the learned Trial Court of decreeing the suit against Defendants. In any case, the said decree could be treated only against Defendant Nos. 1 and 3 and not against Defendant No. 2 in view of earlier order. In such circumstances, the learned Trial

Court ought not to have rejected the application on the ground that the Appeal against such judgment and decree is already entertained and decided by the First Appellate Court and Second Appeal is pending before this Court. The principle of merger of decree passed by Trial Court in the decree passed by the Appellate Court would not apply to this case to the extent of correction of inadvertent error crept in the judgment and decree passed by Trial Court. If there is apparent error in passing judgment and decree which is contrary to the record of the Court itself, it is absolutely necessary to correct such error to set record right. Since this being inadvertent error committed by Trial Court, the same must be corrected that too by the same Court.

6. It would be relevant to refer to the observations of the Hon'ble Supreme Court in aforestated case as under:

"14. How to solve this riddle? In our opinion, the successful party has no other option but to have recourse of Section 152 of CPC which provides for clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission being

corrected at any time by the Court either on its own motion or on the application of any of the parties. A reading of the judgment of the High Court shows that in its opinion the plaintiffs were found entitled to succeed in the suit. There is an accidental slip or omission in manifesting the intention of the Court by couching the reliefs to which the plaintiffs were entitled in the event of their succeeding in the suit. Section 152 enables the Court to vary its judgment so as to give effect to its meaning and intention. Power of the Court to amend its orders so as to carry out the intention and express the meaning of the Court at the time when the order was made was upheld by Bowen L.J. in re Swire; Mellor V. Swire, (1885) 30 Ch. D. 239, subject to the only limitation that the amendment can be made without injustice or on terms which preclude injustice. Lindley L.J. observed that if the order of the Court, though drawn up, did not express the order as intended to be made then "there is no such magic in passing and entering an order as to deprive the Court of jurisdiction to make its own records true, and if an order as passed and entered does not express the real order of the Court, it would, as it appears to me, be shocking to say that the party aggrieved cannot come here to have the record set right, but must go to House of Lords by way of appeal."

7. Considering the law laid down by the Hon'ble Supreme Court and having regard to peculiar facts and

circumstances of the case, the present Petition deserves to be allowed. The impugner order, therefore, is set aside. Application Exh. 01 filed by Petitioner/Plaintiff stands allowed.

8. Learned trial Court to cause necessary corrections to the judgment and decree.

9. Petition is allowed in above terms.

(R. M. JOSHI, J.)

Malani