

(1972) 11 AHC CK 0012

In the Allahabad High Court

Case No : Civil Misc. Application No's. 3303 of 1970, 622 of 1965 and Civil Revision No. 753 of 1963

Ganesh

APPELLANT

Vs

Sri Ram Lalaji Mahraj Birajman Mandir and Others

RESPONDENT

Date of Decision : 15-11-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, 151, 152

Citation : AIR 1973 All 116 : (1972) 42 AWR 878

Hon'ble Judges : K.B. Asthana, J;C.D. Parekh, J;A.K. Kirty, J

Bench : Full Bench

Advocate : J.N. Agarwala, for the Appellant; S.P. Kumar, for the Respondent

Final Decision : Allowed

Judgement

Kirty, J.—These two applications having been referred to a Full Bench by the learned Acting Chief Justice by an order dated 28-7-1972 have come up before us. Application No. 3303 of 1970 was filed on 14-5-1970 u/s 151 of the Code of Civil Procedure. The other application filed on 23-3-1969 is under Sections 151 and 152 of the Code of Civil Procedure. Before the learned Acting Chief Justice a contention was raised that Sections 151 and 152 of the CPC were not applicable. In support of this contention reliance was placed on Mt. Hasina Begum and Others Vs. Abdul Hafiz, , On behalf of the applicant, however, reliance was placed on AIR 1944 5 (Oudh) In view of the apparent conflict between the decisions in these two cases reference to a Full Bench was made by the learned Acting Chief Justice.

2. Suit No. 254 of 1952 was instituted by the applicant against Ram Lal, Ganesh and Smt. Saraswati, inter alia, for possession of a house described at the foot of the plaint. The house, which was the subject-matter of the suit, was purchased by the plaintiff from Panna Lal under a sale deed dated 8th June. 1950. Panna Lal entered appearance but did not contest the suit. In his written statement he admitted having sold the suit property to the plaintiff and further pleaded that

the other defendants were in occupation of the house as tenants. The suit was, however, contested by Ganesh and Smt. Saraswati. It was pleaded by them that they were not in possession of the property as tenants but in their own right as owners. Amongst other pleas, a plea of adverse possession was also taken. It was, however, nowhere stated in the written statement that the subject-matter of the suit was not the same property which was sold by Panna Lal to the plaintiff under the sale deed dated 8-6-1950. The trial court framed a number of issues which were answered in plaintiff's favour. The suit accordingly was decreed on 27-5-1957 for possession of the house in suit. An appeal against the decree of the trial court was preferred by Ganesh. It appears that during the pendency of the suit in the trial court Smt. Saraswati, who was the mother of Ganesh, died. No application was filed by the plaintiff for substituting the names of the legal representatives of Smt. Saraswati in her place. The appeal filed by Ganesh was dismissed by the learned Additional Civil Judge, Jhansi on 15-10-1958. Thereafter Ganesh filed a Second Appeal (S. A. No. 1612 of 1958) in this Court. This second Appeal was dismissed by a learned Single Judge under Order XLI, Rule 11, Civil P. C. on 27-1-1959.

Thereafter the plaintiff-decree-holder executed the decree. A warrant for delivery of possession was issued and when the Amin went to deliver possession it was found out that the description of the northern and southern boundaries of the property) as mentioned in the decree, did not tally with the actual northern and southern boundaries of the house on the spot. The Amin under the circumstances returned the warrant unexecuted along with a report mentioning therein the discrepancy. The discrepancy, however, was only this; "The boundary which was shown as the northern boundary in fact was the southern boundary of the house". Similarly the southern boundary as shown in the decree was actually the northern boundary. In the plaint the property in suit was described as house No. 125 situate in Mohallah Choudharana. The boundaries of the house in suit, were also mentioned in the plaint. It, however, appears that neither in the trial court nor in the appellate court nor even in the second Appeal in this Court was it ever alleged by Ganesh that the house in suit was not the same as the house conveyed to the plaintiff by Panna Lal under the sale deed dated 8-6-1950. That is to say, there never existed any dispute between the parties concerned in regard to the identity of the house which was the subject-matter of the suit. The execution application, however, was dismissed by the executing court in view of the report submitted by the Amin. Thereafter the Plaintiff-decree-holder filed an application in the court of the learned Additional Civil Judge, Jhansi for the amendment of the decree with a view to get the mistake in or misdescription of the northern and southern boundaries corrected. This application was contested, but the learned Judge allowed the application. In his order dated 11-5-1963 it was noted that there was no dispute about the property involved and its identity. Against this order Civil Revn. No. 753 of 1963 was filed by Ganesh. During the pendency of this revision the decree-holder opposite party filed application No. 622 of 1965 on 23-3-1965. The revision was allowed by D. S. Mathur, J. on

24-3-1965 solely on the ground that the learned Additional Civil Judge. Jhansi had no jurisdiction to amend the decree in view of the fact that Second Appeal No. 1612 of 1958 was dismissed by this Court. The learned Judge in his judgment allowing the revision, however, observed as follows:--

"The proper remedy available to the plaintiff-opposite party was to apply to the High Court for amendment of the decree. Such an application has since been made but it shall be disposed of separately.

The revision is hereby allowed and the order dated 11-5-1963 is set aside. The application for amendment of the decree shall stand rejected though similar application made before the High Court shall be considered in due course." It may here be also mentioned that on 24-3-1965 the learned Judge also passed the following order on Civil Misc. Appln. No. 622 of 1965 :--

"The application, cannot be deemed to have been made in Civil Revn. No. 753 of 1963. It shall be registered separately as a Miscellaneous case."

The application, however, could not come up for hearing, on account of the death of Ganesh and the consequent substitution proceedings. In Appln. No. 622 of 1965 it was prayed that an order for the amendment of the decree passed by the trial court and affirmed by the lower appellate court in First Appeal and by this Court in Second Appeal be corrected by giving the northern boundary as southern boundary and southern boundary as northern boundary of the house in dispute. In application No. 3303 of 1970. which was filed on 14-5-1970, it was prayed that the boundaries as given in para. 7 of the plaint be ordered to be amended by deleting the word [^][^]m?kj** and substituting the word [^][^]nf{k.k** in its place and similarly the word [^][^]nf{k.k** be deleted and substituted by the word [^][^]m?kj** in its place.

3. As already mentioned, at no material point of time was there any dispute between the parties in regard to the identity of the house, which was the subject-matter of the suit and of the decree. It appears however, that in the sale deed in question this very mistake in regard to the description of the northern and southern boundaries occurred and that in the plaint due to inadvertence the boundaries as given in the sale deed had been copied out. Under the circumstances it seems to us that the misdescription or mistake in the boundaries did not in any way materially affect the suit or the decree passed thereunder. The identity of the subject-matter of the suit being not in dispute no difficulty could have arisen in delivering the suit property to the decree-holder in execution of the decree. Since however two applications are before us in which prayers have been made for the amendment of the plaint as also of the decree and since the matter has been referred to this Bench it is necessary for us to consider the applications on merit and to give our decision.

4. Sri S. P. Kumar, learned counsel for the contesting judgment-debtor raised two preliminary objections. One was that the present applications, if at all. could only have been made in Second Appeal No. 1612 of 1958 and not in Civil Revision No.

753 of 1963. The other was that Smt. Saraswati, one of the defendants, having died during the pendency of the suit and her legal representatives not having been substituted, the suit as against her abated and that, therefore, also the two applications were not legally entertainable and deserved to be dismissed. In our opinion there is no substance in these two objections. The learned counsel himself submitted that these applications could be and ought to have been made in the aforesaid Second Appeal. The learned counsel for the applicant made an oral prayer to us that if need be the applications may be treated as applications filed in the said Second Appeal. We see no objection to accepting this prayer. In regard to the second objection the learned counsel for the applicant submitted that the decree of the trial court was passed against Ganesh, who occupied a dual capacity, he was a defendant in his own right and on the death of Smt. Saraswati, he being one of the legal representative, if not the sole representative, must be deemed to have represented the estate, if any, of Smt. Saraswati. Even if we proceed on the basis that the suit as against Smt. Saraswati had abated, the two applications cannot be held to be affected in any way as to their maintainability. In the decree Smt. Saraswati was not shown as a judgment-debtor. Obviously, therefore, if the amendment prayed for is allowed, it cannot be said that there will be any alteration in the decree which will in any way prejudicially affect the legal representatives of Smt. Saraswati. if any. In regard to the first preliminary objection we may further mention that from the judgment of Mathur, J., dated 24-3-1965 allowing Revision No. 753 of 1963 and the order of the learned Judge of the same date passed in Civil Misc. Application No. 622 of 1965, it is clear that the learned Judge did not give any decision on the question whether the decree could or could not be amended as prayed by the decree-holder. In fact the learned Judge expressly left this question to be dealt with by the High Court inasmuch, as, in his view, such an application could only be appropriately considered and decided by the High Court. We, therefore, overrule the preliminary objections.

5. It has already been mentioned that the reason why the applications were referred to a Full Bench by the learned Acting Chief Justice is the conflict in the decisions of this Court and the Outh Chief Court in the two cases which have already been noted hereinabove. During the hearing of these applications before us the learned counsel for the applicant submitted that the matter was directly dealt with, by a Division Bench of this Court in Aziz Ullah Khan and Others Vs. Court of Wards, . Learned counsel further submitted that Shujaatmand Khan's case (supra) is clearly distinguishable. He further submitted that in Shujaatmand Khan's case earlier decision of this Court in Aziz Ullah Khan's case was neither referred to nor considered. It was urged that on the point involved in the applications before us there being a direct decision of this Court which has so far neither been overruled nor even distinguished in any later case the applications should be allowed and this Bench should affirm the view taken by the Division Bench in Aziz Ullah Khan's case.

6. On examination the two cases of this Court, namely, Aziz Ullah Khan and

Others Vs. Court of Wards, and Mt. Hasina Begum and Others Vs. Abdul Hafiz, we find that the former case is directly in point, whereas the latter case is clearly distinguishable on facts.

7. In Aziz Ullah Khan and Others Vs. Court of Wards, the suit was filed on the basis of a mortgage. In the mortgage deed itself by an accidental slip the mortgaged property was described as being situated in Mauza "Nagla Zamania Nawadiya", whereas the correct name of the village was "Nawadiya Zaminia Nagla". This mistake was repeated in the plaint, the preliminary decree, the final decree, execution application and the sale certificate. The mistake was discovered in mutation proceedings in the revenue court, and because of this mistake in the description of the mortgaged property the mutation application was rejected by the revenue court. Thereupon the decree-holder applied for the amendment of the decree u/s 152 of the Code of Civil Procedure. This application was opposed on the ground that no such amendment could be made u/s 152 of the Code of Civil Procedure. In support of this submission that such amendment could be permitted u/s 152 of the CPC reliance was placed by the learned counsel concerned on two earlier decisions of this Court. Referring to these cases the Division Bench observed and held as follows:--

"For the opposite party we have been referred to a ruling of this court in Sheo Balak Pathak v. Sukhdei AIR 1914 All 61) in which the court ordered the amendment of the proceedings starting from the plaint right down to the decree."

"We have also been referred to an unreported decision of a Bench of this Court (of which one of us was a member) in Sarju Kumar Mukherji v. Sheikh Enayat Husain. The facts of that case were very similar to the facts of the case before us and the court ordered the correction of the documents in question, namely, the plaint, the decree and other documents. We see no reason why these decisions of this Court should not be followed as they are in accordance with the ordinary meaning of the language in Section 152. It has further been argued that the court below purports to act u/s 152 of the CPC only and that Section can only apply in terms to the amendment of the decrees and not to the amendments of the plaint, the sale certificate and the dakhnama. This contention no doubt is correct but the power of the court to make corrections necessary for the ends of justice is not confined only to powers exercisable u/s 152. Extensive powers may be exercised also under Sections 151 and 152. We consider that this is eminently a case in which the accidental slip should be corrected as the correction is necessary for the ends of justice".

8. Aziz Ullah Khan and Others Vs. Court of Wards, therefore, is an authority for the proposition that such accidental mistakes, as had occurred in that case, can be corrected by the court, apart from the powers exercisable u/s 152 of the Code of Civil Procedure, under the powers exercisable under Sections 151 and 152 of the Code of Civil Procedure, if such correction is necessary for the ends of justice. Respectfully we agree with the view expressed by the learned Judges in Aziz Ullah Khan and Others Vs. Court of Wards, and affirm that view. A Division

Bench of the Oudh Chief Court in Ruhulghani's case (supra) also held that clerical mistakes occurring due to inadvertence in a mortgage deed giving rise to repetition of the same mistake in the plaint and the decree can be corrected in exercise of powers under Sections 151 and 152 of the Code of Civil Procedure. This case was also a case of incorrect description or misdescription of an item of the mortgaged property. Although in this case Aziz Ullah Khan's case was not referred to or considered, the learned Judge independently of it came to the same view as had been taken earlier by the Bench of this Court in Aziz Ullah Khan's case. Reference, however, was made to Shujaatmand Khan's case, but it was distinguished. Shujaatmand Khan's case was not a case of some accidental or inadvertent mistake committed by the parties. What had happened was that a mortgage deed was executed on 16th December, 1897 hypothecating eight zamindari properties. Another mortgage deed was executed in 1905 in respect of the same eight properties and also a house. In 1914 a mortgage by conditional sale was executed in respect of the eight zamindari properties and also the house besides a grove. The description of the zamindari shares and the boundaries of each item of the properties of the mortgage deed of 1914 were precisely the same as in the two earlier mortgages. Meanwhile, however, there was a Settlement in 1901, as a result of which the proportionate shares of the mortgagors in the Mahals were changed. After the passing of a preliminary decree in the suit filed on the basis of the 1914 mortgage an application u/s 152 of the CPC was filed alleging that there had been a misdescription of the mortgaged shares in the mortgage deed of 1914. A prayer was made for an amendment of the plaint and the preliminary decree. The High Court held that the amendment which was sought would completely alter the plaint and the decree and also the deed on which the plaint was based. In the circumstances the learned Judges were of the view that there was in reality no clerical mistake which could be corrected u/s 152 of the Code of Civil Procedure. It will thus be seen that Shujaatmand Khan's case is clearly distinguishable on facts. There it was as a result of Settlement operations that certain changes came about in regard to the shares of the mortgagors in the Mahal. It was not a case of any clerical mistake or accidental misdescription of property due to acts or omissions of parties as in the instant case.

9. The learned counsel for the contesting judgment-debtor urged before us on the basis of reported decisions of other Courts that in the circumstances of the case the amendments prayed for could not be legally ordered either u/s 151 and 152. He relied on the decision of the Madras High Court in T.M. Ramakrishnan Chettiar alias Mannar Krishnan Chettiar and Others Vs. G. Radhakrishnan Chettiar and Others, The learned counsel for the applicant, however, pointed out that in a later case of Appat Krishna Poduval Vs. Lakshmi Nathiar and Others, the Madras High Court itself took a different view. The learned counsel also pointed out that the view taken by this Court in Aziz Ullah Khan's case has been followed by other High Courts. He referred to in this connection a decision of the Patna High Court in Jagarnath Prasad Bhagat and Others Vs. Jamuna Prasad Singh and

Others, . The learned counsel for the judgment-debtor also referred to the decision of the Raiasthan High Court in Kistoormall and Others Vs. Sattar Mohamed and Others, We, however, do not consider it necessary to discuss these cases, as, in our opinion in the circumstances of the case for the ends of justice, corrections can be made or permitted to be made in the plaint as well as the decree, as was held in Aziz Ullah Khan's case by a Division Bench of this Court and in Ruhulgani's case by the Oudh Chief Court. Besides, we may mention that the Supreme Court in L. Janakirama Iyer and Others Vs. P.M. Nilakanta Iyer and Others, has held that Inadvertent or clerical mistakes in the decree can be corrected by the High Court under Sections 151 and 152 of the CPC even during the pendency of an appeal in the Supreme Court. We are thus of opinion that under the circumstances of the instant case the two applications could be legally entertained and deserve to be allowed.

10. Before parting with the case we may also refer to Order VII, Rule 3 of the Code of Civil Procedure, which provides:--

"Where the subject-matter of the suit is Immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such, property can be identified by boundaries or numbers in a record of Settlement or Survey, the plaint shall specify such boundaries or numbers."

It will thus be seen that what the law requires is that the description of the property in suit given in the plaint must be sufficient to identify the property. If independently of the boundaries the property can be sufficiently identified, then any error or misdescription in the boundaries cannot affect either the suit or the decree passed In the suit. In the instant case, as already mentioned, no dispute at any time was raised that the suit property and the property in respect of which the decree was passed is not identifiable on the spot or it is a property different from the property which was purchased by the plaintiff from Panna Lal and for the delivery of which the suit was filed. In the circumstances, in our opinion, ends of justice require that the two applications should be allowed and the amendments prayed for be made.

11. In the result, both the applications are allowed. Let amendments be made as prayed. The parties shall bear their own costs.