

(2019) 09 UK CK 0166
In the Uttarakhand High Court
Case No : Civil Revision No. 111 Of 2019

Union Of India And Another	Vs	APPELLANT
Rajendra Singh Negi And Another		RESPONDENT

Date of Decision : 23-09-2019

Acts Referred:

Land Aquisition Act, 1894 — Section 18, 53, 54
Code Of Civil Procedure, 1908 — Section 96, 151, 152, 153A, Order 6 Rule 11, Order 6 Rule 17, Order 41 Rule 11
Constitution Of India, 1950 — Article 227

Citation : (2019) 09 UK CK 0166

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Rakesh Thapliyal

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. On a conclusion of the land acquisition reference proceedings , the learned District Judge, Dehradun, in a Bunch of Land Acquisition Reference proceedings with a leading case as Land Acquisition Case No. 290 of 1990, Virendra Singh and others Vs. Collector, Dehradun and another, has answered the reference in favour of land owners by the judgment and decree as rendered by the District Judge on 20th November, 2008.

2. It is not in controversy that the said judgment as rendered by the District Judge in a bunch of reference proceedings, it was put to challenge before this Court by invoking the provisions contained under Section 54 of the Land Acquisition Act by filing the First Appeal No. 85 of 2009, Union of India and another Vs. S.S. Negi and others along with other connected First Appeals, which came up for consideration before the First Appellate Court of this High Court and the First Appellate Court by the judgment dated 2nd April, 2014, had dismissed the Appeal and as a consequence thereto, the judgment and award as rendered

by the District Judge on 20th November, 2008 has been upheld and has attained finality.

3. This judgment of 2nd April, 2014 since being in a proceeding in continuation of the proceedings of the Reference Court before the Regular First Appellate Court and furthermore, because in view of the provisions contained under Section 53 of the Land Acquisition Act, the provisions of the CPC has been made applicable in the proceedings of the Act and hence as a consequence of the principle of merger, the judgment of the District Judge dated 20th November, 2008, stands merged and settled with the judgment of the First Appellate Court dated 2nd April, 2014.

4. Consequent to the decision rendered by the First Appellate Court, the revisionist, herein, had preferred an application under Section 152 of the C.P.C. on 26.11.2015 for seeking rectification/modification of the judgment of Reference Court dated 20th November, 2008. The same has been rejected by the impugned order by the Court of Additional District Judge, 5th, Dehradun. The rejection of the application, paper No. 3-B, as preferred by the revisionist under Section 152 of the CPC, it has been rejected on the ground that on account of the fact that the judgment of the Reference Court since has been adjudicated upon on merits by the First Appellate Court's judgment, hence, the provisions contained under Section 152 CPC could not be invoked by seeking a rectification of the judgment for correcting arithmetical mistake by invoking the provisions contained under Section 152 and that too, after the judgment has been rendered finally in the First Appellate proceedings, which is a superior proceedings to the proceedings of the Reference Court before the statutory Appellate Court.

5. The learned counsel for the revisionist has tried to draw a distinction that as a matter of fact so far as the judgment of the Reference Court is concerned, which is being sought to be rectified by invoking the provisions of Section 152 of the CPC, he is not averse to it nor does he questioned the propriety of the judgment dated 20th November, 2008 or the decree as formulated as a consequence of it. What he is trying to carve out the distinction is that the tabulation or the calculation sheet, which has been prepared by the District Judge as a consequence to the adjudication made on 20th November, 2008, hence, he submits that the said tabulation or the calculation memo, which has been prepared by the learned District Judge will not be construed to be the part of the decree or a judgment and hence, the provisions of Section 152 could be invoked irrespective of the adjudication made by the judgment and decree by this Court in the First Appeal No. 85 of 2009, by the judgment dated 2nd April, 2014.

6. This Court is not in agreement with the argument as extended by the learned counsel for the revisionist, the reason being that the calculation memo, which has been prepared by the District Judge is nothing but as a consequence of reflection of the judgment and decree and the determination, which has already been made by the Reference Court, which has attained its finality after the adjudication made by the First Appellate Court. Meaning thereby, the calculation

memo do not have its independent existence at all. If at all, if any calculation is to be made in the instant case or as it has been made by the District Judge, it is nothing but a reflection of the determination already made by the Reference Court by a judgment dated 20th November, 2008. Hence, this calculation memo itself cannot be brought within the ambit of Section 152, hence, the judgment impugned in the present Revision as rendered by the Revisional Court on 2nd May, 2019, holding thereof that the application under Section 152 would not be tenable after an adjudication has been made by superior appellate court. Hence, dismissed the application under Section 152 of the revisionist, which was registered as Misc. Case No. 50 of 2016, Collector Vs. S.S. Negi and others and while rejecting the application, the Court has taken into consideration the ratio as propounded by the Hon'ble Apex Court in the case reported in (2011) 11 SCC 198, Sarup Singh and another Vs. Union of India and another. Relevant paragraphs of the said judgment read as under :-

"25. In the present cases the judgment and order passed by the High Court before Amendment Act 68 of 1984 became final and binding as no appeal was brought to this Court thereafter. However, consequent to the amendment in the Land Acquisition Act, the appellants had filed civil miscellaneous applications for the grant of 30% solatium and 9% interest for the first year and 15% interest thereafter. This Court has also held in a catena of decisions that a decree once passed and which has become final and binding cannot be sought to be amended by filing petition under Sections 151 and 152 CPC.

26. In Union of India v. Swaran Singh this Court held thus: (SCC p. 503, para 8)

"8. The question then is whether the High Court has the power to entertain independent applications under Sections 151 and 152 and enhance solatium and interest as amended under Act 68 of 1984. This controversy is no longer res integra. In State of Punjab v. Jagir Singh and also in a catena of decisions following thereafter in Union of India v. Pratap Kaur; State of Maharashtra v. Maharau Srawan Hatkar; State of Punjab v. Babu Singh; Union of India v. Raghubir Singh and K.S. Paripoornan v. State of Kerala, this Court has held that the Reference Court or the High Court has no power or jurisdiction to entertain any applications under Sections 151 and 152 to correct any decree which has become final or to independently pass an award enhancing the solatium and interest as amended by Act 68 of 1984. Consequently, the award by the High Court granting enhanced solatium at 30% under Section 23(2) and interest at the rate of 9% for one year from the date of taking possession and thereafter at the rate of 15% till date of deposit under Section 28 as amended under Act 68 of 1984 is clearly without jurisdiction and, therefore, a nullity. The order being a nullity, it can be challenged at any stage. Rightly the question was raised in execution. The executing court allowed the petition and dismissed the execution petition. The High Court, therefore, was clearly in error in allowing the revision and setting aside the order of the executing court."

27. In Union of India v. Rangila Ram this Court held as follows: (SCC p. 586,

para 4)

"4. The point is no longer res integra. This Court has considered the scope of the power of the High Court under Sections 151 and 152 CPC and also under Section 13-A of the Act. This Court has held that once the civil court made an award as per law then in force which became final and that there is no error of law as on that date. Subsequent amendment does not give power to the court to amend the decree under Sections 151 and 152 CPC. This was held in *State of Maharashtra v. Maharau Srawan Hatkar and Union of India v. Pratap Kaur*. In *Maharau Srawan Hatkar* case, this Court held that the civil court lacked inherent jurisdiction and was devoid of the power to entertain an application to award additional benefits under Amendment Act 68 of 1984. The facts therein were that the award had become final and Amendment Act 68 of 1984 had come into force on 24-9-1984. The respondents made an application under Sections 151 and 152 CPC to award enhanced solatium and additional benefits, etc. and the civil court allowed and granted the same. In that context, considering the civil court's power under Sections 151 and 152 CPC, this Court laid the above law."

28. In *Dwaraka Das v. State of M.P.*, this Court described the scope of Section 152 CPC thus: (SCC p. 504, para 6)

"6. Section 152 CPC provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders of errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the court or the tribunal becomes functus officio and thus being not entitled to vary the terms of the judgments, decrees and orders earlier passed. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 for which the proper remedy for the aggrieved party is to file an appeal or review application. It implies that the section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151 and 152 CPC even after passing of effective orders in the lis pending before them. No court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or order."

7. The Court has also relied the judgment of the Allahabad High Court as reported in 2015 (5) ALJ 155, *Rakesh Kumar and others Vs. Ashok Kumar and another*. Paragraph 14, 15, 16, 17, 23 and 26 of the said judgment reads as under:-

14. Before proceeding further, it would be relevant to refer to the provisions of

section 152 and 153-A CPC, which are as under:-

"152. Amendment of judgments, decrees 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.

153-A. Power to amend decree or order where appeal is summarily dismissed.- Where an Appellate Court dismisses an appeal under rule 11 of Order XLI, the power of the Court to amend, under section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the Court of first instance."

Code of Civil Procedure permits clerical or arithmetical mistakes in the judgments, decrees, orders or errors arising therein from accidental slip or omission to be corrected at any time, by the court, either of its own motion or on the application of any of the parties.

15. Legal principle is settled that a decree passed by trial court, when affirmed, merges in the appellate decree. Whether it would be the court of first instance, or the appellate court, in which the decree has merged, to entertain application under section 152 CPC is the question?

16. Legal position, in this regard, has been aptly summed up by the Apex Court in following words, in *Gojer Bros. Pvt. Ltd. v. Ratan Lal Singh*: 1974 (2) SCC 453:-

"The juristic justification of the doctrine of merger may be sought in the principle that there cannot be, at one and the same time. more than one operative order governing the same subject-matter. Therefore the judgment of an inferior court, if subjected to an examination by the superior court, ceases to have existence in the eye of law and is treated as being superseded by the judgment of the superior court. In other words, the judgment of the inferior court loses its identity by its merger with the judgment of the superior court."

17. Proposition, aforesaid, has been consistently followed in Constitution Bench judgment in *Kunhayammed and Ors. v. State of Kerala* and *Anr*: (2000) 6 SCC 359, *Chandi Prasad and Ors. v. Jagdish Prasad and Ors.* (2004) 8 SCC 724 and in *Om Prakash Verma and Ors. v. Andhra Pradesh and Ors.* (2010) 13 SCC 158. Reliance has also been placed by learned counsel for the defendant-petitioners upon decision of Full Bench of Kerala High Court in *Thomas v. Kunjamma and another*: AIR 2006 Kerala 40.

23. Learned counsel for the respondents has not been able to dispute the factual proposition that appeal filed under section 96 of the Code had been admitted, and thereafter it was decided, by a reasoned judgment and order of the appellate court. Since dismissal of appeal by the first court was not under Order XLI Rule

11 CPC, judgment and decree of the trial court would merge with judgment and decree of affirmance passed by the appellate court. In such a factual scenario an application under section 152 CPC would not be maintainable before the trial court. This objection was specifically taken before the trial court, but the same has been erroneously rejected vide order dated 24.9.2012. In view of the discussions, aforesaid, application under section 152 CPC could be moved only before the first appellate court, decree whereof was operative and trial court had no jurisdiction to entertain the application under section 152 CPC, and therefore, the order impugned dated 24.9.2012 is not liable to be sustained.

27. So far as the order passed by the executing court dated 20.8.2011, permitting amendment in execution application, as well as its affirmance in revision vide order dated 23.2.2012 are concerned, it transpires that an application was filed by the plaintiffs/applicants in execution under Order VI Rule 17 CPC read with section 151 CPC for permitting plaintiffs/applicants to amend execution application, by mentioning third floor in place of second floor. This application was allowed by the trial court upon payment of cost. Revisional court has affirmed such an order by observing that the mistake was an accidental slip and all such proceedings could be corrected under section 152 of the Code. This court finds that application under Order VI Rule 17 CPC was not maintainable, so long as the decree itself was not amended, inasmuch as prayer in the execution could only be in accordance with the decree. Once the decree specified the property as consisting of four rooms on third floor, no prayer could be permitted by way of amendment in execution to seek relief in respect of four rooms on second floor. Trial court, therefore, had exceeded its jurisdiction in allowing amendment application under Order VI Rule 11 CPC read with section 151 CPC, without getting the decree amended first. So far as its affirmance in revision is concerned, the same cannot be sustained, as by virtue of section 153-A CPC, any exercise of power under section 152 CPC could be available only to the appellate court, and not to trial court. In such view of the matter, petition No. 1648 of 2015 under Article 227 of the Constitution of India is also liable to succeed and the order dated 20.8.2011 of the executing court and the order dated 23.2.2012 of the revisional court are liable to be quashed."

8. In view of the aforesaid preposition as determined by the Revisional Court by the impugned order dated 07th May, 2019, this Court is of the view that there is no apparent error, which has been committed by the Additional District Judge 5th, while rejecting the application under Section 152 under the aforesaid concept, as it has been pointed out in the impugned judgment.

9. However, being aggrieved against the said order dated 7th May, 2019, present Revision has been preferred by the Revisionist with delay, which has been reported by the Registry to be of 34 days. So far as the delay of 34 days is concerned, this Court is of the view that the reasons, which has been explained in the delay condonation application is quite satisfactory and, hence, the delay would stand condoned.

10. This Court, at this stage, is refraining itself from issuing notices to the private respondents for the reason being that while determining the revision on its own merits at this stage, this Court is not passing any order averse to the interest of the respondents because the Revision itself is being dismissed holding thereof that 152 application is not maintainable after the affirmation of the judgment sought to be rectified by the First Appellate Court.

11. Since under the principle of merger, now the finality to the Trial Court's judgment has been attained by the judgment of the First Appellate Court, the Revision under Section 152 will not be maintainable before the District Judge, who has decided the reference under Section 18, hence, the application before the said Court was not maintainable, but, having said so, this will not preclude the revisionist from filing an appropriate application before the First Appellate Court for rectification of the so called mistake, which has been committed by the District Judge in preparation of the tabulation sheet.

12. Subject to the above liberty, the Revision lacks merit and is dismissed.

13. The Registry is directed to return the certified copy of the impugned orders, which are under challenge in the Revision, after getting the zerox copy substituted.