



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.15669 OF 2022**

Satyawar Dhondi Pawar	...	Petitioner
versus		
Shishupal Dhondi Pawar and Ors.	...	Respondents

**WITH
INTERIM APPLICATION NO.2741 OF 2025**

Satyawar Dhondi Pawar	...	Applicant
versus		
Shishupal Dhondi Pawar and Ors.	...	Respondents

Mr. Vishwanath S. Talkute, for Petitioner/Applicant.
Mr. Ajit V. Alange, for Respondent No.1.
Mr. Graham Francis, for Respondent Nos.3, 4, 5A to 5D.

CORAM: N.J.JAMADAR, J.

DATE : 13 MARCH 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally.
2. This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of an order dated 14 March 2022 passed by the learned Civil Judge, Jr. Division, Sangola, whereby the application preferred by the Petitioner to correct the judgment and decree passed in Regular Civil Suit No.5 of 1979 so as to determine and partition the share of the applicant and the co-defendants, came to be rejected.

3. Respondent No.1 instituted a suit for partition and separate possession in respect of agricultural lands bearing Block Nos.40, 90, 109, 127, 128, 141, 145, 146/1,2 and 152/1B situated at Villages Haldahiwadi and Shirbhavi, house property situated at Village Haldahiwadi and the cash amount. The suit proceeded ex-parte against Defendant No.3 (the Petitioner herein) and the Defendant Nos.2, 4, 5B, 7 and 8.

4. By a judgment and order dated 6 March 1992, the trial Court partly decreed the suit. It was declared that the Plaintiff was entitled to partition and separate possession of his 11/70 share in the suit lands bearing Block Nos.40, 90, 127, 128, 141, 145, 146/1, 2 and 152/1B and the house property and the amounts of Rs.1,000/- and Rs.304/- deposited in District Central Co-op. Bank, Sangola. The suit came to be dismissed qua property bearing Block No.109.

5. Aggrieved, Defendant Nos.1 and 8 to 10 preferred an appeal being Civil Appeal No.68 of 1992. By a judgment and order dated 21 September 1999, the said appeal came to be dismissed.

6. The decree came to be executed qua the house property. For partition of the agricultural lands, the decree was sent to the Collector. The Collector proposed partition and prepared a Partition Table so as to carve out 11/70 share of the Plaintiff.

7. The Petitioner preferred an application for amendment in the judgment

and decree so as to determine the share of the Defendants. It was contended that, since the suit was for partition and separate possession of the joint family properties under the provisions of Order XX Rule 18 of the Code of Civil Procedure, 1908, the Court ought to have declared the shares of all the parties who were entitled to partition. Thus, the mistake which has crept in the decree be corrected and the share of all the Defendants who were entitled to partition in the agricultural lands be declared, and, accordingly, the decree be executed.

8. Respondent No.1 resisted the application.

9. By the impugned order, the learned Civil Judge was persuaded to reject the application observing, inter alia, that in the judgment passed in RCS No.5 of 1979, the Court had not at all determined the shares of the other persons entitled to the share in the agricultural lands. Therefore, the defect that has occurred in the judgment and decree in RCS No.5 of 1979 cannot be said to be a clerical or arithmetical mistake which can be corrected by invoking the powers under Sections 151, 152 and 153 of the Code.

10. Mr. Talkute, learned Counsel for the Petitioner, submitted that there was a clear omission on the part of the trial Court in passing the decree in RCS No.5 of 1979. It was incumbent upon the Court to decide the shares of the Defendants as well, in the suit property. Since every co-sharer is a Plaintiff in a suit for partition, the trial Court could not have rest content with declaring

the share of the Plaintiff alone. The fact that the Petitioner had not preferred an appeal against the said decree and judgment, according to Mr. Talkute, is of no significance. There is no impediment in correcting the decree even at this stage before it is executed.

11. To buttress these submissions, Mr. Talkute placed reliance on the judgment of this Court in the case of Shashikala Namdeorao Phad and Anr. V/s. Avinash Namdeorao Phad and Anr.¹, an order of this Court in the case of Hirabai Rangrao More V/s. Chandrakalabai Wasudeo Bhande² and the judgment of the Andhra Pradesh High Court in the case of Tandra Satyanarayana Rao V/s. Tandra Paparao and Ors.³.

12. Mr. Alange, learned Counsel for the Respondent No.1 -Plaintiff countered the submissions of Mr. Talkute. It was urged that the Plaintiff has been deprived of the fruits of the decree, though the suit was instituted in the year 1979. The Petitioner has been in possession of all the agricultural lands. Thus, the Petitioner intends to perpetuate his possession by filing objections in the execution proceeding, though the decree in respect of house property has been executed.

13. Mr. Alange would urge that the amendment sought in the decree cannot be said to be one of correction of a arithmetical or clerical error or accidental slip or omission. The Trial Court had not determined the shares of other co-

1 WP No.3740 of 2016 dated 6 August 2019

2 WP No.2240 of 2019 dated 11 Feb. 2020

3 1997 SCC Online AP 81

sharers except the Plaintiff. That exercise cannot be done by way of amendment in the decree. An endeavour was made by Mr. Alange to urge that the proposed amendment would be beyond the scope of the powers conferred on the Court under Section 152 of the Code. Reliance was placed on the judgment of the Supreme Court in the case of State of Punjab V/s. Darshan Singh⁴.

14. Mr. Alange further urged that even resort to the inherent power under Section 151 of the Code may not be permissible. To this end, reliance was placed on the decision of the Supreme Court in the case of My Palace Mutually Aided Co-op. Society V/s. B. Mahesh and Ors.⁵.

15. Mr. Francis, learned Counsel for Respondent Nos.3, 4, 5A to 5D supported the prayer for determination of the shares of the other co-sharers.

16. Incontrovertibly, Respondent No.1 had instituted a suit for partition and separate possession of the suit properties asserting that those properties were joint family properties. Dhondi Bapu Pawar – Defendant No.5, was the father of Shishupal – the Plaintiff; Gowardhan, Samadhan, Satyanarayan and Abhiman – Defendant Nos.1 to 4 respectively. Godabai – Defendant No.6 was the mother of the Plaintiff and Defendant Nos.1 to 4. Rajabai, Sindubai, Changunabai and Thakubai, who were impleaded as Defendant Nos.5A to 5D, were the daughters of Dhondi and Godabai. Dhondi passed away during

4 2004(2) Mh.L.J. 565

5 Civil Appeal No.5784 of 2022 dated 23 August 2022

the pendency of the suit.

17. After returning findings regarding the character of the suit properties, the learned Civil Judge held that had the partition taken place during the life time of Dhondi, the Plaintiff would have been entitled to 1/7th share in the joint family properties. Upon the demise of Dhondi, the Plaintiff is entitled to get his 1/7 share plus 1/70 share received from his father i.e. total 11/70 share by way of partition and separate possession. Accordingly, the decree came to be passed.

18. Under the provisions of Order XX Rule 18 of the Code, where the Court passes a decree for the partition of property or for the separate possession of a share therein, if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of Section 54 of the Code. The trial Court while passing a decree in RCS No.5 of 1979 was, therefore, required to determine and declare the rights of other co-sharers who were entitled to a share in the event of the partition of the suit lands. However, the trial Court had declared the share of the Plaintiff alone. The omission to declare the shares of the co-sharers is, thus, evident.

19. In the case of Shashikala Namdeorao Phad (supra), on which reliance was placed by Mr. Talkute, the trial Court had declared the shares of the parties in the body of the judgment. However, in the operative portion of the order, the shares were incorrectly stated. In that backdrop, this Court held that in exercise of the powers under Section 152 of the Code, decree could have been corrected.

20. In the case of Hirabai Rangrao More (supra), the issue was of correction in the area of the property in respect of which the decree was passed.

21. The judgment of the Andhra Pradesh High Court in the case of Tandra Satyanarayana Rao (supra) also involved the question of the correction in the decree, especially in the operative portion where the shares of parties were entitled to were incorrectly mentioned, though in the body of the judgment, the shares of the parties were correctly determined. In such a factual backdrop, placing reliance on the decision of the Supreme Court in the case of Samarendra V/s. Krishna Kumar⁶, it was held that the decree could have been amended by resorting to the power under Section 152 of the Code.

22. It is true, in the case at hand, the trial Court had not declared the shares of other co-sharers, as was the case in the decisions in Shashikala Namdeorao Phad (supra) and Tandra Satyanarayana Rao (supra). The trial

6 AIR 1967 SC 1440

Court had determined the share of Plaintiff alone. However, implicit in the said determination is the determination of the shares of other co-sharers who were entitled to partition in the suit lands. From the perusal of the judgment of the trial Court in RCS No.5 of 1979, it becomes evident that the trial Court had determined $\frac{1}{7}$ share of the Plaintiff by allotting one share each to Dhondi – Defendant No.5, and Godabai – Defendant No.6, and their five sons i.e. Shishupal – Plaintiff, and Defendant Nos.1 to 4. After the demise of Dhondi, however, it seems, the share of Dhondi was partitioned amongst the Godabai, the widow, five sons, and four daughters i.e. Defendant Nos.5A to 5D, and, thus, an additional $\frac{1}{70}$ share was allotted to the Plaintiff aggregating to total $\frac{11}{70}$ share in the suit properties. Thus, the executing Court could not have rejected the application on the premise that in the judgment in RCS No.5 of 1979, since the shares of other co-sharers were not determined, it could not have corrected the decree.

23. Section 152 of the Code reads as under:

“Section 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.”

24. On a plain reading of the text of Section 152, it becomes evident that the Court is empowered to correct the clerical or arithmetical mistakes in

judgments, decrees or orders or errors arising therein from any accidental slip or omission. The use of the expression 'may' emphasises that the power is discretionary and in a sense enabling in nature. Likewise, the use of the expression, "at any time" indicates that the stage of the proceeding does not matter. Such a correction can be made at any time. The use of the expression "either of its own motion or on the application," underscores the legislative intent that it was necessary to empower the Court to correct its record *suo motu* or on the application of any of the parties.

25. The aforesaid expressions of wide amplitude, however, do not imply that the power conferred on the Court under Section 152 is in the nature of review. The corrections, which can be legitimately made by the invoking Section 152 are only those which fall in the category of, "clerical or arithmetical mistakes" or "errors arising from accidental slip or omission". Any correction, which touches upon merits of the case or adds to or subtracts from the relief that has been denied or granted, as the case may be, falls beyond the purview of Section 152 of the Code. On a true construct, the avowed purpose of vesting of the general power in the Court to amend its judgment, decree or orders, is to ensure that the act of the Court does not cause prejudice to the parties. A reference to few judgments of the Supreme Court would illuminate the path.

26. In the case of ***State of Punjab vs. Darshan Singh***⁷ the Supreme Court expounded the nature and import of the power contained in Section 152 of the Code as under :

“12. Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very Court or the tribunal cannot, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party if at all is to file appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review.” (emphasis supplied)

7 2004(1) SC 328.

27. In the case of ***Jayalakshmi Coelho vs. Oswald Joseph Coelho***⁸ the legal position was enunciated as under :

“13. So far legal position is concerned, there would hardly be any doubt about the proposition that in terms of Section 152 C.P.C., any error occurred in the decree on account of arithmetical or clerical error or accidental slip may be rectified by the court. The principle behind the provision is that no party should suffer due to mistake of the court and whatever is intended by the court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice.....

14. As a matter of fact such inherent powers would generally be available to all courts and authorities irrespective of the fact whether the provisions contained under Section 152 C.P.C. may or may not strictly apply to any particular proceeding. In a matter where it is clear that something which the Court intended to do but the same was accidentally slipped or any mistake creeps in due to clerical or arithmetical mistake it would only advance the ends of justice to enable the Court to rectify such mistake. But before exercise of such power the Court must be legally satisfied and arrive at a valid finding that the order or the decree contains or omits some thing which was intended to be otherwise that is to say while passing the decree the court must have in its mind that the order or the decree should be passed in a particular manner but that intention is not translated into the decree or order due to clerical, arithmetical error or accidental slip. The facts and circumstances may provide clue to the fact as to what was intended by the court but unintentionally the same does not find mention in the order or the judgment or something which was not intended to be there stands

8 2001(2) SC 181.

added to it. The power of rectification of clerical, arithmetical errors or accidental slip does not empower the court to have a second thought over the matter and to find that a better order or decree could or should be passed.. There should not be re-consideration of merits of the matter to come to a conclusion that it would have been better and in the fitness of things to have passed an order as sought to be passed on rectification. On a second thought court may find that it may have committed a mistake in passing an order in certain terms but every such mistake does not permit its rectification in exercise of Courts inherent powers as contained under Section 152 C.P.C. It is to be confined to something initially intended but left out or added against such intention.

(emphasis supplied)

28. In the case of ***Niyamat Ali Molla vs. Sonargon Housing Co-operative Society Ltd. and ors.***⁹ the nature of the power of the Court to correct the record of the Court was expounded by the Supreme Court as under :

“19. Code of Civil Procedure recognizes the inherent power of the court. It is not only confined to the amendment of the judgment or decree as envisaged under Section 152 of the code but also inherent power in general. The courts also have duty to see that the records are true and present the correct state of affair. There cannot, however, be any doubt whatsoever that the court cannot exercise the said jurisdiction so as to review its judgment. It cannot also exercise its jurisdiction when no mistake or slip occurred in the decree or order. This provision, in our opinion, should, however, not be construed in a pedantic manner. A decree may, therefore, be corrected by the Court both in exercise of its power under Section

9 (2007) 13 SCC 421.

152 as also under Section 151 of the Code of Civil Procedure. Such a power of the court is well recognized.”

(emphasis supplied)

29. Mr. Alange was justified in canvassing a submission that the Plaintiff has been struggling to get his share in the joint family properties since the year 1979. This Court could have permitted the partition and delivery of possession of the separate share of the Plaintiff, while remitting application back to the executing Court to determine the shares of the rest of the parties who are entitled to the share in a joint family properties. However, there is a significant development in law, which may be required to be considered by the Court while deciding share of the other parties, especially the daughters of Dhondi i.e. Defendant Nos.5A to 5D.

30. The trial Court as well as the Appellate Court have proceeded on the premise that the properties described in paragraph 1 of the plaint were the ancestral properties. In view of the amendment to Section 6 of the Hindu Succession Act, 1956 with effect from 9 September 2005, the status of coparcener has been conferred on the daughters born before or after the amendment, in the same manner as son with same rights and liabilities.

31. A reference to a three judge Bench decision of the Supreme Court in the case of Vineeta Sharma V/s. Rakesh Sharma and Ors.¹⁰ would be

¹⁰ AIR 2020 SC 3717

apposite. The Supreme Court has, inter alia, held that the expression used in explanation to Section 6(5), 'partition effected by a decree of a court' would mean giving of final effect to actual partition by passing the final decree, only then it can be said that a decree of a court effects partition. A preliminary decree declares shares but does not effect the actual partition, that is effected by passing of a final decree; thus, statutory provisions are to be given full effect, whether partition is actually carried out as per the intendment of the Act is to be found out by Court.

32. In paragraph No.129, the Supreme Court culled out the principles, as under :

"129. Resultantly, we answer the reference as under :

(1) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(2) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December 2004.

(3) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(4) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male

relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.” (emphasis supplied)

33. In view of the aforesaid enunciation of law, the Court would be required to consider the share to which Defendant Nos.5A to 5D would be entitled to in the joint family property. Therefore, the issue of determination of the shares of the other co-sharers / defendants ought to be decided by the executing Court. Resultantly, the Writ Petition deserves to be allowed.

34. Hence, the following order.

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned order dated 14 March 2022 stands quashed and set aside.
- (iii) The application for determination of the shares of the parties entitled to the partition of the agricultural lands stands remitted to the executing Court for afresh determination in the light of the aforesaid observations.
- (iv) The executing court is requested to decide the application and also execution petition as expeditiously as possible and preferably within a period of six months from the date of communication of this order.

(v) Rule made absolute to the aforesaid extent.

(vi) No costs.

(vii) In view of the disposal of the Writ Petition, Interim Application No.2741 of 2025 also stands disposed.

(N.J.JAMADAR, J.)