

(1981) 02 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 958 of 1976

Surrinder Kumar and Another

APPELLANT

Vs

Hans Raj and Others

RESPONDENT

Date of Decision : 27-02-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1981) 02 P&H CK 0048

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Advocate : H.L. Sarin, with Mr. M.L. Sarin, for the Appellant; Chandra Singh, for the Respondent

Final Decision : Allowed

Judgement

Surinder Singh, J.—The petitioners moved an application before the lower Court under Sections 151/152, Code of Civil Procedure, for amendment of the decree passed on May 28, 1966. The prayer was that the decree be brought in conformity with the compromise executed between the parties on the same date. This prayer was disallowed by the trial Court mainly on the ground of laches, the application for amendment having been moved after a long delay. So far as the matter of limitation is concerned, it is well-settled that there is no period of limitation prescribed for amendment of a decree which is required to be carried out on account of a clerical error. In the case in hand, there is no dispute that the petitioners had filed a suit for possession of some land on the ground that they constituted a Joint Hindu Family. With their father Shanker Lal who was arrayed as a defendant. The petitioners alleged that Shanker Lal had sold some coparcenary property which he had no right to do. The petitioners, therefore, prayed that their father had entered into this sale for a fictitious consideration in order to deprive the petitioners of their rights in the joint family property. The suit was compromised between the parties on the basis of statements made by them before the Court trying the same As per this compromise, a sum of Rs.

1300/- had been paid by the respondents to the petitioners in three instalments of Rs. 400/-, Rs. 400/-, and Rs. 600/- payable on particular dates, as mentioned in the compromise. On the basis of this compromise, the trial Court passed a decree in terms of the compromise but while doing so, it was mentioned in the decreesheet that a "declaratory decree" as prayed for is passed in favour of the plaintiffs and against the defendants.

2. The sole submission of the learned counsel for the petitioners is that the suit filed by the petitioner was for possession of the property and hence the question of passing a declaratory decree could not arise. The argument is carried that the decree was not in conformity with the compromise between the parties and should be modified. There is substance in this argument of the learned counsel because a reference to the plaint in the suit, copy whereof has been shown by the learned counsel for the petitioners, indicates that the vendor, i.e., the father of the petitioners was arrayed as a defendant in that suit. It was on this account that the suit was filed for possession, which, in fact, tantamounts to joint possession of the plaintiffs and their father. This being so, the decree passed ought to have been for joint possession of the property, subject of course to the terms of compromise. The trial Court was, therefore, not justified in refusing the amendment of the decree-sheet.

3. The Revision Petition is accepted and the order of the trial Court dated March 3, 1976 is set aside. The decreesheet is modified to the extent that instead of the words, a "declaratory decree" the words, a "decree for joint possession" shall be mentioned in the decree-sheet.

4. The learned counsel for the respondents has, however, submitted that irrespective of the amendment of the above decree-sheet, the decree is no longer executable as the respondents had paid the whole of the amount of Rs. 13000/- to the petitioners, as stipulated in the compromise. This Court is, however, not to deal with this matter at this stage and it will be for the executing Court to consider the same as and when the matter is taken to that Court.

5. There will be no order as to costs of the Revision petition.