
(1957) 03 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 208 of 1955

Kali Saran Nanak Chand

APPELLANT

Vs

Hari Ram and Others

RESPONDENT

Date of Decision : 11-03-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 38, 47
Evidence Act, 1872 — Section 95
Transfer of Property Act, 1882 — Section 8

Citation : AIR 1958 P&H 13

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : S.D. Bahri, for the Appellant; Rajindar Sachar, for the Respondent

Final Decision : Dismissed

Judgement

Tek Chand, J.—This is an execution second appeal from the order of the Senior Subordinate Judge, Jullundur. The facts of this case are that a decree for possession by way of pre-emption was passed in favour of the appellant on 20th January, 1950. This decree was on the basis of a compromise that shop No. 3 indicated in red in the plan, Exhibit O. 1, the breadth of which was erroneously stated to be 9 feet 9 inches, was left with the decree-holder. In addition to this shop, the open space towards the south in continuation of the wall BE right up to the northern wall of house No. 4 was left with the decree-holder in lieu of Rs. 3200/- payable by the decree-holder to the judgment-debtor. It was indicated that a wall was to be constructed in continuation of the joint eastern wall, through the entire length, and this newly constructed wall would be treated as joint. In consequence of this compromise, a joint wall had been constructed as indicated in continuation of the eastern wall of the shop indicated by the letters BE.

The decree-holder had deposited the sum of Rs. 3,200/- as required by the trial Court. After the joint wall had been constructed, the decree-holder took out

execution on 17th January, 1953. The executing Court issued notice to the judgment-debtor-respondent who filed objections. The main plea of the judgment-debtor-respondent was that the decree had been fully satisfied long ago. The decree-holder-appellant contended that the decree had not been satisfied, as under the terms of the compromise, and the decree based on the compromise, he was entitled to an area with a breadth of 9 feet 9 inches, whereas, what he has been given, is an area with a breadth of 8 feet 8 inches only. The decree-holder's grievance was that he has received an area which is short by width of 1 foot 1 inch.

2. On the pleadings of the parties the following issues were struck by the learned Sub-Judge:--

1. Has the decree been satisfied outside the Court? 2. Relief. Both the Courts below decided issues against the decree-holder-appellant, who has now presented a second appeal in this Court. The real controversy centres round the width of 1 foot 1 inch. There is no doubt an obvious error so far as the measurements are concerned as the compromise deed and decree specifically indicate that the width is 9 feet 9 inches and it is an admitted fact that the width on the spot does not exceed 8 feet 8 inches. If one were to look at the measurements it is not possible to reconcile the measurements upon the spot with measurements in the compromise deed and decree based upon it.

3. Mr. Som Datta Bahri on behalf of the decree-holder-appellant contends that a mistake having crept in the decree it is not open to the executing Court to go behind the decree which must be executed as it stands. Moreover, he argues that the mistake cannot be corrected by the executing Court. It is for the judgment-debtor to apply to the Court which passed the decree under the provisions of Section 151 of the CPC to get the error rectified. He based his contention upon a decision of the Bombay High Court in *Krishnaya Parbhaya Chintalwar Vs. Meghraj Paparam Teli*, . In that case it was held that where the description of the property is incorrect in the decree itself, the executing Court cannot rectify it.

It is only the Court which passed the decree that can correct the mistake in the exercise of its inherent powers u/s 151. The reason given for this conclusion was that if the Court passing the decree, corrects the mistake and amends the decree, the amended decree is appealable, but if it refuses to do so the order of refusal is not a decree and no appeal lies against it. The above Bombay decision is distinguishable on facts. It was not a case of property having been described correctly by words and measurements having been wrongly given. That decision is no guide for deciding the point in controversy arising in this case.

4. The next authority relied upon by Mr. Bahri is *Shiam Lal v. Mt. Moona Kuar*. AIR 1934 Oudh 352 . In that case it was held that where a mistake (in that case the hadbast number of the village was shown as the khasra number of the plot mortgaged) is repeated in the judgment of the Court and the preliminary and the final decree, the Court could amend the plaint, judgment and the decree under

its inherent power under Ss. 151 and 152, where the mistake was clerical, arithmetical or of an error arising from an accidental slip or omission. This authority too does not help the decree-holder. If anything, it goes against him.

5. The correct proposition in this case is laid down in *Matiur Rahman Khan Vs. Sonu Lal and Others*, The main controversy in the Patna case was, as to whether, the mortgaged property appertained to separate account No. 60 or separate account No. 88. Fazal Ali, J., observed that it was well settled, that an executing Court had no right to go behind the decree, or in any way, to add to or amend the terms thereof. It had to execute the decree as it stood, and any amendment thereof, could be made only by the Court which passed the decree.

6. After having held the above, Fazal Ali J. proceeded to say, that it was, however, the duty of the executing Court to ascertain the property which was the subject of the decree, and for this purpose, it was entitled to look at the paramount description of the property in question. In doing so, the executing Court was stated not to have exceeded its jurisdiction.

7. In this case if one were to go by the description of the property as contained in the compromise and the decree, the conclusion was irresistible that the decree had been fully satisfied. But if on the other hand, the guiding factor, was the measurement, as opposed to description, then, there was an obvious error in the measurements, and it could not be said, that the area described according to measurements, had been taken possession of by the decree-holder in execution of his decree. It is, however, a well known principle for construction of deeds of conveyance, that if in a land conveyed and described by boundaries, as well as, by area, there is a difference between the boundaries and area, the land, actually comprised within the boundaries, is to be treated as to have been conveyed.

In *Gossain Das Kundu v. Mrittunjoy Agnan Sardar* 22Ind. Cas. 26 there was a difference between the areas and the boundaries which were the subject-matter of the sale, and it was held, that the purchaser took plot as defined by the boundaries, and if within those boundaries, there was more or less of land, than that, stated in the sale-certificate, the purchaser obtained title to whatever was contained within those boundaries.

This case was cited with approval in *Raghunandan Thakur Vs. Babu Kishundeo Narain Mahta and Others*, . Similar view was taken by Vivian Bose J. in *Pannalal Bhagirath v. Bhaiya-lal Bindraban* AIR 1937 Nag 281. In the last cited case, there was a small disparity between the measurements on the spot, and those that were given in the sale deed, although the description was accurate. It was held in that ruling, that a substantial description of property, such as by boundaries, must prevail, whether the mistake crept in a deed of conveyance or in a judgment or a decree.

8. The dicta in the above rulings, commends itself to me, which I follow. The description given in the compromise deed admits of no doubt as to the intention

of the parties and describes with sufficient clarity the area that was intended to be taken by the decree-holder in consideration of Rs. 3,200/-. I accept the principle that in such cases where there is a conflict between the description of the property given, and the measurements indicated, the former is to prevail. In the light of above observations, the question of rectification of errors does not arise. The decree is to be deemed for the area as indicated by the description of the property. The area towards the east, extends up to the wall which runs in straight line, in continuity with the existing wall BE. Clerical errors are to be read as amended vide Maxwell on the Interpretation of Statutes (tenth edition) page 252.

9. In view of what has been stated above there is no force in appeal of the decree holder which fails and is dismissed with costs-throughout.