

(1959) 11 KL CK 0015
In the High Court Of Kerala
Case No : C.R.P. No. 42 of 1959

Sekharan Namboodiripad

APPELLANT

Vs

Raman Namboodiri and Others

RESPONDENT

Date of Decision : 18-11-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, 151, 152, 153

Citation : (1960) KLJ 148

Hon'ble Judges : P. T. Raman Nayar, J

Bench : Single Bench

Advocate : N.N. Venkitachalam, for the Appellant; D.H. Namboodiripad, for the Respondent

Final Decision : Dismissed

Judgement

Raman Nayar, J.—The only decree sought by the petition of compromise-in fact it purported to be under O. XXIII, R. 1, C.P.C.-and the only decree passed was one of dismissal of the suit. No clerical error is alleged so far as the decree is concerned, and it seems to me that the correction of an alleged clerical error in the agreement of compromise which was filed into court and merely recorded by it cannot fall within the scope of Sections 151, 152 and 153 of the Code. A separate suit for rectification on the ground of mutual mistake-and as pointed out by Beaumont C.J. in AIR 1937 Bombay 457 a clerical error can hardly fail to be that-would appear to be proper remedy. I fail to see why, in departure from the normal procedure, the court should act under Sections 151 to 153 of the Code to correct an error in a proceeding which, though formally recorded in the suit is really an extraneous proceeding. AIR 1933 Allahabad 608 and AIR 1937 Bombay 457 relied upon by the petitioner are cases where the error existed in the order or decree of the court, and, in fact, those cases seem to imply that it is only where an error exists in the compromise as embodied in an order or decree of the court that resort can be had to the simpler procedure of an amendment under Sections 151 to 153 of the Code instead of a suit for rectification. 1958 II

M.L.J. 514 has no bearing for there, the error existed only in the decree and not in the compromise agreement. I think the court below was right in dismissing the petitioner's application for amendment of the compromise agreement. I dismiss the petition with costs.