

(1959) 09 AHC CK 0035
In the Allahabad High Court
Case No : Second Appeal No. 2171 of 1943

Jai Narain and Others

APPELLANT

Vs

Chheda Lal and Others

RESPONDENT

Date of Decision : 16-09-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 147, 151, 152
Constitution of India, 1950 — Article 215

Citation : AIR 1960 All 385

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : Sabd Saran and H.N. Seth, for the Appellant; Krishna Sahai, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.

1. This is a matter arising out of at judgment of this Court in two connected 2nd appeals which were decided by this Court eight years ago. The matter has been raised by the learned Munsif of Chandausi before whom an application has been made by the judgment debtors for restitution and for damages on the ground that the decree holder committed a fraud on the court in execution proceedings. In considering this application on merits the learned Munsif had to interpret the decree of this Court passed in 1951 but found that he could not do so because of a clerical error which appeared to him to have crept into the judgment of this Court. He passed an order directing that the file of the matter before him including those of the suits which were decided by this Court in second appeals in 1951 should be sent up to this Court to consider whether the alleged clerical error should be rectified.

2. At the outset it may be mentioned that the clerical error referred to above relates to the description of a portion of the property which was in dispute in second appeals decided on 1-5-1951. In his judgment Sapru, J. observed. "This

being so, the position is that the portion A M N B on the map will also be exempt from the operation of the decree awarded by the lower appellate court," It is common ground between the parties that there is no portion which can possibly be enclosed by the letters A M N B on the map. According to Mr. H. N. Seth, learned counsel for the party which was the judgment debtor appellant in second appeals, the letter "B" should be replaced by "D" so that the observation of the learned Judge will run thus :

"This being so, the position is that the portion A M N D on the map will also be exempt from the operation of the decree awarded by the lower appellate court."

I have to decide whether any correction should be made, and if so, whether it should be in accordance with Mr. Seth's suggestion.

3. Mr. K. C. Saxena, who opposed this application on behalf of the decree holder with great tenacity, urged three points against making any correction. First, he contended that the decree in the suit having been completely satisfied, this Court is functus officio and has no jurisdiction even to correct any errors u/s 152 C. P. C. He relied on a decision of a Division Bench of this Court in Pitam Lal Vs. Balwant Singh, in which one of the learned Judges observed that when a decree for money has been finally satisfied and discharged, the court is functus officio and can no longer entertain an application for amendment u/s 152 C. P. C.

He also cited a judgment of the Madras High Court in Munuswami Pillai Vs. Mahdi Hussain Khan Sahib, in which an observation was made to the effect that it is questionable whether a court would be justified in making a correction which involved the payment of a larger sum of money by one party to another long after satisfaction had been recorded and when nothing remained to be done and the decree had become dead. In a subsequent decision of this Court in Beche Lal and Others Vs. Hem Singh and Others, a learned single Judge disagreed with the observation of Daniels J. in the Division Bench, case mentioned above.

There is no doubt that this observation did not have concurrence of the other learned Judge for, Daniels J. observed, "I concur. I would be prepared to go a step further and hold that when a decree for money has been finally satisfied and discharged, the court is functus officio . . ." Thus, according to the learned Judge himself, he was going a little further than his learned colleague on the Bench.

4. In my opinion, this Court, as a court of record, owes a duty to itself to ensure that its record is free from any blemish or error. If any such error is brought to its notice in any manner whatsoever and at any time whatsoever, it has the power to correct errors of a clerical nature. To hold otherwise would mean that this Court is powerless even after discovering that a particular sentence in a judgment is grammatically incorrect or absurd. I am, therefore, inclined to agree respectfully with Agarwala, J. that, after the satisfaction of the decree, the Court may become functus officio as regards the execution of the decree but it retains the power to correct obvious errors in its own records, It goes without saying that the Court will not make any correction if it leads to injustice and in any case,

not without hearing the parties whose interests are likely to be affected.

5. However, the question of satisfaction of the decree does not arise in this case for the judgment debtors have made an application before the execution court that the decree holder obtained demolition of the property in dispute by committing a fraud on that court. A copy of that application was placed before me by Mr. Seth and was also shown to learned counsel for the decree holder. The application purports to have been made under Sections 144, 147 and 151 of C.P.C. In brief, the judgment debtors allege that, after the decision of the second appeal by this Court, the decree holder put in execution, not the decree of the High Court but that of the lower appellate court which had been superseded by the former.

The circumstances in which this fraud was alleged to have been perpetrated are detailed in the application. In support of his application, the judgment debtors placed the judgment and decree of this Court in the second appeal and contended that the decree of the lower appellate court had been substantially modified by the High Court. At this stage the alleged clerical error in the judgment of Sapru, J. was brought to the notice of the Court. The learned Munsif thought that there was an obvious error, but he decided, very properly, to send the matter upto this Court for such orders as it may deem fit to pass.

6. In view of these circumstances, it cannot be said that the matter is dead or that this Court is functus officio. The judgment debtors have laid a very serious charge against the decree holder which is being investigated. The interpretation of the judgment of Sapru, J. is a material factor in that investigation. It is, therefore, not only within the power of this Court to rectify the error but also its duty.

7. Mr. Saxena's second and third objection can be taken together. He contended that this Court, even if it has the power, should not make any correction at this late stage. He also stated that the objection as to any execution excess of the decree should have been taken at the time of execution. The answer to both these arguments is to be found in the application of the judgment debtors before the learned Munsif. They allege that the decree holder somehow obtained execution without serving notice on them and that they came to know of it only when they found that their house had been demolished. The question of their raising any objections at a previous stage does not, therefore, arise.

8. I shall now consider whether there is any clerical error in the judgment of Sapru, J., which needs correction. Mr. Saxena vehemently contended that there is none, but much of his argument really was virtually an attack on the correctness of the decision of Sapru, J. on merits. He placed before me the findings of the lower appellate court on a remand by this Court, and contended that Sapru, J. could not have meant that the portion AMND on the map should also be exempt from the operation of the decree awarded by the lower appellate court; but he could not explain which portion was meant by the learned Judge to be exempt.

According to him, the question of any portion being exempt does not arise in view of the findings of the lower appellate court. As indicated above, this really means that the finding of Sapru ,J. is erroneous. It is too late for the decree holder at this stage to advance this argument. If he felt that no portion of the property should be exempt from the decree he should either have made an application for review or sought redress against the judgment of Sapru, J. from the Supreme Court.

9. After hearing learned counsel on both sides I am satisfied that the view of the learned Munsif that there appears to be a clerical error is correct. I am of the opinion that, as a result of this error A M N B was typed out whereas it should have been AMND. Let the necessary correction be made and the letter "B" be substituted by the letter "D" both in the judgment of Sapru ,J. dated 1-5-1951 and in the decree so that the correct description will be AMND.

10. The record of this case shall be sent forthwith to the learned Munsif of Chandausi so that the application of the judgment debtors is disposed of on merits. A very serious allegation has been made and" there should be a thorough investigation in the interests of justice.

11. I do not think this is a fit case for special appeal. Leave to appeal is refused. Furthermore. I am very doubtful whether leave to appeal can be asked at the stage when a clerical error is corrected. The appellant did not ask for any leave to appeal at the time when Sapru ,J. delivered his judgment,