A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 470 of 2016
CNR No. ODHC010325452016

An application under Article 227 of the Constitution of India.

Purna Chandra Mohanty (dead)through his LRs ***(Plaintiff)***

1. ***Hemalata Mohanty***
2. ***Srotoswini Mohanty***
3. ***Jasaswini Mohanty***
4. ***Manaswinee Mohanty @ Manaswini Mohanty***
5. ***Tejaswini Mohanty*** ***…. Petitioners***

-versus-

1. ***State of Orissa***
2. ***The Tahasildar, Parlakhemundi, District-Gajapati*** ***…. Opposite Parties (Defendants)***

Advocates who has appeared in this case through Hybrid Mode:

For Petitioners : *Mr. S.K. Dash, Advocate*

For Opposite Parties : *Mr. S.J. Mohanty, ASC*

CORAM:
HON'BLE MISS JUSTICE SAVITRI RATHO

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Date of Hearing: 04.08.2026 :: Date of Judgment: 31.10.2026

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Savitri Ratho, J. This CMP has been filed by the Plaintiff challenging the order dated 09.10.2015 passed by the learned Senior Civil Judge, Parlakhemundi in Civil Suit No. 10 of 2023 rejecting his application

filed under Sections 151 and 152 of the CPC for correcting the Khata number in the schedule annexed to the decree dated 21.11.1995 in T.S. No. 07 of 1995 and to amend the decree by deleting Khata No. 40 and replacing it with Khata No. 52 of Betaguda Mouza.

2. During pendency of the CMP, the Plaintiff-Petitioner expired and has been substituted by his legal heirs whose names are mentioned in the cause title of this judgment.

BRIEF FACTS

3. The Plaintiff filed T.S. No.07/1995 before the learned Civil Judge (Junior Division) Parlakhemundi seeking a decree for declaration of his right, title and possession over suit land and for permanent injunction against the Defendants from interfering with his right, title and possession over the land.

4. The case of the Plaintiff was that his father, Purna Chandra Mohanty was an employee under the late Maharaja in Parlakhemundi as the keeper of the Armory. Besides his salary his father was allowed to cultivate some lands measuring Ac.2.94 decs situated in mouza Betagada appertaining to plot no.38, khata no.52 as per the last settlement. His father converted the said land into cultivable land in the year 1945 after due reclamation. Since then he was in cultivating possession of the suit land. Due to ill health of his

father, the Plaintiff took over cultivation of the land in the year 1962. Thus the Plaintiff and his father both were regularly cultivating the land and growing paddy crop therein continuously to the knowledge of the Revenue authority. The Plaintiff perfected his right over the suit land by way of his cultivating possession for the last 30 years. In the years 1974-75 the Survey Settlement started and in the year 1979 the R.O.R. was published. In the settlement operation, the suit property was wrongly recorded in the name of government as the plaintiff and his father could not submit their claim over the property before the authorities.

5. Notice was issued to the Defendants and they appeared in the case and sought for time to file written statement. They did not file written statement for which, they were set ex parte on 15.09.1995 and hearing was taken up. The Plaintiff examined himself as P.W.1 and exhibited the postal receipts showing issuance of summon to the Defendants. After hearing the Plaintiff, ex parte judgment was passed against the Defendants/ Opposite Parties declaring the right, title, interest and possession of the Plaintiff over the suit land vide judgment dated 08.11.1995 and decree dated 21.11.1995.

6. After the decree was passed, the Petitioner applied for mutation of the case land i.e. Khata No.52, Plot No.38 before the

Tahasildar, Parlakhemundi. But the Tahasildar refused to mutate the land i.e. Khata No.52, Plot No.38 as the judgment and decree pertained to Khata No.40.

7. The Petitioner filed an application under Sections 151 and 152 of the C.P.C. in the suit to correct the Khata Number in the schedule annexed to the decree and amend the decree by deleting Khata No. 40 and adding Khata No. 52 of Betaguda Mouza in its place.

IMPUGNED ORDER DATED 09.10.2015

8. After receiving the application, the learned trial Court called for the original case record from the District Record Room, perused the plaint dated 29.03.1995, ordersheets in T.S. No. 07 of 1995, the judgment and the original decree and rejected the application, holding that perusal of the plaint reveals that the Khata Number mentioned in the plaint was 40 and order had been passed in respect of Khata No.40 and not Khata No. 52. The relief was granted to the Plaintiff in accordance with the prayer in his plaint and the prayer for change of Khata Number does not come under the purview of Section 151 or 152 of the CPC. It was neither a clerical nor arithmetical mistake or an error arising from any accidental slip or omission and that change in Khata Number would go to the very root

of the case and lead to further litigation and completion.

SUBMISSIONS

9. I have heard Mr. S.K. Dash, learned counsel for the Petitioner and Mr. S.J. Mohanty, learned Additional Standing Counsel.

PETITIONER

10. Mr. S.K. Dash, learned counsel for the Petitioners submits that since notice had been issued to the Opposite Parties (Defendants) in the suit but they did not choose to file any written statement, they will not be prejudiced in case the schedule description of land is corrected by changing the Khata Number from 40 to 52 as the boundaries of the suit land were correct. He also submits that the learned trial Court has erroneously rejected the application holding that it does not come within the purview of Sections 151 or 152 of the CPC. As only the Khata Number was sought to be corrected, it would not amount to review of the judgment and decree and should have been allowed and any accidental slip or omission by a party leading to an incorrect detail in the judgment and decree can also be corrected by exercise of power under Sections 151 and 152 of the CPC. In support of his submission, he relies on the decision of this Court in the case of

Belamati Digal and Another vrs. Pravabati Nayak and Others (in CMP No. 1308 of 2024 decided on 8th August, 2025) and the decision of the Supreme Court in the case ***of Niyamat Ali Molla vrs. Sonargon Housing Co-operative Society Ltd. and Others***: ***2007 INSC 1070: (2007) 13 SCC 421.***

STATE COUNSEL

11. Mr. S.J. Mohanty, learned Additional Standing Counsel submits that no interference is called for with the impugned order in as much as the learned trial Court has specifically observed in the impugned order that the Court passed the order in respect of Khata No.40 and not in respect of Khata No.52 and the decree has been granted to the plaintiff as per prayer in his plaint and the prayer for changing the Khata Number does not come under the purview of Section 151 or Section 152 of the CPC as it is not a clerical or arithmetical mistake or an error arising from any accidental slip or omission. Any change in the Khata Number will affect the root of the case and lead to further complication and litigation. The learned trial Court had rightly held that the decision relied on by the learned counsel for the parties are different on facts in the present case. Mr. Mohanty, learned Additional Standing Counsel further submits that without amending the plaint, the prayer of the Petitioner-Plaintiff to

amend the decree cannot be granted as that would grant an opportunity to the Defendants to file written statement to the amended plaint. But after disposal of the suit, the question of amendment of the plaint does not arise.

JUDICIAL PRONOUNCEMENTS

12. In the case of ***Bela Debi vs Bon Behary Roy and another : AIR 1952 Cal 86*** **,** the Calcutta High Court has held that Section 152 of the CPC applies where the accidental slip is of the Court or of its ministerial officers and may extend to accidental slip or omission attributable to the parties where the mistake is so palpable that there can be no doubt as to what the parties meant or what the Court meant. But such power should not be exercised for resolving controversial points and cannot correct errors anterior to the proceedings before it .

13. In the case of ***Niyamat Ali Molla*** (supra) , the Supreme Court has held as follows: -

> *"19.Code of Civil Procedure recognises 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 152 as also under Section 151 of the Code of Civil Procedure. Such a power of the Court is well recognized."

"26.It is not a case where the defendants could be said to have been misled. It is now well settled that the pleadings of the parties are to be read in their entirety. They are to be construed liberally and not in a pedantic manner. It is also not a case where by reason of an amendment, one property is being substituted by the other. If the Court has the requisite power to make an amendment of the decree, the same would not mean that it had gone beyond the decree or passing any decree. The statements contained in the body of the plaint have sufficiently described the suit lands. Only because some blanks in the schedule of the property have been left, the same, by itself, may not be a ground to deprive the respondents from the fruit of the decree. If the appellant herein did not file any written statement, he

did so at its own peril. Admittedly, he examined himself as a witness in the case. He, therefore, was aware of the issues raised in the suit. It is stated that an Advocate-Commissioner has also been appointed. We, therefore, are of the opinion that only because the JL numbers in the schedule was missing, the same by itself would not be a ground to interfere with the impugned order."

14. Relying on the decision in ***Bela Debi*** (supra) , this Court in the case of ***Belamati Digal*** (supra) , has held as follows : -

"*11. Having noted the ratio decided in the cited cases, this Court would once again refer to the facts of the case to observe that the case is not one wherein there was any doubt as regards the location of the suit property by either of the parties. Notwithstanding the mistake in the plaint schedule, the averments made in the plaint and the written statement coupled with the admission of D.W.1 in her evidence, makes the position clear. So, it is not a case where correcting the Mouza would mislead anyone much less the defendant. In other words, the defendants cannot be said to be taken by the surprise. Having admitted that the property situates in Mouza Piserama in their written statement they cannot take the plea that had a petition been filed by the plaintiffs for amendment of the plaint, they would have had the opportunity of filling an additional written statement.*

Assuming such an application had been filed then, in view of the specific pleading in their written statement quoted above, admitting the location of the suit property in Mouza Piserama, they obviously could not have taken a different view. So, this is not a case where any controversy exists as regards location of the suit land necessitating further enquiry."

As regards the scope of Section 151 of the CPC , the Court held as follows : -

"13. True, on the face of an available provision, the Section 151 cannot ordinarily be taken resort to and that the power under Section 151 has to be with for circumspection and care but then, if in a case like the present one, where grave injustice would result by non-exercise of such power, the Court should not shy away from doing so. It is stated at the cost of repetition that it would prevent the decree holder from getting its benefits, thereby rendering it a paper decree. The Court below must therefore, be deemed to have exercised its inherent power under Section 151 of CPC along with Section 152 of CPC.

14. From the foregoing narration, this Court is left with no doubt that the Court below approached the issue from the right perspective and has passed the impugned order to ensure that the decree holder is not deprived of

the fruits of the decree passed in his favour. As between an unenforceable and the technical consideration of limitation on exercise of power under Section 152, the cause of former obviously has to be advanced. The Court below must therefore, be held to have rightly allowed the application for correction."

ANALYSIS AND CONCLUSION

15. In the case of ***Belamati Digal*** (supra), the learned trial Court had allowed the application filed by the Plaintiff for correction of the name of the Mouza from 'Raikia' to 'Piserama' in the suit schedule holding that the Defendants had admitted that the name of the Mouza was Piserama and in the ROR, marked as Ext-1, the name of the Mouza had been mentioned as Piserama. This Court dismissed the CMP holding that it was within the knowledge of both parties that the suit land is situated in Mouza Piserama and not Raikia.

16. In the case of ***Niyamat Ali Molla*** (supra) , the Appellant (defendant) had not filed any written statement but had examined himself as a witness .The suit was decreed against the defendant after which the plaintiff filed an application for amendment of the plaint and the decree containing the schedule of the property as there were some blanks in the schedule. The objection of the defendant to the amendment was rejected and the amendment allowed by the

Executing Court holding that as the Defendant had examined himself as witness and hence was aware of the issues in the suit and it cannot be said that the defendants could have been misled and after reading of the pleadings it cannot be said that a particular property was being substituted by another as the statements in the pleadings had suitably described the land .

17. The principles decided in the cases of ***Niyamat Ali Molla*** (supra) and ***Belamati Digal*** (supra) are no longer res integra . It is however apparent that the facts of the present case are distinguishable from the facts in the cases of ***Niyamat Ali Molla*** and ***Belamati Digal*** (supra).

18. In the present case, written statement had not been filed by the defendants. Hence it is not possible to ascertain if the Defendants were aware of the mistake in the Khata number as it was in the case in ***Belamati Digal*** (supra) and ***Niyamat Ali Molla*** (supra) .

19. Change of Khata Number will result to change the description and identity of the suit land and would amend to a review.

20. In the present case, it is true that the defendants had failed to file any written statement. But as the suit had been decreed on the basis of the description of the land given by the plaintiff, correction of the judgment ad decree could have been permitted only after the

Khata number in the plaint had been amended and the Defendants afforded opportunity to file written statement thereafter. The Plaintiff cannot be allowed to take advantage of his / her own mistake of mentioning the wrong Khata number in the plaint and presumably in his deposition without amendment of the plaint.

21. The submission of Mr. S.K. Dash, learned counsel for the Petitioners that since notice had been issued to the Opposite Parties (Defendants) in the suit but they did not choose to file any written statement, they will not be prejudiced is not acceptable as because their failure to file written statement was in respect of Khata No. 40 and not Khata No. 52. Change in khata number could only have been permitted by allowing amendment of the description of the case land and giving opportunity to the defendants to file written statement and contest the suit . But no application for amendment has been filed.

22. The submission of the learned counsel that unless the decree is corrected, it will be un executable and therefor correction should have been allowed as the Petitioner should not suffer or any mistake in the decree is liable for rejection as the mistake in Khata Number in the plaint and consequently in the judgment and decree was not attributable to the Court. So the maxim *Actus Curiae Neminem Gravabit* will not come to the rescue of the Plaintiff –Petitioner.

23. In view of the above discussion, I do not consider this to be a fit case for exercising the power under Article 227 of the Constitution of India to interfere with the impugned order.

24. The C.M.P. is accordingly dismissed.

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(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated, the 31st October, 2026*/Puspa*

Signature Not Verified
Digitally Signed
Signed by: PUSPANJALI MOHAPATRA
Designation: Personal Assistant
Reason: Authentication
Location: Orissa High Court
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