
(2007) 11 AP CK 0027

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 4540 of 2007

Kalasani Venkata Laxmi Reddy

APPELLANT

Vs

Bommineni Aruna Reddy and Others

RESPONDENT

Date of Decision : 26-11-2007

Acts Referred:

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

Citation : AIR 2008 AP 107 : (2008) 2 ALD 755 : (2008) 2 ALT 14

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : Sabbineni Venugopal, for the Appellant; P.R. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Gopala Krishna Tamada, J.—The first respondent herein instituted O.S. No. 8 of 1986 seeking partition of the plaint schedule properties and for possession of her 1/10th share against the second respondent. During the pendency of the suit, the second respondent died and his legal representatives, i.e, the petitioner and respondents 3 to 10 were brought on record. After contest, the trial court passed a preliminary decree on 06.09.1994. Thereafter, an application for passing of final decree was passed, and the trial court, after appointment of an Advocate/Commissioner and submission of the report by the said Advocate/Commissioner, passed a final decree on 23.12.1999. Though in the judgment, particular shares were allotted to the first respondent and the tenth respondent, while drafting the decree, the said shares were altered showing the share allotted to the first respondent/plaintiff in favour of the tenth respondent and the share allotted to the tenth respondent in favour of the first respondent/plaintiff.

Despite the fact that the final decree was passed and the shares were allotted, the same did not work out, and the first respondent filed a petition seeking execution, being E.P. No. 80 of 2000. Petitioner has taken an objection stating that the said decree cannot be executed in the light of the discrepancy as stated

above and the court below rejected the said objection. Questioning the said order, petitioner filed a revision and the same was also dismissed. As there was discrepancy, the first respondent filed I.A. No. 560 of 2007 seeking amendment of the decree u/s 152 of the Code of Civil Procedure, 1908 (CPC). The Court below allowed the said application. Aggrieved by the same, this revision is filed by the petitioner.

2. The learned Counsel for the petitioner has drawn my attention to Section 152 CPC and tried to contend that it is only clerical or arithmetical mistakes in judgments, decrees or orders arising from any accidental slip or omission may, at any time, be corrected by the court either on its own motion (*suo motu*) or on the application of any of the parties, but as the said amendment is not falling in any of the provisions mentioned in Section 152 CPC, the said amendment is not permissible. The learned Counsel also drawn my attention to the judgment of this Court in *P. Prasad and Another Vs. Shirdi Enterprises*, wherein, a learned Judge of this Court, after following the judgment in *Dwaraka Das v. State of M.P.* 1999(1) Sup 429 has taken the view that if the petitioner wants amendment of the decree for correction of mistakes other than clerical or arithmetical, which is permissible by virtue of Section 152 CPC, his remedy is to file an appeal, but not to seek amendment of the decree.

3. Per contra, the learned Counsel for the respondent, stated that the said amendment is only because of the mistake committed by the office and as it comes under the meaning "clerical mistake" and also it is an accidental slip" by the office of the trial Court, which squarely, falls u/s 152 CPC. In this context, the learned Counsel has drawn my attention to the judgment reported in *Niyamat Ali Molla v. Sonargon Housing Cooperative Society Limited* 2007(1) DTSc 796.

4. No doubt, in the judgment relied on by the learned Counsel for the petitioner, this Court has taken the view that the moment the Court passes a decree, it becomes *functus officio* and the matter, which has been judicially decided by the decree cannot be reopened on an application u/s 152 CPC. However, having perused the said judgment, this Court is of the view that the facts in the said case are different when compared with the facts in the case on hand. The judgment will be dictated by the Court and the decrees will be prepared by the office on the basis of the said judgment. The judgment clearly spells the mind of the Court and that alone is the criteria in drafting the decree. If an omission occurs in the decree because of the mistake committed by the clerks concerned, it definitely falls within the ambit of Section 152 CPC, as it clearly states that any clerical or arithmetical mistake in the decree can be amended.

5. In the case on hand, as per the judgment drafted by the learned I Additional Senior Civil Judge at Warangal, a particular share was allotted to the first respondent and another share was allotted to the tenth respondent, but while drafting the decree, the shares were altered and the share allotted to the tenth respondent was shown to be that of the first respondent and the share allotted to the first respondent was shown to be that of the tenth respondent. Simply

because the same were altered in the decree it cannot be said that the Court has become functus officio and cannot alter the decree. If such is the interpretation, there is no meaning to Section 152 CPC. Even if such a view is accepted, the Court is conferred with inherent powers as provided u/s 151 CPC. According to Section 151 CPC, nothing in CPC shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary to meet the ends of justice or to prevent abuse of process of the Court.

6. In the case on hand the fault occurred because of the mistake committed by the office and to meet the ends of justice, the Court which passed the said judgment can definitely amend the said decree. No doubt, when once the judgment is pronounced, the Court becomes functus officio, but it does not mean that the Court cannot pass an order of this nature. If there is a mistake in drafting the plaint, and judgment and decree are pursuant to the said pleadings, it may be said that he can file an application seeking amendment of the decree.

7. An identical matter came up before the Supreme Court in Niyamat Ali Molla's case (supra), wherein the learned Judges, discussing the provisions under Sections 151 and 152 CPC have taken the view that the Code empowers the Court to correct its own error in judgment, decree or order or any incidental slip or omission. Further, it was also held that the Code recognizes the inherent powers of the court. It is further held that it is not only confined to amendment of the judgment or decree, as envisaged u/s 152 of the code, but also inherent power in general and the Courts have a duty to see that the records are true and present the correct state of affairs. Thus holding, the Supreme Court held that a decree may, therefore, be corrected by the Court both in exercise of its power u/s 152 CPC as also u/s 151 CPC and such power of the Court is well recognized.

8. In the light of the said judgment, this Court is of the view that the judgment relied on by the learned Counsel for the petitioner cannot apply to the facts on hand.

9. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.