



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14418 OF 2018

Ramesh Shankar Shetkar

...Petitioner
[Judgment Debtor]

VERSUS

1. Nilesh Ramrao Shetkar
2. Ranjana Ramesh Shetkar
3. Tarabai Sangram Kasore
4. Nagarbai Gangadhar Deshmukh
5. Rameshwar Madhav Shetkar

...Respondents
[Res. 1 and 2-Orig. DH
and Resp. 3 to 5 Ori. JD]

.....
Mr. V.V. Bhavthankar, Advocate for the Petitioner
Mr. K.M. Nagarkar, Advocate for respondents No. 1 and 2
.....

CORAM : MANJUSHA DESHPANDE, J.

DATE : 7th FEBRUARY, 2025

ORDER :

1. The petitioner is challenging the order dated 26.11.2018, passed by Civil Judge, Junior Division, Biloli, below Exhibit-53, whereby application filed by original plaintiffs/degree holders for amendment in plaint and decree has been allowed.

2. Decree Holders/original plaintiffs filed an application contending that while filing civil suit, the plaintiff has written House No. 105, situated at Lohgaon, but in the Gram Panchayat record in Namuna-8, house No. is mentioned as 793. It is

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contended that while mentioning the house number in the plaint, a mistake has been committed, which is not intentional, but a typing mistake committed due to inadvertence. Therefore, a prayer was made to grant permission to amend the plaint and decree under Section 152 of Code of Civil Procedure.

3. The application was opposed by the Judgment Debtors/original defendants on the ground that they have opposed the execution petition filed by plaintiffs wherein he has contended that house number is 793 and not 105. However, his objection was brushed aside and thereafter appeal filed by him against said order was also dismissed. The order of dismissal was confirmed in the second appeal before this Court. Therefore, according to him, considering that the proceedings have finalized by dismissal of second appeal before this Court, the decree holders now cannot agitate said issue and change his stance.

4. Learned advocate Shri. Bhavthankar appearing for the petitioner submits that change in house number is not an accidental slip or omission, which can be corrected under Section 152 of CPC. In the present case, the plaintiff has categorically demanded partition of House No. 105 in the plaint. Therefore, now he is precluded from seeking correction of the house

number. According to him, application of decree holders which is entertained by the Trial Court treating it to be an application under Order 6 Rule 17 of CPC cannot be entertained since amendment in decree cannot be effected by invoking Order 6 Rule 17 of CPC. Therefore, according to him, the Trial Court has committed an error by allowing the application thereby granting permission to amend the plaint as well as decree.

5. Learned advocate Shri. Nagarkar appearing for respondent No. 1 and 2, who are decree holders/plaintiffs contends that though in the plaint house number has been stated to be 105 and plaintiffs have maintained the same stand throughout, however, during the execution proceeding they realized from the municipal record that the house number is 793 and not 105. According to him, it is an arithmetical mistake. Admittedly, there is only one property which belongs to judgment debtor in the village. Therefore, it will not cause prejudice to the judgment debtors if there is change effected in the house number. He further refers to the findings recorded by the Trial Court which discloses that the boundaries mentioned in the plaint regarding house no. 105 matches with the boundaries in the report submitted by Court Commissioner, which is

accompanied with the map and in the report of Court Commissioner, same boundaries are referred by him. It is further observed by the Trial Court that so far as the house number and its boundaries are concerned, it was never objected by judgment debtors in their written statement or even thereafter. It is also submitted by learned advocate for respondent No. 1 and 2 that even during the measurement, the judgment debtors have never objected to the boundaries which are measured during the measurement carried out by the Court Commissioner. Therefore, at this stage, objection raised by judgment debtors cannot be accepted.

6. Upon going through the order passed by the Trial Court and after hearing the respective advocates for parties, it is not disputed that the suit is decreed in favour of decree holders and proceedings have attained finality. Therefore, so far as execution is concerned, Section 152 of the CPC confers powers on the Court to correct errors in judgments, decrees, or orders. This includes clerical or arithmetical mistakes, or errors that occur due to an accidental slip or omission and it can be corrected any time by the Court either on its own motion or on application by any party.

7. In the present case, though boundaries which are mentioned in the plaint as well as in the decree and report of Court Commissioner are one and the same, however, from the municipal/Gram Panchayat record it transpires that house number is mentioned as 793, which has been wrongly mentioned in the plaint as 105. Though, decree holders had consistently taken a stand that house number is 105 and not 793, however, they have subsequently realized the error on their part. They were under assumption that they have rightly mentioned the house number which is 105. But, upon subsequently realizing mistake committed by them in mentioning house number in plaint, they are seeking permission to amend the plaint as well as decree so that decree becomes executable.

8. Learned advocate for respondents No. 1 and 2 places reliance on the judgment in the case of ***Peethani Suryanarayana and Anr. v. Repaka Venkata Ramana Kishore and Ors.***, AIR 2009 SC 2141, wherein the amendment of decree for changing survey number of the suit property is sought. The change was resisted by the contesting respondent, but it was not considered since the change in survey number did not constitute substitution of property, the order allowing the amendment was sustained and

it would not be interfered. It is observed that "*the power of the court to allow such an application for amendment of plaint is neither in doubt nor in dispute. Such a wide power on the part of the court is circumscribed by two factors, viz., (i) the application must be bonafide; (ii) the same should not cause injustice to the other side and (iii) it should not affect the right already accrued to the defendants.*"

In the present case, application of decree holders is bonafide and it is not likely to cause any injustice to the judgment debtors and it is not going to affect the judgment debtors, since there is no accrual of right in favour of judgment debtors in the decree which has been passed by the Court while deciding the suit.

9. Learned advocate for the respondents further places reliance on the judgment of this Court in the case of ***The Ratnakar Bank Limited vs. Usha Rajaram Nimbalkar & Ors.***, 2013(4) ALL MR 538, wherein this Court has held that, "*Order 6 Rule 17 of CPC applies to the amendment of pleadings, and cannot apply to execution of proceedings and more so in respect of an application for possession which has been filed in which through inadvertence the description of the property so far as*

two boundaries are concerned have not been given."

10. In the present case, it is undoubtedly a mistake committed by decree holders, which is apparent from the boundaries mentioned in the plaint, Court Commissioner's report as well as the decree. Hence, it is apparent that house number has been wrongly mentioned. Whenever there is clerical or arithmetical mistake in judgments, decrees or orders, the Court is conferred with a power to correct the mistake as per Section 152 of CPC and accordingly, the Trial Court has allowed the amendment application filed by the decree holders. Therefore, the powers conferred under Code of Civil Procedure are rightly exercised by the Trial Court. The Trial Court while allowing the application has confirmed that the identity of suit land has not been changed. Therefore, no prejudice is going to be caused to the judgment debtors. Since the defendants were unable to demonstrate that in what manner prejudice would be caused to them, if the house number is changed, I do not think that there is any case for interference made out by the petitioner. Hence, the writ petition is dismissed.

(MANJUSHA DESHPANDE, J.)

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