

(1961) 09 PAT CK 0011
In the Patna High Court
Case No : A.F.O.D. No. 337 of 1957

Shyamal Bihari Mishra and Others

APPELLANT

Vs

Girish Narain Missir and Another

RESPONDENT

Date of Decision : 08-09-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 7, 151, 152

Citation : AIR 1962 Patna 116

Hon'ble Judges : Raj Kishore Prasad, J

Bench : Single Bench

Advocate : S. Mustafi, for the Appellant; Parmanand Sharan Sinha and Devendra Prasad Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Raj Kishore Prasad, J.—This appeal is by defendants I to 10, who along with defendants 11 to 13--Respondents third party, were defendants first party, and is directed against the amended decree of May 30, 1957, by which the amount of cost, awarded to the appellants against the plaintiff-respondent, was reduced, from 1020/1/- to Rs. 795/1/-, that is, by Rs. 225.

2. The single question, for determination here, is, whether the amendment of the decree, asked for by the plaintiff, after it had been executed and satisfied by sale of his properties, and, after an appeal against it was pending, should have been allowed by the court below?

3. In order to decide this question, it is necessary to know the material facts having bearing on it

4. A suit for partition was brought, by the plaintiff-respondent first party, against defendants first party, some of whom are appellants and others are respondents third party, and, defendants second party--respondents second party. It was dismissed on the 31st March 1955, with costs, to the defendants. The order portion of the said judgment is in these terms:

"That the suit be dismissed with costs and pleader's fee at Rs. 5/- per cent. Costs and pleader's fee to be paid by the plaintiff to the contesting defendants 1st party and defendants 2nd party."

A decree, in accordance with the said judgment, was drawn up on the 13th April, 1955, by which Rs. 1020/1/- was directed to be paid by the plaintiff to defendants first party, appellants, and, respondents third party. We are not here concerned with defendants second party, who are respondents second party.

5. The appellants and respondents third party, who were defendants first party, thereafter, on the 1st June, 1955, executed their decree for cost for Rs. 1020-1-0. In the execution after service of the notice under Order 21 Rule 22, Code of Civil Procedure, the plaintiff-respondent first party, who was judgment-debtor, filed an objection u/s 47, Civil Procedure Code, on the 7th October, 1955. The objection of the plaintiff was rejected on the 23rd January, 1956.

6. It will appear from the order-sheet of the execution case, Exhibit P, wherein the order of January 23, 1956, is also to be found, that the objections, inter alia, taken by the plaintiff were (1) that the execution could not proceed unless the decree was amended, inasmuch as, it was not prepared in accordance with the judgment and the amount of cost payable by the plaintiff to the appellants and respondents third party decree-holders mentioned in the decree was incorrect and, (2) that an appeal against the decree under execution was pending in the High Court.

7. After the rejection of the objection of the plaintiff, his properties were sold on the 19th March, 1956, in satisfaction of the decree for costs, and, purchased by the appellants and respondents third party decree-holders themselves for Rs. 1088/2/-.

8. During the pendency of the said execution, the plaintiff, after rejection of his objections on the 23rd January, 1956, immediately about three months thereafter, on the 18th April, 1956, filed an application for amendment of the decree under execution, before the confirmation, of the sale, which had taken place earlier. During the pendency of the said application for amendment, the sale was confirmed on the 20th April, 1956, and, ultimately the execution was dismissed on full satisfaction on the 30th April 1956. The application of the plaintiff for amendment of the decree was, thereafter, allowed on the 30th May, 1957, and, the decree was amended, and, by the amended decree the appellants along with respondents third party, were allowed Rs. 795-1-0 as cost against the plaintiff-respondent first party, in lieu of Rs. 1020-1-0 as mentioned originally in the unamended decree.

9. The appellants have now presented the present appeal against the amended decree and challenged the amendment allowed by the Court below, not on facts, but purely on points of law.

10. It is conceded on behalf of the appellants that the amended decree, appealed

against, is in accordance with the judgment, and, that the original decree, which was put into execution by them, was not in conformity with the judgment.

11. Mr. S. Mustafi, appearing for the appellants, raised two points, in support of the appeal, namely, (1) that the decree having been executed and satisfied, and the execution of the said decree also having been dismissed on full satisfaction on the 30th April, 1956, there was no decree, which could be amended on the 30th May, 1957, inasmuch as, the decree sought to be amended was dead on the date the amendment was allowed; and, (2) that, at the time the application for amendment of the decree was made, a first appeal against the said decree was pending in the High Court, and, therefore, the application for amendment of the decree lay to the High Court, and, not to the trial Court, find, as such, on this ground also the court below had no jurisdiction to allow the amendment.

12. In support of his first contention, Mr. Mustafi relied on two decisions, one, a Single Judge decision of the Madras High Court in Munuswami Pillai Vs. Mahdi Hussain Khan Sahib, and the other a Bench decision of the Allahabad High Court in Pitam Lal Vs. Balwant Singh, .

13. In reply, to the first contention of Mr. Mustafi, it was contended by Mr. Parmanand Saran Sinha, appearing for the plaintiff-respondent, that u/s 152 of the CPC 1908--hereinafter referred to as "the Code", the court below had complete jurisdiction to amend its decree at any time, and, therefore, it committed no illegality in allowing the amendment complained of. He, further, argued that on the day the application for amendment of the decree was made, the execution thereof was pending, and, had not been disposed of. He, therefore, submitted that, in either view the amendment allowed was perfectly legal.

14. In support of his above contention, Mr. Sinha relied on two single Judge decisions--one of this Court in Khudu Mahto v. Bhim Mahto AIR 1930 Pat 183 and the other of the Allahabad High Court in Beche Lal and Others Vs. Hem Singh and Others, .

15. In reply, to the second contention of Mr. Mustafi, it was argued by Mr. Sinha that as the first appeal against the decree under execution was then pending and had not been disposed of, it was the trial Court which alone had jurisdiction to amend its decree, and not this trial Court. He relied, in support of his contention on a Bench decision of this Court in Rewa Mahto Vs. Delu Mahto and Others, .

16. As the decision of the sole question raised in the appeal rests on the interpretation of Section 152 of the Code, it would be useful at this very stage, to read it. Section 152 of the Code is to the following effect:

""152. 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."

17. It is a cardinal principle of the law of procedure that the decree should agree with the judgment. Where, therefore, its decree is at variance with its judgment,

and, when the decree does not correctly express what was really decided and intended by the Court, it has an inherent power to vary or amend its own decree or order so as to carry out its own meaning and intention. In doing so, it does nothing but exercise a power to correct a mistake of its ministerial officer by whom the decree or order was drawn up. It only insists that the decree drawn up in the office of the Court should correctly express the judgment given by the Court. In the words of Lindley, L. J. in *re Swire; Mellor v. Swire* (1885) 3 Ch. D. 239 :

"there is no such magic in passing and entering an order as to deprive the court of jurisdiction to make its own records true, and if an order as passed and entered does not express the real order of the Court, it would, as it appears to me be shocking to say that the party aggrieved cannot come here to have the record set right but must go to the House of Lords by way of appeal."

18. Every Court, therefore, has an inherent power over its own records, so long as those records are within its powers, and it can set right any mistake in them.

19. In *Hatton v. Haris* (1892) AC 547 , Lord Watson said:

"When an error of that kind has been committed, it is always within the competency of the Court, if nothing has intervened, which would render it inexpedient or inequitable to do so, to correct the record in order to bring it into harmony with the order which the Judge obviously meant to pronounce."

20. Where, however, the decree or order as drawn up represents the real decision of the Court, it has no jurisdiction to re-hear or alter it.

21. There are, however, only two cases in which the Court can amend or vary a decree or order after it is drawn up and signed, namely,

(1) under its inherent power when the decree or order does not correctly state what the Court actually decided and intended; and,

(2) u/s 152, where there has been a clerical or arithmetical mistake, or an error arising from an accidental slip or omission.

22. Under Sections 151 and 152 of the Code very wide powers have been given to the Court. Section 151 lays down that nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. Under the present Code, an application to amend a decree so as to bring it in conformity with the judgment must now be made to the Court in the exercise of its inherent powers u/s 151 of the Code, Under Order 20, Rule 7 of the Code, it is the duty of the Judge to satisfy himself that the decree is in conformity with the judgment. This duty primarily rests with the Court, and, not with any interested party, and therefore, the Court can do so even suo motu, or, on an application by any interested party, and, such an application to amend a decree to make it in conformity with the judgment may be made and entertained

by the Court at any time.

23. Section 152 however, permits clerical, or arithmetical mistakes in judgments decrees or orders to be corrected at any time. Section 152, therefore, deals with one of the two cases, stated above, in which only the Court can amend or vary a decree or order after it is drawn up and signed. Under this section, where there has been a clerical or arithmetical mistake, or an error arising from an accidental slip or omission in a judgment, decree or order, it may, at any time, be corrected by the Court either on its own motion or on the application of any of the parties. The amendment petition u/s 152 of the Code is not a continuation of the suit or proceedings therein. It is in the nature of an independent proceeding, though connected with the order of which the amendment is sought. The jurisdiction of the Court to amend its decree or order on the ground that by inadvertence, because of any clerical mistake, the decree or order as drawn up does not give effect to the intention of the Court as expressed in its judgment is undoubted. In order that the manifest rights of a party, which were intended to be effected by its decision may not be defeated, the Court always exercises its right to amend its decree or order, if as drawn up, it is not in conformity with its judgment due to a clerical or arithmetical mistake in it.

24. It is therefore, manifest from Section 153 of the Code, that the Slip Rule, as sometimes it is called, will enable the Court to rectify the slip and amend its decree or order, which has been drawn up, only (a) where there has been an accidental slip or omission in the decree or order as drawn up, or, (b) when the order as drawn up does not correctly state what the Court actually decided and intended.

25. It is a general principle that rules of limitation are applicable to acts to be performed by litigants and not to acts which the Court may or has to perform suo motu. An amendment u/s 152 falls within the latter class of acts and there is, consequently, no limitation for an application for amendment under this section. The amendment can be made at any time. The phrase "at any time", used in Section 152, indicates that the power of the Court to amend its decree under this section is uncontrolled by any time factor, but only by the scope of the section within which it functions. There is, therefore, no limitation for an application to amend the decree. The decree may be amended under this section at any time, although the time for appealing from the decree has expired.

26. In the light of the above principles, which bring out the true scope and meaning and correct interpretation of Section 152 of the Code, let us now examine, first, the authorities relied upon by Mr. Mustafi and see if they support any of his twin grounds of attack against the amendment allowed.

27. In *Munuswami Pillai Vs. Mahdi Hussain Khan Sahib*, , the decree was entered satisfied and the execution petition noted as disposed of on the 5th December, 1923. About 10 months later, on the 24th September, 1924, an application for amendment of the decree, by altering the amount to be paid from 615-6-10 into

Rs. 756-1-0 was made. In those circumstances, it was held by Spencer, J., that a court would not be justified in making a correction which involves the payment of a larger sum of money by one party to another, long after satisfaction, had been recorded, and when nothing remains to be done and the decree has become dead.

28. It has no application here, for the simple reason that the application for amendment of the decree, in the instant case, was made before the execution case was dismissed on full satisfaction and the decree became dead, and, as a matter of fact, the plaintiff took the objection at the execution stage itself that unless the decree was amended it could not be executed, and; it was only after rejection of his objection that he made the application for amendment of the decree, and on the date it was made, the execution case was pending.

29. In *Kishun Ahir and Others Vs. Saran Ahir and Another*, , what happened was that on the judgment-debtor satisfying a mortgage decree in full, the case was struck off. Three years afterwards, the defendants applied for amendment of the decree. In those circumstances, the order of the Court below allowing the amendment was set aside and the application for amendment of the decree was dismissed. Sulaiman and Daniels, JJ. who presided over the Divisional Bench, held that u/s 152 of the Code the Court has power, under the peculiar circumstances of any case, to refuse an application for amendment of decree if it feels inclined to do so, and, that the Court is not bound to grant the application in every case.

30. This case also, for the same reasons for which *Munuswami Pillai Vs. Mahdi Hussain Khan Sahib*, is not applicable here, has no application to the present case. I may mention that the just-mentioned Allahabad case was also referred to in the Madras case noticed above.

31. It will, therefore, appear, from the above discussion, that the two cases relied upon by Mr. Mustafi are of no assistance to him in the present case, for the simple reason that, in each of the above cases, the decree, of which the amendment was sought for, had been fully satisfied and had become dead long before an application for its amendment was made, but, here, the application for its amendment of the decree was made when the decree under execution could not be said to be dead, but was quite alive, in that, the sale in execution of the said decree, although held earlier, had not been confirmed till then, and the execution case was then pending as it was dismissed on full satisfaction thereafter.

32. The two cases relied upon by Mr. Sinha, on the other hand, in my opinion, fully apply to the present case and furnish a useful guide.

33. In *Khudu Mahto Vs. Bhim Mahto and Others*, , a decree for partition had been passed on the basis of the commissioner's report, and, after the decree, possession was delivered to the parties on the basis of the commissioner's report which was a part of the decree. The plaintiff of that suit, thereafter, filed

an application under Sections 151 and 152 of the Code for amendment of the decree on certain grounds. The application was rejected by the Subordinate Judge mainly on the ground that the decree had already been executed. The said order was reversed by this Court. Narayan J., held that the fact that the decree had been executed is of no importance so far the question as to whether the amendment prayed for should be allowed or not is concerned; that the amendment ought to be allowed if it is fit to be allowed in view of the provisions of Sections 151 and 152 of the Code; it being another matter as to how the plaintiff will proceed so far as the execution is concerned after the amendment prayed for is made.

34. I express my cordial assent to the above observation of His Lordship, and, if I may say so with respect, it brings out the correct interpretation of Sections 151 and 152 of the Code.

35. The present case is much stronger, because, as mentioned before, the application for amendment was made, after a similar objection taken by the plaintiff in the execution case had been rejected and when the execution case was then still pending, and, before it was actually dismissed on full satisfaction.

36. In *Beche Lal and Others Vs. Hem Singh and Others*, , what happened was this: In 1927 the suit of the plaintiff was decreed and the Court ordered a decree for sale of the mortgagee's rights to be prepared under Order 34, Rule 4, of the Code, but in spite of the express terms of the judgment that the decree for sale was to be in respect of mortgagee's rights, a decree was prepared mentioning the proprietary rights in the properties mortgaged to be sold. No body, however, noticed this discrepancy between the judgment and the decree. Thereafter, in 1929 a final decree was also prepared and the description of the properties to be sold was copied from the preliminary decree. No money having been paid under the decree, an application for execution of the said final decree was made for sale of the properties mentioned therein. The properties were ultimately sold and purchased by the decree-holders themselves in lieu of the decretal amount and they certified full satisfaction of the decree and possession thereafter was delivered to them on the 10th August, 1934.

Subsequently, the discrepancy, between the judgment and the preliminary decree of 1927, was discovered, and, then, on the 5th August, 1946, after about 12 years, an application, for amendment of the decree as also of all subsequent proceedings, including the sale certificate was made. The application for amendment was resisted on several grounds, one of them being that after the satisfaction of the decree the court became functus officio and had no jurisdiction to amend the decree and that on equitable grounds the amendment sought for ought not to be made after a long lapse of time. The trial Judge overruled these objections and ordered the amendment of the decree, though not of the sale certificate or other proceedings. An application in revision was, thereafter, made to the High Court against the order allowing the application for amendment of the decree under Sections 151, 152 and 153 of the Code.

Agarwala, J., refused to interfere with the order allowing the amendment and held that the contention that the application for amendment has been, made after a long lapse of time is without any foundation, because as soon as the mistake was discovered the application was made, and, as such, it is immaterial that the discovery of this mistake was made after long lapse of time. Agarwala, J., held, further, that where the decree does not agree with express terms of the judgment, the power of correction can be exercised even when the decree is executed and ostensibly fully satisfied, inasmuch as, the Court may be functus officio with respect to execution of the decree; but not with respect to its power of correction. His Lordship, further, observed that an error in a decree arising from any accidental slip or omission may at any time be corrected without appeal, and that the only limitation upon this power of the Court is to be found in cases where third parties have acquired rights under the erroneous judgment in the interval.

37. I express my respectful agreement also with the above observation of His Lordship.

38. In the present case, the auction purchasers were defendants first party appellants and respondents third party decree-holders themselves, and, therefore, questions (i) of any equity having arisen in favour of the plaintiff against whose interest the amendment was allowed, or (ii) of the rights of a third party having intervened meanwhile, did not arise, as rightly conceded by Mr. Mustafi also.

39. It follows, therefore, from a review of the authorities relied upon by the learned Counsel for both the parties, that, u/s 152 of the Code when an error in a judgment, decree or order, arising from any accidental slip or omission, or, any clerical or arithmetical mistake, occurs in it, it is always within the competency of the Court, if nothing has intervened meanwhile which would render it inexpedient or inequitable to do so, to correct it in order to bring it into harmony with the order which the judge obviously meant to pronounce, and, that under this section no time limit is fixed for making an amendment in it when an error of that kind has been committed. When, therefore, there has been a clerical or arithmetical mistake or any error due to any accidental slip or omission in the decree or order as drawn up or when the decree or order as drawn up does not correctly state what the Court actually decided and intended, Section 152 of the Code enables the Court to rectify the slip and amend its decree or order, which has been drawn up.

40. I however, express my respectful dissent to the observation, of Daniels, J., in Pitam Lal Vs. Balwant Singh, , that where a decree for money had been finally satisfied and discharged, the Court is functus officio and can no longer entertain an application for amendment u/s 152 of the Code. The above dictum, as stated also in Sheo Prasad Rai v. Dharam Sen Rai 49 Ind Cas 948: (AIR 1919 Pat 141), reproduced in P. Ratnasabapathy Goundan Vs. The Public Prosecutor, , at page 517, has not found complete favour in subsequent decisions.

41. In my opinion, where a decree has been executed and satisfied and the execution thereof dismissed on full satisfaction, the court may be functus officio with respect to the execution of the decree, but it is not functus officio with respect to its power to correct its judgment, decree or order, if there is any clerical or arithmetical mistake, or, any error due to accidental slip or omission therein. The fact that the decree has already been executed and satisfied, and, therefore, it is dead, is of no consequence, and of no importance whatsoever, so far as the question as to whether its amendment asked for should be allowed or not. The fact that the decree has been executed, and satisfied does not take away the inherent power of the court to allow the amendment asked for its judgment, decree or order, if it is fit to be allowed, in view of the provisions of Sections 151 and 152 of the Code, irrespective of the consideration as to how the plaintiff will proceed so far as the execution of the same is concerned after its amendment sought for is made.

42. For these reasons, in my opinion, the order allowing the amendment, in the instant case, is perfectly legal and with jurisdiction and it cannot be challenged on the alleged ground at all. The first ground of attack, therefore, fails.

43. As regards the second ground of attack, that because an appeal was pending in this Court against the unamended decree, the application for its amendment should have been made in this Court, and, not in the court below, in my opinion, it is also equally unsubstantial. If the decree of the first court had been affirmed on appeal by this Court, then, of course, the decree of the first Court having merged in the decree of this Court, this Court alone would have had jurisdiction to amend the decree.

44. In the present case, however, the position is different. Admittedly, on the date the amendment was applied for as also when the amendment was allowed on the 30th May, 1957, the appeal to this Court against the decree amendment of which was asked for, was then pending, as it was subsequently dismissed for default nearabout August, 1957. In this view of the matter, the Court below had complete jurisdiction to allow the amendment of its decree, notwithstanding that an appeal against it, was at the time pending in this Court.

45. In those circumstances, the trial court! alone had the jurisdiction to amend its decree. In *Rewa Mahto Vs. Delu Mahto and Others*, , P. R. Das and Ross, JJ., of this Court, held that a court can amend its record even after an appeal is brought, because a court of law has authority over its own record. A similar contention was raised in that case also but to was rejected.

46. In my opinion, therefore, where the Court would otherwise have the authority to amend its decree, it may do so even after an appeal has been taken against the said decree, and, is pending and has not yet been disposed of. The second ground of attack also is, therefore, devoid of any force.

47. For these considerations, there is no merit in the appeal, and, accordingly, it is dismissed; hut, in the circumstances of the case, the parties shall bear their

own costs of this Court.