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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-5285-2024

Date of decision : 12.09.2024

Manjit Kaur (now deceased) through LRs and another

... Petitioners

Versus

Jaswant Singh and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.L.S. Sidhu, Advocate
for the petitioners.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition under Article 227 of the Constitution of India for setting aside the impugned order dated 31.07.2024 (Annexure P-9) passed by the Civil Judge (Jr.Div.), Moga whereby the trial Court has accepted the application of respondent no.1 under Section 152 CPC for amendment of the counter claim.
2. Brief facts of the present case are that the present petitioners had filed a suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiffs with respect to the suit land, which included khasra no.145//10/1 and did not include khasra no.145//4/1. A counter claim was filed by respondent no.1-defendant no.1, Jaswant Singh, for possession of the land measuring 0 kanal 11 marla 4 sarsahi being 206/1260 share of 3 kanal 10 marla. In the head note of the

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counter claim, inadvertently the land was stated to be comprised in rectangle no.145/4/1 (3-10), khewat no.909, khatauni no.1087 as per the jamabandi for the year 2002-03, instead of khasra no. 145//10/1. The counter claim for possession was made on the basis of a registered sale deed dated 13.02.2009 which as per the impugned order is with respect to khasra no.145//10/1 and not khasra no.145//4/1. The error in mentioning the wrong khasra number is also apparent from the fact that respondent no.1 had filed a counter claim only with respect to the land which is the suit land, which in the present case was khasra no.145//10/1 along with other khasra numbers. On account of the said error in the head note of the counter claim, similar error was reflected in the affidavit filed by the counter claimant and resultantly, even in the judgment and decree dated 27.09.2016 (Annexure P-5) the said error continued and although the counter claim of respondent no.1 was decreed but the khasra number had been wrongly mentioned.

3. An application dated 30.04.2019 (Annexure P-6) was filed by respondent no.1-counter claimant under Section 152 CPC for amendment of the decree dated 27.09.2016 for mentioning the correct khasra number. In the said application, it was specifically stated that the sale deed in question, on the basis of which the decree was granted, was with respect to khasra no.145//10/1 and not with respect to khasra no.145//4/1 and even the jamabandi for the year 2002-03 which has been annexed, was with respect to khasra no.145//10/1. It is further stated that even the plaintiffs in their suit had sought permanent injunction with respect to various khasra numbers including khasra no.145//10/1. Reply to the said application was



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filed. The trial Court vide impugned order dated 31.07.2024 had allowed the said application after observing that the mistake mentioning the wrong khasra number in the counter claim was a typographical mistake and the said fact was apparent from the sale deed, which was the basis for allowing the said counter claim. It was observed that it is settled law that even in case an error has crept in the judgment and decree, on account of there being a mistake in the counter claim / affidavit, then also the same can be rectified at any stage under Section 152 CPC. It is the said order which has been challenged in the present revision petition.

4. Learned counsel for the petitioner has submitted that the present case is not a case where an inadvertent error has occurred in the judgment and decree and rather in the present case in the counter claim itself, the khasra number which has been mentioned is 145//4/1 and not 145//10/1 and even in the affidavit given in support of the said counter claim, the khasra number 145//4/1 is mentioned. Thus, it is submitted that the present case would not fall under Section 152 CPC and the impugned order thus deserves to be set aside.

5. This Court has heard the learned counsel for the petitioner and has perused the paper book.

6. Section 152 CPC is reproduced hereinbelow:-

“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.”



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A perusal of the said provision would show that wide powers have been given to the Court to rectify accidental slip / omission / errors and no specific time has been mentioned in the said provision for carrying out the said rectification.

7. A Coordinate Bench of this Court in the case of ***Saudagar Singh vs. Amir Singh & others*** reported as ***2009(4) RCR (Civil) 638*** after relying upon the judgment of the Division Bench of this Court as well as other judgments had observed that the language of Section 152 CPC does not restrict the power of the Court to correct the clerical or accidental errors and the said provision has been framed to advance the cause of justice and to avoid the multiplicity of litigation. It was further observed that the mistake in the decree could be corrected by the Court under Section 152 CPC, even though it may have been copied from the pleadings of the parties themselves and that it was not even necessary to undertake the amendment of pleadings while carrying out the said correction. Reference has also been made to the judgment of the Hon'ble Supreme Court in the case of ***Jayalakshmi Coelho vs. Oswald Joseph Coelho*** reported as ***(2001) 4 SCC 181*** in which it was observed that the principle on which the provision of Section 152 CPC is based is that the mistake by Court ought not to cause a party to suffer and whatever be the intention of the court while passing a decree should be clearly reflected therein and that the powers under Section 152 CPC are inherent powers and are available to all courts. The relevant portion of the said judgment is reproduced hereinbelow:-

*“4. These decisions are countered by reference to judgment in ***Pritam Singh v. P. Didar Singh and another, 1976 RLR 586****



where a Division Bench of this Court had ruled that language of Section 152 of Civil Procedure Code does not restrict the power of the Court to correct the clerical or accidental error and the powers mentioned in Section 151, 152 and 153 are vested in the Court to advance the cause of justice and to avoid the multiplicity of proceedings. It further held that a mistake in decree could be corrected by the Court under Section 152 Civil Procedure Code, even though it may have been copied from the pleadings of the parties themselves and that it is not even necessary in the correction of the decree to undertake the amendment of pleadings. The Hon'ble Supreme Court held in Jayalakshmi Coelho v. Oswald Joseph Coelho, 2001(2) RCR (Civil) 515: (2001)4 SCC 181 that the principle on which the provisions of Section 152 are based is that mistake by court ought not to cause a party to suffer and whatever be the intention of the court while passing a decree should be clearly reflected therein. The Hon'ble Supreme Court laid down that powers under Section 152 are inherent powers and would be available to all courts and authorities regardless whether Section 152 is applicable to any particular proceedings.

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.....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. ”

8. In the present case, the fact that the suit filed by the petitioner for injunction included various khasra numbers including khasra



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no.145//10/1 and not khasra no.145//4/1 has not been disputed before this Court. The said fact is also apparent from a perusal of the judgment dated 27.09.2016 (Annexure P-5). Furthermore, the fact that the counter claim for possession filed by respondent no.1-defendant no.1 to the said suit is based upon the registered sale deed dated 13.02.2009 is not disputed and at any rate the said fact is apparent from a perusal of the counter claim (Annexure P-1). The findings of the trial Court to the effect that the said sale deed pertains to khasra no.145//10/1 and not to khasra no.145//4/1 has not been challenged before this Court. From the above said fact, it is thus apparent that on account of a clerical error in the head note of the counter claim, the said clerical error had crept in the affidavit filed along with the counter claim and had also crept in the judgment and decree dated 27.09.2016, decreeing the counter claim and thus, the trial Court has rightly exercised the powers vested under Section 152 CPC for rectifying the said error. The above said judgments fully support the said aspect. The decree passed by the Court should duly reflect the decision taken in the case. In the present case, it is apparent that the matter which was adjudicated was with respect to khasra no.145//10/1 and not with respect to khasra no.145//4/1, and thus, the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

September 12, 2024.
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No