IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3558 OF 2022

Ramprabhu Gopinath Kapse ...Petitioner

Versus

Shevantabai Baburao Kapse ...Respondent

Mr. Ashutosh Kulkarni, i/b Akshay Kulkarni, for the Petitioner.

Mr. Sameer Kumbhkoni, a/w Anjali Shaw and Chaitanya Joshi, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 13th MARCH, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties, heard finally.

2. The petitioner – original defendant takes exception to an order dated 26th October, 2018 passed by the learned District Judge, Barshi, on an application filed under Section 152 of the Code of Civil Procedure, 1908 ("the Code") for amendment in the judgment and decree passed in Regular Civil Appeal No.204 of 1986, whereby the said application was allowed and paragraph No.2 of the judgment and operative part of the decree were ordered to be corrected.

3. Shorn of unnecessary details, the background facts leading to this petition can be stated as under:

3.1 The respondent instituted a suit for recovery of possession of the properties bearing Block Nos.593 and 535 situated at Javalgaon, Vairag, Taluka Barshi and mesne profit. The suit properties were described as Block No.593 and Block No.535 with a suffix "1/2 share". By a judgment and order dated 30th January, 1986, the learned Civil Judge was persuaded to dismiss the suit returning a finding that the defendant proved that he had perfected his title to the suit land by way of adverse possession.

3.2 Being aggrieved, the plaintiff preferred an appeal being Civil Appeal No.204 of 1986. By a judgment and order dated 25th September, 1990, the learned District Judge allowed the appeal and reversed the decree passed by the trial court. The learned District Judge directed as under:

> "..... The defendant – respondent is directed to give possession of the lands bearing Block Nos.593 and 535 of village Javalgaon, Taluka Barshi to the plaintiff – appellant. For mesne profits, separate enquiry under 0.20 rule 12 (c) C.P.C. is directed."

3.3 The defendant preferred second appeal being SA/618/1990. By an order dated 7th February, 1991 this Court dismissed the second appeal opining that the judgment passed by the first Appellate Court did not suffer from any legal infirmity.

3.4 In the execution proceedings, the defendant filed an application contending that the decree was not executable. The plaintiff had instituted the suit for recovery of ½ portion of Block No.535 and Block No.593 and the decree passed by the First Appellate Court was for the entire Block Nos.593 and 535. Thus, the decree being a nullity, it was not executable. The execution proceedings were disposed of by an order dated 14th September, 2015.

3.5 The plaintiff, thereafter, preferred an application to amend the judgment and decree, purportedly under Section 151 read with Section 152 of the Code. Two amendments were sought. Firstly, the area of Block No.593 was sought to be corrected to 1H. 05Are and, secondly, ½ portion was claimed out of Block No.535. The defendant resisted the application.

3.6 By the impugned order, the learned District Judge was persuaded to allow the application observing, *inter alia,* that the mistake in the operative part of the decree passed in RCA/204/1986 appeared to be an accidental error. If the judgment is read as a whole, the learned District Judge intended to pass a decree for possession in respect of entire Block No.593 and ½ portion of Block No.535. Inadvertently, in the operative part, the possession of Block Nos.593 and 535, as

a whole, was ordered to be delivered. It was, therefore, necessary to correct the area in respect of Block No.593 and restrict the decree to the ½ portion of Block No.535. The learned District Judge directed as under:

> "The defendant – respondent is directed to give possession of land admeasuring 1H 05R bearing B.No.593 and ½ share out of 2H 82R bearing B.No.535 of village Javalgaon, Taluka Barshi to the plaintiff – appellant."

4. Being aggrieved, the defendant has invoked the writ jurisdiction.

5. Mr. Kulkarni, the learned Counsel for the petitioner, urged that the corrections in the decree directed to be carried out by the learned District Judge are clearly beyond the scope of amendment permissible under Section 152 of the Code. The learned District Judge has oversimplified the matter by observing that the error occurred on account of accidental slip. No other reason has been ascribed. Taking the Court through the description of the property in the plaint Mr. Kulkarni urged with tenacity that the qualification "1/2 portion" governed both Block Nos.593 and 535. That was the plain and simple prayer of the plaintiff. Thus, the decree passed by the First Appellate Court in RCA/204/1986 for the entire Block Nos.593 and 535 was clearly unexecutable and was lawfully so ordered by the Executing Court. By the impugned order, the learned District

Judge, thus, could not have corrected the said judgment and decree by resorting to the provisions contained in Section 152 of the Code.

6. Mr. Kulkarni further submitted that there was a serious doubt about the proprietary title of the predecessor-in-title of the plaintiff over entire Block Nos.593 and 535. To this end, Mr. Kulkarni took the Court through the observations in the judgment of the First Appellate Court, especially paragraph 15. As there was a serious dispute about the title of the husband of the plaintiff over entire Block Nos.593 and 535, the learned District Judge could not have ordered the correction in the decree without holding a proper enquiry. In the least, the issue is required to be tried and adjudicated. Thus, the impugned order deserves to be quashed and set aside, submitted Mr. Kulkarni.

7. In opposition to this Mr. Kumbhkoni, the learned Counsel for the respondent, submitted that the learned District Judge was well within his rights in ordering the correction in the judgment and decree. At no point of time, there was any cloud over the title of the husband of the plaintiff over entire Block No.593. The documents before the Court clinched the issue about the exclusive ownership of the predecessor-in-title of the

plaintiff over Block No.593. Even, the trial court had returned the finding that the plaintiff had exclusive title over the suit property. But had dismissed the suit on an incorrect premise that the defendant had perfected his title over the suit property by way of adverse possession. An inadvertent omission in the decree passed by the First Appellate Court to clarify that possession of "½ portion of Block No.535" was to be delivered has resulted in a delay of almost 35 years in the execution of the decree. The learned District Judge has, thus, correctly exercised the jurisdiction to correct the judgment and decree, urged Mr. Kumbhkoni.

8. Reliance was placed by Mr. Kumbkoni on the judgments of this Court in the cases of ***Rahul Trading Corporation and another vs. Bernard Anthony Pereira and others***[1] and ***Laxman Ramji Taske (since deceased) through LR Saraswati Laxman Taske and ors. vs. Kewalabai Kisan Pawade and ors.***[2]***.***

9. In the wake of the facts of the case and the rival submissions canvassed across the bar, the question as to whether the District Court could have amended the judgment and decree by invoking the power under Section 152 of the Code, wrenches to the fore. Thus, to start with, it may be

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1 2023 (2) All M.R. 659.

2 (2017) 6 Mh.L.J. 224.

apposite to appreciate the nature, extent and limits of the powers of the Court to correct a judgment, decree or order. 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."

10. 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.

11. 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 substracts 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.

12. In the case of ***State of Punjab vs. Darshan Singh***[3] 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

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3 2004(1) SC 328.

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)

13. In the case of ***Jayalakshmi Coelho vs. Oswald Joseph Coelho***[4] 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 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

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4 2001(2) SC 181.

> 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.
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> (emphasis supplied)

14. In ***K. Rajamouli vs. A.V.K.N. Swamy***[5]**,** where the High Court has granted interest pendente lite, which was not awarded by the trial court, the Supreme Court held that the High Court could not have resorted to Section 152 of the Code to award pendente lite interest. The observations of the Supreme Court in paragraph 6 are instructive and hence extracted below:

> "6. Section 152 provides that a clerical or arithmetical mistake 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. The question, therefore, arises is whether omission of pendente lite interest to the decree by the trial Court was an accidental or clerical error. In the case of *Dwaraka Das v, State of M.P. and Am, [1999] 3 SCC 500*, it was held that the omission in not granting the pendente lite interest could not be held to be accidental omission or mistake and therefore, neither the trial Court nor the appellate Court has power to award pendente lite interest under Section 152 of the Code of Civil Procedure. This decision is squarely applicable to the present case. In the present case, neither the arbitrators nor the trial court awarded pendente lite interest to the decree holder. The executing court also refused to grant pendente lite interest to the decree holder and the same was upheld by the High Court in the revision petition filed against the order of the executing court. However, the position would be different where the judgment of a court provides for pendente lite interest and decree omits to mention such interest. Such a mistake could be corrected under Section 152 CPC, The correct position of law is that a decree cannot add or subtract any relief except what has been provided in the judgment. But this is not the case here, Mr.

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5 (2001) 5 Supreme Court Cases 37.

> B. Kanta Rao, learned counsel appearing for the respondent then relied upon a decision of this Court in *Janakiramma Iyer v. Nilakanta Iyer, [1962] suppl. 1 SCR 206*. In this case, the trial Court awarded mesne profit, however, in the decree it was written as net profit. On an application filed by the plaintiff for correction of the decree under Section 152 of the Code of Civil Procedure, the word 'net' was substituted by 'mesne1. This was the case of typographical mistake and, therefore, not applicable to the present case."
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> (emphasis supplied)

15. In the case of ***Niyamat Ali Molla vs. Sonargon Housing Co-operative Society Ltd. and ors.***[6] 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 152 as also under Section 151 of the Code of Civil Procedure. Such a power of the court is well recognized."
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> (emphasis supplied)

16. In the light of the aforesaid exposition of law, it has to be seen whether the judgment and decree passed by the First Appellate Court suffered from such error or omission which falls within the ambit of Section 152 of the Code. Conversely, whether the correction ordered to be carried out by the learned

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6 (2007) 13 SCC 421.

District Judge partakes the character of a review of the judgment and order passed by the First Appellate Court.

17. For an answer, in my considered view, recourse is required to be made not only to the judgment of the First Appellate Court but also the judgment of the trial court.

18. First and foremost, the submission of Mr. Kulkarni that the suffix "½ share" governed both Block Nos.593 and 535 and, therefore, the decree could not have been passed in respect of entire Block No.593, does not merit acceptance. There is no indication in the plaint that the said suffix "½ share" which appeared below the property described at Sr. No.12 i.e. Block No.535, also governed the property described at Sr. No.1 i.e. Block No.593.

19. Mr. Kulkarni then invited the attention of the Court to the observations in paragraph 2 of the judgment in RCA/204/1986. In the said paragraph as well, the learned District Judge after the description of the suit properties i.e. Block Nos.593 and 535, added the words, "to the extent of ½ share". This description of the suit property in paragraph 2 of the judgment of the First Appellate Court, does not appear to be of decisive significance. Properly construed the said narration just

described the property as was described in paragraph 1 of the plaint.

20. Thirdly, Mr. Kulkarni would urge there was a serious doubt about the entitlement of the husband of the plaintiff to entire Block No.593. Attention of the Court was invited to paragraph 15 of the judgment of the First Appellate Court.

21. I have carefully perused the observations in paragraph 15. The learned District Judge has categorically recorded that the suit property was not ancestral. Though the learned District Judge has observed that the plaintiff's husband Baburao Kapse and Sandipan Disale had jointly purchased the land bearing Survey No.88/2 which corresponds to Block No.593, yet, in the very same paragraph there is a clear and categorical reference to the fact that original Survey No.88/2 corresponds to Block No.535 and that was acquired jointly by Sandipan Disale and Baburao Kapse, the husband of the plaintiff. Thereafter, the said Block No.535 was mutated in the name of Baburao and Sandipan Disale. It, thus, becomes abundantly clear that the plaintiff's husband had ½ share in Block No.535.

22. In contrast to this, on the basis of the record of rights in respect of land bearing Survey No.101/5 (old), which corresponds with Block No.593, the learned District Judge has

recorded that the husband of the plaintiff had purchased the said land bearing Block No.593 from Nagnath Kashinath Kulkarni and thenceforth the said land was continuously shown in the name of Baburao Kapse alone, till his death. These findings of facts in my considered view, take the matter beyond the pale of controversy.

23. The aforesaid position becomes even more clear and beyond cavil, from the observations of the trial court in the judgment in RCS/620/1980. In paragraph 19 of the judgment the trial court has categorically observed that the entries in the record of rights clearly showed that the deceased husband of the plaintiff had purchased Block Nos.573 and 593 individually and Block No.535 alongwith Sandipan Disale. The trial court had proceeded on the premise that there was no dispute about the exclusive title of the deceased husband of the plaintiff over Block No.593. It is a different matter that the trial court erred in holding that the defendant had perfected the title by prescription.

24. The matter can be looked at from another perspective. Both the trial court and the First Appellate Court have recorded categorical findings that the plaintiff had proved her title over Block No.593 and ½ portion of Block No.535. The claim of the

defendant was of acquisition of title by prescription. That claim was negatived by the First Appellate Court. The said order was upheld by the this Court.

25. Consequently, even if the Court looks at the substance of the matter, the defendant – petitioner has no semblance of right, title and interest in Block No.593 and ½ portion of Block No.535. Viewed through this prism, the impugned order passed by the learned District Judge directing the correction in the judgment and decree appears to be in consonance with the object of vesting power in the Court to correct its own record so that its incorrect act or record does not cause prejudice to a party.

26. In the totality of circumstances, the learned District Judge was justified in holding that an error had crept in, in the operative part of the decree in RCA/204/1986 in not clarifying that the decree for possession was restricted to ½ share of Block No.535. The said correction necessarily flows from the observations and findings of the First Appellate Court in the body of the judgment. It was essentially a mistake in the description of the property in the operative part of the decree.

27. Mis-description of the suit property can be corrected by the Court in exercise of the power under Section 152 and 151 of the Code, even post decree. A useful reference, in this context,

can be made to a judgment of the Supreme Court in the case *Pratibha Singh and Anr. V/s. Shanti Devi Prasad and Anr. AIR 2003 SC 643* wherein with reference to the power to correct the description of the suit property, post passing of the decree, the Supreme Court enunciated as under :

> "17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the Court record caused by overlooking of provisions contained in O. 7 R. 3 and O. 20 R. 3 of the C.P.C. is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to S. 152 or S. 47 of the C.P.C. depending on the facts and circumstances of each case - which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under S. 152 of the C.P.C. by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of S. 47 C.P.C. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke S. 47 of the C.P.C."
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> (emphasis supplied)

28. The conspectus of aforesaid consideration is that there is no such infirmity in the impugned order as to warrant interference by this Court in the exercise of writ jurisdiction. The petition, therefore, deserves to be dismissed.

29. Hence, the following order:

: O R D E R :

(i) The petition stands dismissed.

(ii) Rule discharged.

No costs.

[N. J. JAMADAR, J.]