

(1932) 05 PAT CK 0002

In the Patna High Court

Gulab Chand Ranka and Another

APPELLANT

Vs

Musammat Kalabati Sarkarin

RESPONDENT

Date of Decision : 04-05-1932

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152, 153

Citation : AIR 1932 Patna 321 : 139 Ind. Cas. 903

Hon'ble Judges : Rowland, J

Bench : Single Bench

Judgement

Rowland, J.—This is an application in revision against the order of the Munsif of Purnea refusing to grant review or amend the order of his predecessor disposing of an application under Order XXI, Rule 90 of the Code of Civil Procedure, on the basis of a compromise. The petitioners were the holders of a decree for Rs. 1,166 and odd in execution of which the property of the judgment-debtor was attached and put up to sale on the 14th September 1924. The decree-holder purchased the property, and the sale was confirmed. Delivery of possession was taken on the 17th January 1925. The judgment-debtor addressed to the court on the 26th March, 1925, an application under Order XXI, Rule 20 to set aside the sale. The application was disposed of on the basis of a compromise petition filed by both parties on the 21st August, 1925, the terms of which were that in full satisfaction of the decree, the judgment-debtor was to pay Rs. 801 by instalments for which periods were fixed, that on payment of the said amount the sale should be set aside, but that on failure to pay the said amount according to the instalments, the sale and delivery of possession in favour of the decree-holders auction-purchasers should stand. The order recorded by the court, however, instead of giving effect to the terms of this compromise and directing that the sale should stand unless and until the decretal amount was paid off in the manner provided for, runs as follows:

A compromise petition filed by parties. Application allowed on compromise. Sale is set aside.

It is said that the instalments due have not been paid. The petitioners moved the Munsif in 1930 to amend the order under Sections 151, 152 and 153 of the CPC or in the alternative to review the order in accordance with the provisions of Order XLVII, Rule 1 of the Code of Civil Procedure. The Munsif refers, to the provision of Order XLVII, Rule 1, and has said that an application for review under this order can only be made to the Judge who passed the original order, unless it is based on either the discovery of new and important matter or evidence or a clerical or arithmetical mistake. Being of opinion that the mistake is not clerical or arithmetical, he comes to the conclusion that it is not open to him to entertain the application under Order XLVII, Rules 1 and 2. As regards Rs. 151, 152 and 153, all that he says is that he thinks these sections do not confer any power of revision on his court. Section 151 no doubt does not directly confer any particular power on the court. It is a general section saving the existing inherent jurisdiction of every court but not conferring any new power. Section 153, it has been conceded at the bearing, is not directly applicable. For the petitioners, however, Section 152 is directly relied on and this section might well have been examined by the Munsif before he declined to exercise jurisdiction in the matter. It is laid down that not only clerical or arithmetical mistakes in judgments, decrees or orders, but errors arising there in 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 power given by the section is a wider power than that conferred by Order XLVII, Rule 2 on the successor of a court passing an order. The application of the section has been considered in several cases of which it will be sufficient to cite 21 Ind. Cas. 115 Muttiar Rahman v. Harendra Nath Mukherjee 21 Ind. Cas. 115. That case, like the present one, referred to a litigation which had been adjusted by a compromise between the parties. A decree was drawn up which failed to give effect to the terms of the compromise and plaintiffs came to court praying that the decree might be amended and brought into conformity with the compromise. It was observed in the course of the judgment:

If Section 152 does not authorise a court to remedy, as far as it can, errors in the formal expression of its order occasioned by its own indolence, it is difficult to appreciate the use of the section. Here there is no doubt what the compromises were. Nor is there any doubt that the court intended those compromises to be embodied in the decree. The fact that they were not so embodied was due to the grossest negligence but it cannot be supposed that the decree was drawn up in this form and accepted by the court and the Pleaders intentionally. Its form, therefore may reasonably be regarded as unintentional and accidental and, therefore, capable of correction u/s 152.

Those observations apply to the case before me with the modification that in this instance no formal decree was drawn up. There can be no doubt whatever that the order passed on the compromise petition embodied an error arising from an accidental slip or omission and therefore within the terms of the section the court had and has power at any time to correct the mistake either of its own motion or

on the application of any of the parties.

The application is allowed. Let the record be sent back to the Munsif with the direction to correct the order and bring it in conformity with what must have been the intention of the court. The opposite party has not appeared and in the circumstances of this case, I shall make no order as to costs as there Was considerable dealy in moving the court below for amendment of the order.