
(1951) 05 CAL CK 0010
In the Calcutta High Court
Case No : Application No. 1001 of 1938

Bela Debi

APPELLANT

Vs

Bon Behary Roy and Others

RESPONDENT

Date of Decision : 23-05-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152

Citation : AIR 1952 Cal 86

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : M. Hazra, for the Appellant; S. Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—This is an application for an order that the schedule to the plaint in the suit, and the-consent decree dated 5 6-1939, and also of the agreement dated 1-12-1933, be corrected, and/or amended, by inserting the correct schedule as mentioned in para. 20 of the petition. There is also a prayer that the Registrar be directed to appoint a Surveyor to survey the premises No. 69/I, Cossipore Road, Calcutta, after amendment and that he should be further directed to execute the conveyance in accordance with the correct schedule.

2. The facts are briefly as follows:

3. The defendant Bon Behari Roy is the owner of certain plots of land situated on the Cossipore-Road. On or about 1-12 1933, Roy executed an agreement for sale in favour of one Chandrika Prasad Gupta, in respect of the plots of land which had been described in the agreement for sale in the following matter:

"All that piece and parcel of land (which is at present covered with water) measuring about 10 cottabs of land (be it a little mere or less) bearing Municipal No. 69/1,. Cossipore Road (Baranagore) in the suburbs of Calcutta,. Holding No. 84, Division I Sub-Division II butted and bounded by on the north by Srithidhar Lane, on the south by Girindranath Mukherjee Road, on the west by Mussamat

Birajini's land, and Radheba Tauchha Bibi's land, paying Government revenue Rs. 2/4/11 per year in respect of the whole premises Holding No. 84."

4. On or about 6-8-1937, Chandrika Prasad Gupta assigned his right title and interest in the said agreement to Mussamat Bela Debi since deceased, who was the plaintiff in the suit. On or about 18-5-1938, Bela Debi filed this suit against Bon Behari Roy and Chandrika Prasad, for specific performance of the agreement for sale. It appears that two ladies, Sm. Nivanani Roy and Sm. Sailabala Mitra, claimed charges for maintenance on the property, and on or about 17-5-1939 they were added as parties to the suit, on the application of Bon Behari Roy.

5. On or about 5-6-1939, a consent decree was passed in the suit. The provisions of the consent decree are briefly as follows:

6. There was to be a decree for specific performance in favour of the plaintiff; Boni Behari Roy was to sell to the plaintiff or her nominee, premises No 69/I, Cossipore Road, free from all incumbrances at Rs. 325 per cotta; the defendants Sm. Nivanani Roy and Sm. Sailabala Mitra relinquished their claims or charges which they might have had in respect of the property in suit; the land was to be surveyed by the defendant's surveyor in the presence of the engineer of the plaintiff, within a week from the date of the decree; and if any party failed to execute the conveyance, the Registrar would do it on his behalf.

7. In July 1948 Bela Debi died. On 8-3-1949, there appears to have been an order for substituting Radha Krishna Shaw, her son, in her place, with leave granted to proceed with the execution.

8. It will therefore be observed that although the decree for specific performance was made as far back as 1939, the plaintiff in this suit had not followed it up by paying the money and getting a conveyance for a period of nearly ten years. In the meantime, land at Cossipore had tremendously appreciated in value, and this, to my mind, is the real genesis of the dispute between the parties which had resulted in this application. In May 1947, there was some correspondence between the parties, and Roy wanted Rs. 3, 500 per cotta instead of Rs. 325 per cotta as contained in the terms of settlement.

9. On or about 29 6 1949, Chandrika Prasad Gupta filed a suit being suit No. 2283 of 1949, against the petitioners and the other parties to this suit, for a declaration that it was he, who was entitled to the benefits of the agreement for sale, dated 1-12-1933, and also of the consent decree dated 5-6 1939. Bon Behari Roy did not appear in that suit. In that suit, Radha Krishna Shaw was restrained from getting a conveyance of the property. On or about 2-6-1940, the suit was dismissed by Sarkar J. There was an application for restoration of the suit which was ordered to be restored upon payment of certain moneys, but as the same was not paid, the order of dismissal stands. The next thing that happened was that Bon Behari Roy filed a suit before the Subordinate Judge at Alipore, being Title Suit No. 115 of 1950, against Chandrika Prasad Gupta, the Shaws and the two ladies, Sm. Nivanani Roy and Sm. Sailabala Mitra, for a

declaration that the consent decree dated 5-6-1939, was void, nullity, and without jurisdiction. The ground made in the plaint is that the property being outside jurisdiction, the High Court could not pass such a decree. This suit has been transferred to this Court under clause 13, Letters Patent.

10. The petitioners say that they have now made inquiries and searches in the records of the Corporation of Calcutta and the Collectorate, and also referred to Smart's Survey Plan, and have come to the conclusion that the schedule in the agreement for sale was not correct, but due to "Inadvertance and/or mistake, errors and omissions" the description as given in the schedule to the agreement was not a correct description, it is said that the boundaries are quite correct but the holding number of the premises instead of being "84" should be "85, 85/A and a portion of 86". The next mistake is in respect of the amount of revenue payable, which is stated to be Rs. 2-4-11 per cotta, but should be "Rs. 2-12-9 in respect of holding Nos. 85 and 85/A" and as "Rs. 0-3-4 in respect of holding No. 85" (sic). Although no other mistakes are pointed out in the petition, it appeared at the hearing of the application that if the holding is altered, then as a result, the area of the land would no longer be 10 cottas, but 19 cottas more or less. In the title-suit filed at Alipore mentioned above, Roy has stated that the boundary given in the agreement for sale was wrong. According to him, the rest of the description of the properties, namely, the holding number, the amount of revenue payable etc., are all right but the boundaries are quite incorrect.

11. I have looked into Smart's Survey Plan relating to these properties and I find as follows:

12. If the property sold is holding No. "85, 85/a and portion of 86", then the plot of land would be a large rectangular piece, situate almost. on the main Cossipore Road, and the area would not be 10 cottahs but nearly double that area. If it is holding No. "84", then it is a smaller plot of land, nearly square in size and situated somewhat away from the main Cossipore Road. Both these plots are stated to be covered with water. They are also referred to as "Ponds".

13. It, therefore, comes to this, that the area, and amount of the revenue would be correct if the holding is No. "84", but the boundary would be incorrect. Whereas, if it was holding Nos. "85, 85/a and part of 86" then the boundaries would be more or less correct but the area and the revenue payable would be incorrect. As regards the boundary, it is not possible to verify it with absolute precision. It appears that in or about 1930, a portion of the land contiguous to holdings 85, 85A was sold to Mt. Birajini, and in the schedule to the agreement, part of the western boundary is given as "'Mt. Birajini's land". From the materials placed before me, I am unable to verify where "Srithidhar Lane", or "Girindranath Mukerji Road" are situated, nor doe3 it appear from Smart's Survey Plan that these are the northern or southern boundaries of holding Nos. "85,. 85A and part of 86". According to Roy, the property which is now being claimed is premises No. 1A, Satchasipara Road, which was never agreed to be sold. I am told that both these plots are ponds, and Roy states that he should

not be made to convey a pond double the size of what, he agreed to sell. But these are not the only difficulties. According to Roy, he had agreed to sell holding No. 84 free from incumbrances and had got the two ladies Sm. Nivanani Roy and Sm. Sailabala Mitra (being his sister and aunt respectively) to relinquish their charges on that, holding only. According to Roy, the holdings now claimed were heavily mortgaged and, in fact have been now sold to third parties. Also, accord to him, the two ladies abovenamed have no intention of releasing "premises No. 1 Satchasipara Road" as it now is, from their claims for maintenance, etc.

14. This application has been made under the-provisions of section 152, Civil P. C, and the following points arise for decision : (1) Is it a kind of error or omission that can be rectified u/s 152 ? (2) In an application u/s 152, is it possible to, correct errors not only in the decree, but also in a deed? (3) Is the application barred by the doctrine of laches ?

15. The fact enumerated above show that if there has been any error or mistake, it originated with the agreement for sale which was executed as long ago as 1933. Since that date, the contiguous lands have developed, the municipal numbers have changed and to my mind (upon the materials before me) it is not possible to state with certainty as to what the parties intended, without going into further evidence. If you take the boundaries, then there is reason for saying that the holding number is incorrect. But in that event, the discrepancy in the area is tremendous. If it was intended to sell holding No. "84", then by altering it to holding Nos. "85, 85A and part of 66", I would be giving the plaintiffs a plot nearly double the area agreed to be sold, and a much more valuable plot, regard being had to its proximity to the Cossipore Road. In my opinion, this kind of dispute cannot be resolved by an application u/s 152.

16. Next arises the question as to whether by an application of this description, I can also rectify the agreement for sale In *Y. S. Rao v. Kandukur Purnayya* A.I.R.1931 Mad. 260, a decree was obtained upon a mortgage. In the mortgage, the survey numbers as set out were wrong. The wrong survey numbers were copied into the plaint and into the preliminary decree. An application was made to correct the errors, and Pandalai J., held that u/s 152 this was permissible. "The object of empowering the Court to correct decrees and orders" said the learned Judge,

"is to correct errors, and if it can be shown that an alleged mistake falls within the class of errors dealt with by section 152, it seems to put an unnecessary hindrance upon the power to do justice which the section gives, to say that the only mistakes of which the Court can take cognizance are those made either in the plaint or in subsequent documents in Court."

This case was followed by Patanjali Sastri J., in *T. V. Ranga Rao v. Balaksonlal* AIR 1941 Mad. 940 (1). The learned Judge was of the opinion that there was no ground for restricting section 152 to mistakes or errors which occur for the first time in the plaint or the subsequent proceedings in Court, but extends to cases

where the mistakes occur earlier, in a document evidencing the transaction itself. A subsequent Divisional Bench of the same High Court, however, consisting of Gentle C. J. and Happell J., dissented from both these judgments (see T.M. Ramakrishnan Chettiar alias Mannar Krishnan Chettiar and Others Vs. G. Radhakrishnan Chettiar and Others, . In that case, there was a mortgage and a mortgage decree had been passed. It was stated that there was a mutual mistake and the properties described in the mortgage deed by reference to the survey numbers was an error and in the place of property No. "1467", Nos. 1463 and 1466" should be substituted. Gentle C. J., pointed out that section 152 of the Code contemplated the rectification of a clerical error or arithmetical mistakes in judgments, decrees or orders and errors arising therein from any accidental slip or omission. He pointed out that the rectification asked for, would not only mean rectification of the decree but that of the mortgage deed itself. He said as follows:

"I am unable to see how section 152 gives to a Court jurisdiction and authority to modify a document, particularly documents upon which the suit is instituted. There is remedy by way of suit, and I find nothing in the provisions of section 152 which confers upon it similar powers as are conferred by section 81, Specific Relief Act, In my view, section 152 is for the purpose of correcting errors directly involved in the proceedings themselves and not for correcting errors which are anterior to the proceedings, particularly in documents upon which proceedings are brought. I am unable to see that property, wrongly described in a deed, can be included in any of the mistakes which the section allows to be corrected. It is not a clerical or an arithmetical error and I cannot see that it is an accidental slip or an omission.....With great respect, I am unable to subscribe to the judgments and the decisions given in the three cases, one in Rangoon High Court Chit Hlaing Maung v. N. A. R. M. Chetty A. I. R. 1924 Bang. 104 and the other two in this Court, (ibid) expressed by Judges sitting alone. I prefer the decision of the Division Bench in the Allahabad Case Mt. Hasina Begum and Others Vs. Abdul Hafiz, . In my view, the application out of which this appeal arises does not fall within 8. 152."

17. In Mt. Hasina Begum and Others Vs. Abdul Hafiz, the suit was for foreclosure in relation to a mortgage. The mortgage was in respect of certain shares in zamindari properties and it was stated after the decree had been passed, that the description of the mortgaged property given in the deed was not correct. The lower Court allowed parole evidence to be given to show what was the intention of the parties, and then directed that the plaint and the preliminary decree should be amended as prayed. This order, however, was reversed on appeal. Young J. said:

"It is quite clear that the order complained of cannot possibly come within section 152, Civil P. C. An amendment of this character which completely alters the plaint and the decree and also the deed on which the plaint is based cannot be said to be the correction of a clerical mistake in a judgment. There was indeed no clerical "mistake even on the showing of the opposite party. The earlier

mortgage deeds were copied .faithfully and correctly by the clerk, and that is the ground of their present complaint. Section 152, therefore, not applying, the Court below had no jurisdiction under this section to act in the way it has done."

The learned Judges further were of the opinion that it was not permissible under the circum-stances, to take parole evidence.

18. In Jagarnath Prasad Bhagat and Others Vs. Jamuna Prasad Singh and Others, a certain property was misdescribed in the mortgage deed and the misdescription affected the preliminary decree, final decree and the sale certificate. The auction purchaser applied for amendment of the sale certificate by substituting the correct description. In the bond, the property was described as "3 annas 4 gandas pokhta share, out of 16 annas in Taluk Mangrar included in khewat No. 3". It was found, however, that no part of Taluk Mangrar was in khewat No. 3 but it was included in khewat No. 2. Courtney-Terrell O. J. and Agarwalla J. held that there was no doubt as to the identity of the property but it was a case only of misdescription and the sale certificate should be allowed to be amended. In a subsequent Patna case, Ramsankar Bandopadaya and Others Vs. Khudiram Dutt and Others, , Fazl Ali J. held that where the property was sold in execution of a decree, the question whether the description of the property by the khewat number, or its description by its area should prevail, cannot be dealt with, under 8. 151 or section 152 of the Code.

19. It will thus be seen that there is a diversity of judicial opinion as to how far a Court can go in rectifying its own decree. Where, of course, the amendment is in order to carry out its own meaning, there is no doubt about the power of the Court in effecting such corrections (see *In re St. Nazaire Co.*, (1879) 12 Ch. D. 88; *Preston Banking Co. v. Allsop* (1895) 1 Chn. 141). Nor can it be disputed that it has power to rectify mistakes which are of a ministerial kind (see *Mellor v. Swire* (1885) 30 Chn. D 239). But the difficulty arises when it is found that the mistake is not one of the Court but is a mistake of the parties themselves. Mistakes in the description of properties in deeds, is illustrative of this kind of mistake. It is the parties who have made the mistake, and the mistake is continued in the pleadings and the decree. According to one view, section 152 is confined to acts of the Court and, therefore, mistakes of parties made in the pleadings or deeds and documents evidencing the transaction cannot be corrected { *L. Ram Chander Sarup Vs. Munshi Mazhar Hussain and Others*, }. The second view is that under this section and section 151, plaint, judgment and decree all can be amended (see *Shiam Lal v. Mt. Moona Kuar* AIR 1934 Oudh 352 *Ram Chandra v. Jamna Prosad A. I. R. 1935 oudh 92*). A third view is that it is permissible under such circumstances to amend the decree and it is unnecessary to amend the plaint (*Badri Pande Vs. Chhangur Pandey, Jamini Bala Biswas v. Bank of Chettinad Ltd., A. I. R. (22) 1935 Rang. 522 at p. 523*). Lastly, there is the view, which I have already noted, which goes to the extent of holding that the Court cannot only rectify pleadings and decrees but rectify documents evidencing the transactions themselves, upon which the suit was founded.

20. I shall now state, what in my opinion, is the true meaning of section 152, Civil P. C. I am not in favour of giving a narrow construction to section 152. I do not agree that section 152 must necessarily 1952 Cal./12 & 13 refer to an "accidental slip or omission" of the Court itself, or its ministerial officers. It does not say so in the section itself, and should not be interpreted as such. Where it is the Court's own accidental slip or omission, or that of its ministerial officers, there can be no doubt that the section applies. But it gives power to rectify any accidental slip or omission in a judgment, decree or order, and might include an accidental slip or omission traceable to the conduct of the parties themselves. But it must be an "accidental slip or omission". A mistake made by the parties in a deed upon which the suit is founded, and repeated in the judgment, decree or order, may or may not be an "accidental slip or omission." Where it is clear, that such is the case, then I do not see why the Court cannot set it right. In doing so, what is going to be rectified is, the judgment decree or order, and it is not at all necessary to rectify either the pleadings or the deed. In making such corrections, however, the Court can only proceed on the footing that there could be no reasonable doubt as to what it really intended to say in its judgment decree or order. It cannot go into any disputed questions. If there is a particular description of a property in a deed, and a suit has been instituted on the strength of that description, and a decree passed, it is not permissible in proceedings u/s 152 to go into disputed questions as to what property was intended to be dealt with, by the parties in the deed. I agree with Gentle C. J. that such a question can only be dealt with, in appropriate proceedings under the Specific Relief Act (see T. M. Ramakrishnan Chettiar v. G. Ramakrishnan Chettiar A. I. R. 1948 Mad. 13). But it may so happen that the mistake is so palpable that nobody can possibly have any doubt as to what the parties meant or what the Court meant when it passed its judgment, decree or order. For example, suppose in a conveyance a property is described as "24 Chowringhee Road, Bhawanipur". It would be clear to everybody what property was meant, and it cannot be seriously doubted that in abating that the property was in "Bhawanipur", the parties had committed an "accidental slip or omission". In such a case, I would not go to the extent of holding that the Court has no power to correct the judgment, decree or order which has repeated the mistake. In doing so, the Court need not correct the pleadings or the document but its own decision. In my opinion, it is not necessary in such a case to amend the pleadings or to rectify the deed, therefore, no question arises as to whether the Court has power to do so. It is, however, quite clear that such cases must be of rare occurrence, and the scope thereof is severely limited. The power cannot be extended to the resolving of controvertial points, and a decision as to what the parties intended or did not intent to do. Apart from this exceptional case, I hold that the Court cannot correct errors anterior to the proceedings before it. For such a purpose, the proper proceeding is by way of a suit u/s 31, Specific Relief Act. To this extent, I agree respectfully with the view enunciated by Gentle C. J. in T. M. Ramakrishnan Chettiar v. G. Radhakrishnan Chettiar A. I. R. 1948 Mad. 13 and the view expressed by Young J. in Mt. Hasina Begum and Others Vs. Abdul Hafiz, .

Applying these principles to the facts of this case, I think that the rectification asked for is impossible. If there has been a mistake in the original agreement it is a mistake which is fundamental, and it is impossible without going into evidence, to decide as to what the parties meant. There are facts in favour of the contention put forward by either party and I cannot describe it as an error (if there is at all any error) as can be called "an accidental slip or omission" as contemplated in section 152. In any event, such slips or omissions cannot be rectified in proceedings u/s 152 or even under S. 151 of the Code.

21. Lastly, there remains the question of delay. There is no time limit for applications u/s 152. Under the corresponding English rule, an error in a decree was in one case amended after 39 years, *Hatton v. Harris* 1892 A. O. 547. In a Bombay case, *Karim Mahomed v. Rajooma*, 12 Bom. 174 at p. 183, an application to rectify a decree was allowed after the lapse of ten years. It is, however, an equally established fact that no amendment should be allowed if third parties had acquired rights, and/or where it would be inequitable or unjust to allow the rectification. Laches, under the particular circumstances of the case, might disentitle a party to relief under this section (see *Kishori Mohan v. Chhanga Lal*, 47 ALL. 44). In this case, it was contemplated by the terms of settlement that there should be a survey within a week, and yet nothing was done for ten years, in the meanwhile, the nature of the contiguous properties, the Municipal numbers, all had been altered; new roads seem to have come into existence, and the particular property which the petitioner now claims, has been the subject matter of sale and/or mortgage. In my opinion, there is no excuse for the laches of the petitioner in the circumstances of this case. It is alleged by the petitioners that no particulars have been given of the mortgage or sale of the disputed property. If I was in favour of the petitioners on the other points, I might have directed further particulars to be given, but inasmuch as I am against the petitioners on the main question whether it was a fit case for intervention u/s 152 of the Code, I do not think that I should be justified in prolonging the proceedings.

22. The application, therefore, fails and must be dismissed with costs.

23. Nothing that I have said herein is to prejudice either of the parties in a properly instituted action. Nor will it affect any application made to carry out the terms of the consent decree, strictly in terms thereof.