(1994) 10 MAD CK 0014

Madras High Court

Case No: C.R.P. No. 570 of 1994

Manika Udayar and two others		APPELLANT
	Vs	
D.A. Mustafa and another		RESPONDENT

Date of Decision: Oct. 29, 1994

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 152

Hon'ble Judges: Jagadeesan, J

Bench: Single Bench

Advocate: Puspha Sathyanarayana, for the Appellant; R. Subramanian, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Jagadeesan, J.
By consent of both the counsel, the civil revision petition itself is taken up for final disposal. The petitioners are the

defendants in O.S.44/86 on the file of the District Munsif, Rasipuram. The respondents herein filed the said suit for specific performance. The suit

was decreed by the trial Court on 22.6.90. Subsequently the respondents herein filed an application LA. 1842 of 93 under Sec. 152 C.P.C. to

amend the decree in respect of the description of the property, since one of the boundaries had been wrongly mentioned. The lower Court had

allowed the said application by order dated 14.10.93 without notice to the petitioners herein. Hence the petitioners filed an application LA.

1874/93 to review and set aside the order dated 14.10.93 in LA. 1842/93. The lower Court by order dated 20.12.93 dismissed the application

filed by the petitioner. Aggrieved by the same, the petitioners have filed the present revision. It is the contention of the counsel for the petitioners

that the Court below ought to have ordered notice in the application LA. 1842/93 to the petitioners and only after hearing them the application

ought to have been disposed of. The other objection raised by the counsel for the petitioners is that Sec. 152 C.P.C. has no application since the

schedule of property has been given in the decree as stated in the plaint. Unless the plaint is amended, the decree cannot be amended. Only where

the Court has committed a mistake in drafting the decree or if any inadvertent mistake had crept in the judgment, than the Court is empowered to

amend the judgment or decree under Sec. 152 C.P.C.

2. Per contra, the counsel for the respondents contended that there is some mistake pertaining to the description of the property in the plaint. It is

admitted that the boundary for one side of the property has been wrongly given. Since the suit for specific performance had been decreed, unless

the correct description of the property in respect of the boundaries is mentioned in the decree, it may not be possible for the respondents decree

holders to get possession of the property. Further by the amendment sought for in respect of the description of property, there is no infringement of

the petitioners, right and as such they are not entitled for any notice before ever any order of amendment is passed. If by virtue of the amendment

sought for, the rights of the petitioners are going to be affected, then only they will be entitled for the notice. Hence the non-issuance of notice to

the petitioners in LA. 1842/93 will not affect the merits of the order in that application.

3. I carefully considered the contention of both the counsel. In fact the counsel for the respondents referred to a judgment reported in Jayarama

Pillai v. Union Bank of India (1991-II-MLJ-43) and claimed support to his contention that no notice is necessary to the petitioners. In fact, in that

case the decree was amended since there was an accidental error in drafting the decree. The suit was filed on an equitable mortgage and the same

was decreed. But while drafting the decree, the decree was drafted in the form of a money decree. Hence the amendment was sought for. There

the Court has amended the decree without notice to the other side as the mistake was committed by the Court and not by any of the parties.

Hence the learned Judge held that there is no necessity for giving notice to the parties for an amendment u/s 152 C.P.C. which is for rectification of

the clerical or arithmetical mistakes in the judgments, decree or orders etc. That principle may not be applicable to the facts of the present case,

since in this case the mistake in respect of the description of boundary had been in existence from the date of filing of the plaint.

4. Without seeking for the amendment of the plaint in respect of the description of the property, it may not be open to the respondents to seek for

the amendment of the decree alone u/s 152 C.P.C, especially when the decree contains the description of the property as given in the schedule to

the plaint. Only if the mistake has been committed by the Court and the Court rectifies such mistake either suo moto or by way of an application,

the notice may not be necessary for the other side. Here it cannot be said that the Court has committed a mistake in drafting the decree while

incorporating the description of property in the schedule.

5. But any how it has to be considered as to whether at this stage the matter has to be remitted back on this ground. Admittedly the suit has been

decreed for specific performance on 22.6.90. There is discrepancy in respect of the boundary of one side of the plaint schedule property. It is

further admitted that except the description of one side of the schedule is property no other amendment is being sought for. The extent of the

property is the same. There is no dispute with regard to the identification of the property also. When there is no dispute with regard to the

identification of the property, then the respondents are entitled to get the sale deed in respect of the property which they agreed to purchase and

the petitioners agreed to sell. I am of the opinion that only on technical objections the petitioners want to drag on the proceedings without any valid

objection for the execution of the decree for specific performance by the respondents. Since the lower Court has categorically found that the right

of the petitioners is not affected, it cannot be said that the petitioners are aggrieved by the order of the amendment. The petitioners had not made

out any case as to how their rights had been affected by the amendment ordered by the lower Court in LA. 1842/93. It may be pertinent to note

further that the petitioners have not raised any rejection with regard to the description of the property as given in the schedule to the plaint. The

respondents having obtained a decree, cannot be asked to have a Paper decree alone, without getting the real usufructs of the same. The

respondents have deposited the entire sale consideration pursuant to the decree and as such in the interest of justice, I am of the opinion that the

order of the lower Court can be sustained, as there is no error in the approach made by the lower Court.

6. Even though the order of the lower Court in I.A. 1842 of 93 may be without jurisdiction, still the same need not be set aside, as the intention of

the order is to render substantial justice to the parties. The lower Court intended to give the benefit of the decree to the decree holder. I am

fortified in my view by drawing support in a case reported in Noorudin v. Raimath (1987 TLNJ 296) in which it has been observed as follows :-

Even in cases where the High Court exercise power of revision under Sec. 115 C.P.C, it is not necessary always for this Court to interfere in

every case where an order is wrong on technical grounds. The revisional jurisdiction of this Court is intended to secure and subserve ends of

justice and not to deny it. In 1970 (I) MLJ 234, this Court ""has held that if interference in a particular case will result in hardship or injustice to a

party, the High Court will be justified in refusing to interfere in the exercise of it''s revisional jurisdiction, even if the order is found to be one without

jurisdiction. Therefore, in case where a substantial justice has been done by an order of the Court which may suffer for want of jurisdiction, it is

always not necessary to set aside such an order solely on the ground of lack of jurisdiction"".

In yet another case reported in Trikmalal Manilal Shah v. Misamiya Isam Haiderbox Razvi (AIR 1992 Gujarat 155) it has been observed as

follows:

In that view of the matter, it cannot be gain said that by this impugled order the learned trial Judge has acted only in advancement or in furtherance

of substantial justice. Such order as has the effect of causing substantial justice between the parties cannot and need not be interfered with by this

Court in exercise of it''s revisional powers under S. 115 of the Code.

The ruling of this Court in the case of Vasantrae Laxmenrao Sahane v. Sahghbi Aritlal Becharlal (1966) 7 Guj.LW at page 840 buttresses the

aforesaid view taken by me. It has been held in para 6 at page 848 of the reported ruling:

It is now well-settled by a series of decisions of several High Courts that the High Court is not bound to interfere in revision in all cases in which it

is found that the Subordinate Court has acted without jurisdiction or failed to exercise jurisdictions or acted illegally or with material irregularity in

the exercise of jurisdiction. The High Court will exercise it''s revisional powers only in aid of justice and not merely to give effect to a technicality

which would not further the ends of justice. Where the High Court finds that substantial justice has been done between the parties by the order of

the Subordinate Court, the High Court will not interfere with such order merely because the case come within any of the three clauses of S. 115.

see the decision of this Court in Jagmohandas v. Jamnadas ""(1965) VI GLR 49: (AIR 1955 Guj.181).

The aforesaid observation made in the above judgments are on all force applicable to the facts of the present case.

Hence there is no merit in the Civil Revision Petition and accordingly the same is dismissed. However, there will be no order as to costs.