
(2011) 04 AHC CK 0297
In the Allahabad High Court
Case No : Civil Revision No. 381 of 2009

Sri Pradeep Kapoor

APPELLANT

Vs

Sri Laxmi Narain Kapoor and Others

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 3, Order 7 Rule 3, 115, 151, 152

Citation : AIR 2011 All 391 : (2011) 4 AWC 4273 : (2011) 3 CivCC 549 : (2011) 6 RCR(Civil) 2102 : (2011) 113 RD 535

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—This is a Revision u/s 115 of the Code of CPC (hereinafter referred to as "CPC"), filed by the Plaintiff in Suit No. 1048 of 1999 against the order dated 23.5.2009, passed by the Civil Judge, Senior Division, Court No. 5, Agra in Misc. Case No. 43 of 2008.

2. The brief facts giving rise to the present revision are that the Plaintiff filed Original Suit No. 1048 of 2009 on 24th December, 1999 seeking a declaration that he is the exclusive owner of the property No. 1/141/1, Khasra No. 515, Village Sajepur, Near Delhi Gate, Professors Colony, Hariparbat Ward, Agra. In the plaint, it was alleged that the Plaintiff formed a Joint Hindu Family with his father, Laxmi Narain Kapoor and his brother Sudheer Kapoor and various properties had been purchased by the Joint Hindu Family. The details of the properties are given in Paragraph-3 of the plaint. There was some dispute between the family members and as such a family settlement was arrived on 7.11.1999 by which various properties were given to cosharers. It appears that in the mutation proceeding, Defendant nos. 5, 3 and 4 refused to sign the application then a declaratory suit No. 1048 of 2009 was filed by the revisionist, claiming that he is the exclusive owner of the property No. 1/141/1, Khasra No. 515, Village Sajepur, Near New Delhi Road, Professors' Colony, Hariparbat Ward,

Agra. Subsequently, a compromise had been arrived between the parties and an application was filed on 25th January, 2000 before the court below with the prayer that the suit be decreed in terms of the compromise. The compromise was duly verified before the court below and thereafter a decree was passed on 25th January, 2000 in terms of the said compromise. Subsequently, the Plaintiff moved an application u/s 151/152 of the Code of CPC before the court below on 16.12.2008 seeking amendment in paragraph-3 of the plaint for addition of Plot No. 149 also in the same. The said application was numbered as 4-Ga. The amendment had been sought on the ground that after the decree being passed, the Plaintiff came to know that Plot No. 149 belonging to Sundervan Avas Sahkari Samit Limited, Agra was purchased by the father Laxmi Narain Kapoor, Pradeep Kapoor and Sudheer Kapoor, both brothers, jointly, by registered sale deed dated 20.10.1993 and the said plot was also subject matter of family settlement and as such given to the Plaintiff, but by an inadvertent mistake it was omitted to be mentioned in the plaint and as such it could not form part of the compromise decree. By the application, the following amendment has been sought:

(I) In paragraph-3 of the plaint, the word "Plot No. 148" be substituted by the words "Plots No. 148, 149". In 10th line of page 3 of the plaint, the word "was" to be converted into "were" and after the date "18.10.1983" the words "and 20.10.1993" be added and the word "deed" written in this line be converted into "deeds".

(II) In Schedule A of the plaint in Item No. 4 the words "plot No. 148 be substituted by "plots No. 148, 149 in suit".

3. On the said application, no objection had been filed by the Respondents. The said application had been rejected by the impugned order dated 23.5.2009.

4. The said application had been rejected on the ground that the amendment sought is not as a result of any clerical mistake or error. The application has been moved for removal of such mistake after nine years; the applicant has requested for addition of a new Plot No. 149 in the original suit and in the result of the suit, which is absolutely a new fact and does not fall within the purview of mistake or error.

5. Heard Sri A.K. Gupta, learned Counsel for the revisionist and Sri V.K. Dwivedi, holding brief of Sri Ashish Agrawal, learned Counsel for the Respondents.

6. Learned Counsel for the revisionist submitted that inadvertently Plot No. 149 has not been mentioned in the Schedule of the plaint, though it is the part of the family settlement. The mistake is apparent and can be rectified at any stage. In support of the contention, he relied upon the following decisions:

1 Ganesh Vs. Sri Ram Lalaji Mahraj Birajman Mandir and Others,

2. Aziz Ullah Khan and Others Vs. Court of Wards,

3. Harbans Lal Tauh v. Allahabad Bank Limited, Ghaziabad 1981 All.L.J. NOC 122.
4. Pratibha Singh and Another Vs. Shanti Devi Prasad and Another,
5. Niyamat Ali Molla Vs. Sonargon Housing Co-operative Society Ltd. and Others,
7. In the case of Ganesh v. Sri Ram Lalaji Mahraj Birajman Mandir and Ors. (supra), the Full Bench of this Court has held that the Court in exercise of powers under Sections 151 and 152 can correct any error or mis-description in the decree pertaining to the boundaries of the suit property.
8. In the case of Aziz Ullah Khan and Ors. v. Court of Wards, Shahjahanpur (supra), this Court has held that the language of Section 152 was wide enough to cover the correction of mistake made by the parties themselves. It has been further observed that there is no doubt that Section 152 applies in terms to the amendment of the decrees and not to the amendment of the plaint, sale certificate and Dakhalnama, but the power of the Court to make corrections for the ends of justice is not confined only to the powers exercisable u/s 152. The extensive powers may be exercised under Sections 152 and 153.
9. In the case of Harbans Lal Tauh v. Allahabad Bank Limited, Ghaziabad (supra), this Court has held that u/s 152 of the C.P.C, the Court has a power not only to correct its own mistakes, which arise in the judgment, decree and order, but it can also correct those mistakes which may have been initially committed by the parties in the pleadings, which was then repeated in the judgment, decree and order of the Court. Even the mistakes occurring in the documents, which formed the basis of the suit and which had somehow been repeated in the pleadings can also be corrected, provided, the mistakes result in mis-description of the property and there is no dispute about the actual identity of the property in suit. Where the very identity of the property was in dispute, Section 152, C.P.C cannot be called in aid. It has been further held that the application can be entertained by the court after any lapse of time and no limitation is provided.
10. In the case of Pratibha Singh and Anr. v. Shanti Devi Prasad and Anr. (supra), the Apex Court held that when the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the Court record caused by overlooking of the provisions contained in Order VII, Rule 3 and Order XX, Rule 3, C.P.C is capable of being cured. After all a successful Plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 Code of CPC depending on the facts and circumstances of each case. An inadvertent error, not affecting merits of the case, may be corrected u/s 152 Code of CPC by the Court, which passed the decree by supplying the omission. The exact description of the decretal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 Code of CPC . A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission.

11. In the case of Niyamat Ali Molla v. Sonargon Housing Co-operative Society Ltd. and Ors. (supra), the Plaintiff filed the suit for possession and declaration of title. The Defendant did not file written statement, however, examined himself as a witness. He did not prefer any appeal against the said judgment and decree. The said decree indisputably has been affirmed up to Supreme Court. Subsequently, Plaintiff filed application for amendment of the plaint as also of the decree containing the Schedule describing the said property. The objection by the Defendant that the application for the amendment, if allowed, would give rise to substitution of one property in place of another, particularly, having regard to the change in the J.L. Number, was rejected by the executing court and the said order has been upheld by the High Court. In Appeal, the Supreme Court reversed the order of the High Court and the executing court and held as follows:

It is not a case where the Defendants could be said to have been misled. It is now well settled that the pleadings of the parties are to be read in their entirety. They are to be construed liberally and not in a pedantic manner. It is also not a case where by reason of an amendment, one property is being substituted by the other. If the Court has the requisite power to make an amendment of the decree, the same would not mean that it had gone beyond the decree or passing any decree. The statements contained in the body of the plaint have sufficiently described the suit lands. Only because some blanks in the schedule of the property have been left, the same, by itself, may not be a ground to deprive the Respondents from the fruit of the decree. If the Appellant herein did not file any written statement, he did so at its own peril. Admittedly, he examined himself as a witness in the case. He, therefore, was aware of the issues raised in the suit. It is stated that an Advocate-Commissioner has also been appointed. We, therefore, are of the opinion that only because the JL numbers in the schedule was missing, the same by itself would not be a ground to interfere with the impugned order.

12. Sri V.K. Dwivedi, holding brief of Sri Ashish Agrawal, counsel for the Respondents, states that the Respondents have no objection to the rectification sought in the plaint.

13. In the Suit No. 1048 of 2009, a relief was claimed for declaration. In the said Suit, the Plaintiff has sought a declaration that he may be declared as the exclusive owner of the properties detailed at the foot of the plaint by virtue of family settlement/arrangement made on 7.11.1999. In the detail of the property, Plot No. 1/141/1, Khasra No. 515, Village Sajepur, Near Delhi Gate, Professors" Colony, Hariparbat Ward, Agra, measuring 1790 Sq. Meters is mentioned. In paragraph-3 of the plaint, the details of the properties, as per Schedule "A", acquired by the members of the family are mentioned. Apart from the other properties, one of the property mentioned in the suit was Plot No. 148, Fatehabad Road, Agra, Village Tora, acquired on 18.10.1993 by the sale deed in the names Sri L.N. Kapoor, Smt. Shanta Kapoor, Sri Pradeep Kapoor, Smt. Amita Kapoor, Sri Sudheer Kapoor and Smt. Anupama Kapoor. No relief has been

sought in respect of Plot No. 148. In paragraph-4 of the plaint, the details of the properties, which have been settled on 7.11.1999 are also mentioned. In Clause (b), it is stated that the land at Fatehabad Road, Village Tora, Agra shall belong to Smt. Amita Kapoor and land at Professors' Colony, bearing Municipal No. 1/141, Agra will belong exclusively to the Plaintiff, Sri Pradeep Kapoor. In the application under Sections 151 and 152 of the Code of CPC by which a rectification has been sought in the plaint, it is stated that Plot No. 148 at Fatehabad Road, Agra in Village Tora was also acquired by Sri L.N. Kapoor, Pradeep Kapoor and Sudheer Kapoor through registered sale deed dated 18.10.1993 and inadvertently the said property could not be mentioned in paragraph-3 of the plaint as well as in Schedule "A" of the plaint.

14. Learned Counsel for the revisionist submitted that the sale deed in respect of Plot No. 149 is Annexure-4 to the application. He submitted that the said property was also part of the settlement, but inadvertently in the plaint it could not be mentioned and subsequently at the stage of mutation when such mistake has been detected, the application has been moved. He submitted that when the parties have no objection to the rectification and no relief has been sought in the plaint in respect of Plot No. 149 and the suit has been decided in terms of the compromise, in order to avoid multiplicity of the proceedings, the rectification is to be allowed.

15. In view of the law laid down by the Apex Court, referred to hereinabove, the rectification in the plaint, even after the decree, is permissible. In the suit, no relief has been sought in respect of Plot No. 148. By the rectification, the parties want to make Plot No. 149, Fatehabad Road, Agra in Village Tora as also the part of the compromise dated 7.11.1999. According to the application, as per the family settlement dated 7.11.1999, the land of Fatehabad Road, Agra, Village Tora, which includes Plot No. 148 as well as Plot No. 149 shall belong to Smt. Amita Kapoor. Thus, by the rectification, the Plaintiff, Pradeep Kapoor is not going to be benefited.

16. In view of the above, since the parties agree for the rectification in the plaint, in the interest of justice and to avoid multiplicity of proceedings, in the peculiar facts and circumstances of the case, it would be appropriate that the rectification sought be allowed. Thus, in paragraph-3 of the plaint, the words "Plot No. 148" be substituted by the words "Plots No. 148, 149", in the 10th line of page 3 of the plaint, the word "was" be substituted by the word "were", after the date "18.10.1983" the words "and 20.10.1993" be added and the word "deed" written in this line be substituted by the word "deeds". In Schedule "A" of the plaint in Item No. 4 the words "plot No. 148" be substituted by "plots No. 148, 149 in suit".

17. The Revision is accordingly allowed.