



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5804 OF 2025

Prembala Manmohan Chawla,
Age : 74 Years, Occu. : Household,
R/o. 384, Bhaurao Nagar,
Nagpur -440 008.

.... Petitioner

VERSUS

Brijgopal S/o. Ramballah Modani,
Age : 64 Years, Occu. : Business,
R/o. 104, Rajlaxmi Apartment,
Wardhaman Nagar Square, C.A. Road,
Near Preetam Bhavan, Nagpur.

.... Respondent

....
Advocate for Petitioner : Dr. R.S. Sirpukar
Advocate for Respondent : Mr. R.M. Bhangde

....

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : 28th NOVEMBER 2025
DATE ON WHICH JUDGMENT IS PRONOUNCED : 18th DECEMBER 2025

JUDGMENT :

1. Heard.

2. **Rule.** Rule is made returnable forthwith and by consent of learned Advocates appearing for the parties, the petition is taken up for final disposal.

3. The petitioner takes exception to the order dated 15.09.2025, passed by 4th Joint Civil Judge, Senior Division, Nagpur, at Exhibit 19, in Special Darkhast No.91 of 2023, allowing the application for amendment of plaint and correction of decree.

4. The petitioner is the original judgment debtor and the respondent is the original decree holder in the execution proceedings. The short controversy involved in the instant petition is about the entitlement of decree holder to seek correction of Mouza in the description of properties by way of amendment application. The controversy arises at the stage of execution of decree when it was revealed that the Mouza of the suit property is incorrectly mentioned in the plaint and resultantly, in the decree and in absence of necessary correction, the execution of the decree would be rendered difficult.

5. The decree holder had filed the execution proceedings for execution of judgment and decree dated 29.02.2012, passed in Special Civil Suit No.732 of 2008, which was a suit for specific performance of agreement to sale dated 27.12.2006. During the pendency of execution proceedings, it was revealed that the Mouza of suit property was incorrectly mentioned in the plaint as 'Sakkardhara'

instead of 'Hiwari'. On realization, the decree holder filed the application for amendment of plaint and correction of decree under Order 6 Rule 17 of Code of Civil Procedure (for short, "C.P.C.") and Section 151 and 152 of C.P.C. The judgment debtor resisted the application by filing reply, however by order dated 15.09.2025, the executing court allowed the application and permitted the decree holder to carry out necessary amendment subject to costs. This order is challenged by the judgment debtor by way of instant petition.

6. Dr. R.S. Sirpurkar, learned Advocate for the petitioner-judgment debtor vehemently submitted that the impugned order passed by the trial court under Order 6, Rule 17 of C.P.C. is absolutely unsustainable since the decree holder has failed to make out any case under Section 152 of C.P.C., to show any 'accidental slip' or 'omission' in the judgment. She submitted that the application for amendment is filed by alleging accidental slip, however in the wake of document of property card being filed on record, there would be no question of accidental slip. She also submitted that the actual Mouza of the suit property was already mentioned in the earlier sale-deed and therefore, the reasons mentioned in the application seeking amendment lacks genuineness. She thus submitted that the reasons mentioned in the application seeking correction in the decree are

beyond the scope of Section 152 of C.P.C., which provision can be invoked subject to fulfillment of the parameters provided therein.

7. Per contra, Mr. R.M. Bhangde, learned Advocate for the respondent-decree holder submitted that there is in fact no dispute about the description of suit property in the entire proceedings. He submitted that the boundaries and area of the suit property are properly described in the plaint and in the decree. As such, the property can be sufficiently identified without any dispute. He submitted that the parties had earlier not raised any dispute in the execution proceedings when the application for temporary injunction at Exhibit 14 was under consideration. He also submitted that the decree holder as well as the judgment debtor have filed on record the photographs of the suit property and as such, there is no dispute or controversy about the identification of the suit property. He thus submitted that the mention of incorrect Mouza is by way of accidental slip and for effectively executing the decree, the mention of the correct Mouza is necessary. He submitted that the decree has attained finality till the Hon'ble Supreme Court and no dispute was raised at any point of time. In support of his contentions that the correction can be permitted under Section 151 and 152 of C.P.C., he placed reliance on the judgments of the Hon'ble Madras High Court in the case of

R. Srinivasan Vs. M. Thambusamy, [1996 SCC Online Mad 383], B. Dheenadhayabaran Vs. Rathna Vel, [2015 SCC Online Mad 10368].

He also placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Bhupinder Kumar Vs. Angrej Singh, [(2009) 8 SCC 766]* and *Puran Ram Vs. Bhaguram and Another, [(2008) 4 SCC 102]*.

8. The short controversy involved in the instant petition is whether the correction of Mouza in the description of suit property can be permitted at the stage of execution of decree of specific performance of contract.

9. In the backdrop of contentious arguments, rival contentions fall for my consideration.

10. Having gone through the record, it is clear that the suit for specific performance of contract was decreed in favour of the plaintiff, who is respondent-decree holder herein, and the decree has attained finality till the Hon'ble Supreme Court. Pertinently, none of the parties have alleged any kind of act of fraud or any mischief committed for incorrect mention of Mouza. The description of suit property as mentioned in the plaint contains all the details sufficient enough to identify the property including the boundaries and area of the suit property. A perusal of the property card also shows that the

suit property was owned by the judgment debtor (defendant in the suit) and her name was mutated in the property card based on the sale-deed dated 03.02.1978.

11. It is pertinent to note that the suit for specific performance of contract was filed by the respondent-decree holder with respect to the same property and as such, the parties were *ad idem* about the identity of the property even though while mentioning the suit property in the plaint, incorrect Mouja was mentioned. Apart from this, it is crucial to note that while contesting the application for injunction at Exhibit 14, filed in the execution proceedings, when allegations about taking away the doors and windows of the suit property were made, both the parties had filed on record certain photographs showing the factual position about the damage alleged to have been caused to the suit property. At that stage also, the judgment debtor did not raise any dispute about the description of suit property. As such, it becomes clear that both the parties very well knew that the execution is with respect to the same property, which is sufficiently identified by both of them. It is nobody's case that there is any other property belonging to any of the parties and there is possibility of confusion or difficulty in identifying the properties.

12. The mention of incorrect Mouza in the description of suit property while mentioning in the plaint cannot be considered to be intentional or deliberate act on the part of the plaintiff-decree holder. The mention of incorrect Mouza needs to be corrected so as to avoid rendering the decree ineffective. Although the executing court is not entitled to travel beyond the decree, but is indeed entitled to pass appropriate orders under Section 151 of C.P.C. for effective execution of the decree.

13. It is profitable to make a reference to the judgment relied upon by the learned Advocate for the respondent. While dealing with the identical fact situation, the High Court of Madras in the case of **R. Srinivasan (Supra)**, has observed that when there is no dispute with regard to identity of the property, correction of survey number at the stage of execution of the decree by invoking provisions of Section 152 of C.P.C. need not be interfered with. Relevant paragraphs from the said judgment appearing in paragraph No.9 is reproduced herewith.

“9. In the instance case also, there is no dispute with regard to the identity of the property. The defendant has raised only an objection with regard to the measurement and extent. The learned District Munsif has failed to see this aspect of the matter. Likewise, the court below has failed to give effect to its own finding that the defendant has not disputed the identity of the property and has not stated that

the survey number given in the plaint is wrong. The finding of the court below that Section 152 of C.P.C., cannot be invoked to correct the survey number of the property and that Section 152 can be invoked only to correct clerical errors or arithmetical errors in the judgments and decrees, in my opinion, is erroneous. Likewise the other reasoning given by the court below that any kind of correction can be carried out only before the decree is passed, is also not correct. The further conclusion of the court below that when a decree had been obtained for a particular survey number, it cannot be corrected at the time of execution, is also erroneous. Even assuming without admitting that the petition under Section 152 of C.P.C., to correct the survey number may be technically objected to, in the interests of justice, the court below should have ordered the application in its inherent powers, as the decree-holder has obtained the decree after full contest cannot at all be deprived of the fruits of the decree on a technical reason.”

14. It has to be noted that the above referred judgment of the Madras High Court was followed by a Single Bench of the same High Court in the case of **B. Dheenadhayabaran (Supra)**, on which reliance is placed by the learned Advocate for the respondent.

15. Learned Advocate for the respondent has also placed reliance on the judgment of the Hon'ble Supreme court in the case of **Bhupinder Kumar (Supra)**, which highlighted the position of law with respect to the execution of decree in the suit for specific performance of contract. So also, the Hon'ble Sureme Court in the case of **Puran Ram (Supra)** has considered the scope of Section 26 of the specific relief act which contains a provision about the rectification of an

instrument and relevant observations from paragraph Nos.12 to 14 of the judgment, are reproduced below.

“12. After closely examining the provisions made under Section 26 of the Specific Relief Act, 1963, we do not find any difficulty to hold that in a suit for specific performance of contract for sale, it is permissible to amend a part of the description of the suit property not only in the plaint but also in the agreement. Section 26 clearly says as to when a contract or other instrument can be rectified and provides that when through fraud or a mutual mistake of the parties, the agreement in writing does not express their real intention, it is open to the parties to apply for amendment of the instrument. It provides that when such a situation arises, then-

“26. (1)(a) either party or his representative in interest may institute a suit to have the instrument rectified, or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified;”

13. A reading of these two conditions made under Section 26 of the Act would amply show that either party may institute a suit to have the instrument rectified or a party who has already filed a suit in which any right arising under the instrument is in issue may claim in his pleading that the instrument be rectified. So far as the facts of the present case are concerned, it cannot be doubted that the main issue in the suit for specific performance of the contract for sale was relating to the agreement for sale in which a part of the description of the suit property was wrongly given by mutual mistake and therefore, needed to be amended.

14. Section 26, of course, says that it would be open to a party to institute a suit for correcting the description of the suit property, but the proviso to Section 26 clearly permits that where a party has not claimed any such relief in his pleading, the court shall at any stage of the proceeding allow him to amend the plaint on such terms as may be just for

including such claim. From a plain reading of the provisions under Section 26 of the Act, there is no reason why the prayer for amendment of the agreement to correct a part of the description of the suit property from Chak No. 3 SSM to Chak No. 3 SLM, later on converted to Chak No. 3 SWM could not be granted. In our view, it is only a correction or rectification of a part of the description of the suit property, which cannot involve either the question of limitation or the change of nature of suit. In our view, the suit shall remain a suit for specific performance of the contract for sale and a separate independent suit is not needed to be filed when the proviso to Section 26 itself clearly permits either party to correct or rectify the description of the suit property not only in the plaint but also in the agreement itself. So far as the question of limitation is concerned, the agreement was entered into on 12-4-1991 and the suit, admittedly, was filed within the period of limitation. Therefore, even if the amendment of plaint or agreement is allowed, that will relate back to the filing of the suit which was filed within the period of limitation.”

16. Although this judgment in **Puran Ram (Supra)** dealt with position of law with respect to Section 26 of the specific relief act, however, considering the execution of decree in a suit for specific performance of contract, it is observed that even by correcting the Chak number from ‘SSM’ to ‘SLM’ and ‘SWM’, the description of suit property which was sufficiently identified by one of the parties would not be substantially affected and the said amendment in the agreement would be a formal in nature.

17. Having regard to the position of law laid down in the above mentioned authoritative pronouncements and while

considering the facts of the instant case, the correction of Mouza from 'Sakkardhara' to 'Hiwari' does not amount to changing the suit property which was otherwise sufficiently identified by both the parties and no dispute was ever raised in that regard. The correction of decree as ordered by the executing court cannot be found to be palpably wrong or perverse. In the entire facts and circumstances, I am of the firm view that the correction of Mouza by invoking inherent powers of the court under Section 151 of C.P.C. is very much warranted to avoid the decree being rendered ineffective.

18. It has to be noted that the decree holder having secured a decree, which is maintained till the Hon'ble Supreme Court, is entitled to enjoy the fruits of the decree and cannot be deprived only on the count of error while mentioning Mouza of the suit property in the plaint. Depriving the decree holder to enjoy the fruits of the decree, in the instant case, would be a pedantic approach.

19. After giving anxious consideration to the above mentioned factual and legal aspects, I find no necessity to warrant indulgence with the impugned order. The impugned order passed by the executing court does not need interference on any count under Article 227 of the Constitution of India. The writ petition, therefore,

deserves to be dismissed. Thus, the writ petition is dismissed with no order as to costs. Rule stands discharged.

[PRAFULLA S. KHUBALKAR]
JUDGE

LATER ON :-

20. At this stage, learned Advocate for the petitioner prays for continuation of the interim relief which was granted by an order dated 30.09.2025 and submits that, in view of that interim relief, the possession of the petitioner be protected. Having regard to the fact that the petitioner is in possession and desires to challenge the judgment delivered today, the interim relief shall continue to operate for a period of six weeks from today and it shall cease to operate after expiry of period of six weeks.

[PRAFULLA S. KHUBALKAR]
JUDGE

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