
(1976) 02 KAR CK 0005
In the Karnataka High Court
Case No : Second Appeal No. 564 of 1971

Shankergouda

APPELLANT

Vs

Garangouda and Others

RESPONDENT

Date of Decision : 27-02-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152

Citation : AIR 1976 Kar 204 : (1976) ILR (Kar) 1112 : (1976) 1 KarLJ 340

Hon'ble Judges : D.M. Chandrashekhar, J

Bench : Single Bench

Advocate : M.M. Jagirdar, for the Appellant; Balakrishna, for N. Santosh Hegde, for the Respondent

Judgement

1. Has the Court -power u/s 152, Civil P. C. to amend its judgment and decree so as to correct a clerical or inadvertent error although such error had occurred on account of a mistake of the parties themselves in the pleadings ? This question arises out of the application, 1. A.. II, made by the appellant. He has prayed for amendment of the judgment and decree in the above appeal, by substituting the figure 203 for the figure 304 denoting, the survey number of the land in Kuralagere village which I held in this second appeal, to be the exclusive property of the appellant and directed its exclusion in the partition of the joint family properties between the appellant and the respondents.

In the affidavit accompanying I. A. II, the appellant has alleged thus: In the plaint he had stated that the land bearing Survey No. 304 of Kuralagere was purchased by him out of his separate funds and that it was not liable for partition. The correct survey number of that land is 203. It is only by a clerical mistake that he had stated the survey number of that land as 304. In para. 8 of the written statement of plaintiff 2 who was later transposed as defend-ant 4 he had expressly pleaded that the mention of S. No. 304 in the plaint was incorrect, but that as a matter of fact it was S. No. 203 known as "Ichigirin Hola". In para. 1 of the additional grounds in the written statement of other defendants, that

land was stated as bearing S. No. 203 and not 304. The plaintiff had also stated in his rejoinder that lands bearing S. Nos. 203, 128 and 355 of Kuralagere village had been purchased by him and hence were not liable to partition. Unless this error in the Survey number of the land is corrected in the judgment and decree in the second appeal, the decree cannot be executed.

3. The respondents have opposed I. A. II and have filed objections in which they have denied that mention of S. No. 304 in the plaint was due to a clerical mistake and that the correct number of the land referred to in the plaint as the separate property of the plaintiff, was 203. The respondents have pleaded that the appellant-plaintiff had omitted to include in the plaint schedule S. Nos. 355, 203 and 128 which were also joint family properties liable for partition, that by the terms of the decree as modified by this Court, all the four respondents have each got 1/5th share in S. No. 203 along with other joint family properties and that by the proposed amendment the respondents would be deprived of their legitimate shares in that land, granted by the decree. They further pleaded that there was a serious dispute between the parties about the identity of the land and that as such it could not be said that the mistake in the plaint was either clerical or accidental.

4. The respondents contended that the, appellant-plaintiff's remedy, if any, was by way of a separate suit or an application in the trial Court and not by this application in this Court.

5. At the outset, I wish to point out that S. No. 203 is not one of the items in Schedule A to the decree of the trial Court or to the modified decree of this Court. Hence, there is no substance in the contention of the respondents that under the decree of this Court they have been given any share in S. No. 203. They have not shown how amendment sought for by the appellant-plaintiff hurts them.

6. When defendants 1 to 3 had themselves stated in the additional grounds in their written statement that the Survey number of the land claimed by the appellant-plaintiff as his exclusive property was 203 and not 304 and defendant 4 (originally plaintiff 2) had also stated to the same effect in para.8 of his written- statement, there can be no doubt that the mention of S. No. 304 was an inadvertent or clerical error and that the correct number of the land claimed by the appellant-plaintiff as his self acquired property was 203 and not 304.

7. Even so, Mr. J. S. Gunial, learned Counsel for respondents 1 to 4, contended that the amendment sought for by the appellant-plaintiff could not be allowed by this Court after the disposal of the appeal.

8. In Appat Krishna Poduval Vs. Lakshmi Nathiar and Others, , the error regarding survey number of the suit land was not only in the schedule to the decree and the plaint but also in the schedule to the deed of assignment in favour of the plaintiff, Yet Madras High Court permitted amendment of the decree u/s 152, Civil P. C. so as to correct the error in regard to the survey

number of the land in the schedule to the decree.

9. In *Anupa Kuer v. Yogendra* (AIR 1954 Pat 108) the plaintiff who had purchased southern half of certain plots of land had omitted to state in the plaint from which direction recovery of possession over the suit plot was sought for. The decree drawn in accordance with the plaint had also omitted to give such direction. Patna High Court held that since there was no ambiguity as to the subject-matter of the suit, but that there was only a mistake as to the description of the -property, the decree should be amended u/s 152, Civil P. C

10. In *Shahzad Khan Vs. Pt. Sheo Kumar*, , a mistake had crept in the decree on account of wrong description of the suit property in the plaint. Allahabad High Court held that the Court can u/s 152, Civil P. C., amend a clerical error in a decree although such error might have occurred on account of its being copied from the plaint and that it was not necessary to amend the plaint itself.

11. The above decisions relied on by the appellant-plaintiff clearly support his prayer. As there is no ambiguity as to the identity of the land claimed by him as his self acquired property and the mistake as to its survey number in the plaint was due to an inadvertent or clerical error, I allow the application, I. A. II, and correct the mistake in my judgment in the second appeal and the decree based thereon, by substituting Survey No. 203 for Survey No. 304.

12. Application allowed.