

(2016) 03 CHH CK 0034
In the Chhattisgarh High Court
Case No : W.P. 227 No. 169 of 2016

Shiv Kumar Sahu

APPELLANT

Vs

Dr. M. Khalil Ullah

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 152

Citation : (2016) 2 CivilLJ 894

Hon'ble Judges : Shri Chandra Bhushan Bajpai, J.

Bench : Single Bench

Advocate : Shri Yogesh Chandra Pandey, Advocate, for the Appellant; Shri S.C. Khakhariya, Deputy Advocate General, on advance copy, for the Respondent

Final Decision : Allowed

Judgement

Shri Chandra Bhushan Bajpai, J.— Heard the matter on admission.

2. Brief facts required for adjudication of the instant WP(227) are that Civil Suit No. 52A/12 is pending before the IVth Civil Judge Class-II, Raipur, C.G. wherein on an application filed under Order 39, Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (in short "the Code") the trial Court vide order dated 18-01-2013 allowed the said interim application and directed defendants 2, 3 and 4 to not to transfer the suit land in favour of anybody, by way of temporary injunction till disposal of the civil suit. Against the said order defendants 2, 3 and 4/petitioners preferred Misc. Civil Appeal No. 7/2013 under Order 43, Rule 1 of the Code. The District Judge, Raipur, C.G. vide order dated 13-08-2014 affirmed the order passed by the trial Court dated 18-01-2013 and ordered that the appellants/defendants 2, 3 and 4 shall not dispose of the suit property as mentioned in para 1 of the temporary injunction application (Annexure-P/1) and also two storied house bearing No. 173 of the Municipal Corporation situated at Bairan Bazar by any of the medium and kept the order passed by the trial Court as it is. Thereafter, the plaintiff/respondent No. 1/ applicant filed an application under Section 152 read with Section 151 of the

Code for deletion of the said house as the same was not included as a suit property. The District Judge, Raipur after hearing the matter in MJC No. 56/2015 vide order dated 17-12-2015 allowed the application and directed to delete the property as mentioned in para 21 as "csju ckktj jk;iqj fLFkr nks eaftyk edku ftldk uxj fuxe edku uacj 173 gSA" Against the said order the petitioners/defendants 2, 3 and 4 preferred the instant WP(227) under the provisions of Article 227 of the Constitution of India invoking jurisdiction provided thereunder and for quashing the order dated 17-12-2015 passed by the District Judge, Raipur, C.G. As informed, the petitioners/defendants 2, 3 and 4 have not preferred any proceeding against the order passed by the District Judge, Raipur in Misc. Civil Appeal No. 7/2013 and with this, the order passed in Misc. Civil Appeal No. 7/2013 attains finality for the moment.

3. In the instant W.P.(227) the grounds have been taken that the order passed by the District Judge in MJC No. 56/2015 does not cover the provisions provided under Section 152 of the Code, the settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject and remedy available to correct the same from the other forum available under the law. The trial Court on an application framed the issues; the issue No. 1 is for the entire property mentioned in the alleged Hibanama dated 14-10-2003 and the house for which the District Judge passed the order and directed in the order dated 13-08-2014 at para 21 is included as disputed property and suit property. The District Judge has no jurisdiction to correct the order passed under the provisions of law including Order 43, Rule 1 of the Code. As the said house is also suit house and for which the trial Court has to appreciate both the parties for issue No. 1, hence, the order passed by the District Judge dated 17- 12-2015 is illegal and improper, therefore, it is prayed that by allowing the instant W.P. (227), the order dated 17-12-2015 be quashed.

4. Heard learned counsel for the petitioners on admission.

5. Learned counsel for the petitioners supported the entire grounds taken in the instant W.P.(227) and submitted that legality of entire property is under the question in issue No. 1 and for the proposed correction which is in the category of merit of the order, the respondent No. 1 ought to pray before the higher Court of correction. The suit house is also included in the property for which issue No. 1 was framed. Hence, the Court below had no authority of law to pass the impugned order which requires interference. Therefore, the order passed by the District Judge dated 17-12-2015 be quashed.

6. Learned counsel for the petitioners placed reliance on the matter of State of Punjab v. Darshan Singh, (2004) 1 SCC 328 wherein Hon'ble the Apex Court held regarding power under Section 152 of the Code that exercise of said power contemplates the correction of mistakes by the court of its ministerial actions and does not contemplate passing of effective judicial orders after the judgment, decree or order. Omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152. It is prayed that the matter is covered

with the above cited case law. Hence, the petition may be allowed.

7. For the purpose of appreciation regarding arguments advanced, grounds taken in the instant W.P.(227), the documents annexed and the pleadings of the W.P. (227), order passed by the trial Court and also by the District Judge in the miscellaneous appeal and also in MJC No. 56/2015 are perused.

8. For consideration of the matter, Section 152 of the Code is relevant with reads as under :-

"152. Amendment of judgments, decree or orders.? Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties."

9. From perusal of the injunction application (Annexure-P/1) para 1, reply filed by the petitioners before the trial Court as Annexure-P/2 para 1, it goes to show that the said house is neither shown as suit land nor added by the petitioners/defendants 2 to 4 in their reply as suit land. Also from perusal of the order dated 18-01-2013, it goes to show that the trial Court appreciated the said interim application for the suit property as mentioned in Annexure-P/1 and allowed the injunction application for the said suit land only. There was no any appreciation regarding the house in question. The District Judge passed the order in Misc. Civil Appeal No. 7/2013; the said appeal was filed against the order passed by the trial Court where there was nothing for the house and when we read operative part of the order passed in Misc. Appeal, para 21, it goes to show that the appellate Court only affirmed the order of the trial Court. The description of the house as aforementioned was not a subject matter of the temporary injunction application and not the subject matter of the order passed by the trial Court dated 18-01-2013. It is not the case that the petitioners/defendants 2, 3 and 4 had filed any cross-suit incorporating the said house as suit house also. From perusal of the above material, it goes to show that the order regarding any house was not the matter of consideration by the trial Court and also by the appellate Court in the miscellaneous appeal. From perusal of Section 152 of the Code, it goes to show that the Court has authority to correct any error arising from any accidental slip or omission at any time either of its own motion or on the application of any of the parties. The District Judge rightly applied his power to correct the accidental slip whereby he added the description of the house in the matter as the same was not subject matter of temporary injunction application and also for the miscellaneous appeal. If at all for the sake or argument, issue No. 1 formulated by the trial Court includes the house in question, even then if the plaintiff had not prayed any relief or claimed for the said house by way of temporary injunction, with this, the trial Court or the appellate Court may not go beyond for what the prayer made in temporary injunction and in the miscellaneous appeal. The cited case law is not applicable as the facts of the present case are different.

10. From perusal of the entire material, in the considered view of this Court, the District Judge has not committed any error of law and the order dated 17-12-2015 is neither illegal nor improper and as such it does not require any interference. Therefore, the instant W.P.(227) has no substance and the same is hereby dismissed at the motion stage itself.

11. The petition dismissed.

12. No order as to cost.