

(2024) 12 SHI CK 0042

High Court Of Himachal Pradesh

Case No: Civil Revision No.180 Of 2022

Parmod Singh & Ors

APPELLANT

Vs

Jitender Singh & Ors

RESPONDENT

Date of Decision: Dec. 27, 2024

Acts Referred:

- Code of Civil Procedure, 1908 - Section 115, 151, 152

Hon'ble Judges: Virender Singh, J

Bench: Single Bench

Advocate: Sudhir Thakur, Somesh Sharma, Rohit Sharma

Final Decision: Allowed

Judgement

Virender Singh, J

1. The petitioners are before this Court, by way of the present Civil Revision, which has been filed under Section 115 of the Civil

Procedure Code (hereinafter referred to as the "CPC"), against the order dated 22.09.2022, passed by the Court of learned Civil Judge, Nahan,

District Sirmaur, H.P. (hereinafter referred to as the "trial Court"), in CMA No.200/2022 in Civil Suit No.86/1 of 2012, decided on 16.01.2015,

titled as "Jitender Singh & Anr. Vs. State of H.P. & Ors."

2. By way of the said order dated 22.09.2022, the application, filed under Section 152 of CPC, for getting a clerical/typing error in the judgment and

decree passed in Civil Suit No.86/1 of 2012 dated 16.01.2015 corrected, moved by the present petitioners, has been ordered to be dismissed, by the

learned trial Court.

3. The applicants (petitioners herein) were impleaded as proforma defendants, in Civil Suit No.86/1 of 2012, which had been filed by respondents No.1

and 2, against respondents No.3 and 4.

4. For the sake of convenience, the parties to the present lis are, hereinafter referred to, in the same manner, as were, referred to, by the learned trial

Court.

5. The facts, in brief, as borne out from the record, are as under:-

6. The plaintiffs had filed a suit for declaration with consequential relief of permanent/mandatory injunction and possession. The suit was filed by the

plaintiffs, on the ground that the plaintiffs, along with predecessor of proforma defendants late Sh. Surinder Singh, were the exclusive owners in

possession of the suit land.

7. In the said suit, only defendants No.1 and 2 had contested the suit, whereas, proforma defendants had filed the written statement, admitting the

entire case of the plaintiffs.

8. From the pleadings of the parties, following issues were framed, by the learned trial Court, vide order dated 21.05.2014:-

1. Whether the plaintiffs and proforma defendants are exclusive owners of the suit land as alleged? OPP

2. Whether the defendants have established a police post Katcha Tank on the suit land and fenced the vacant land without acquiring the same in accordance with

law and without paying compensation to the owners as alleged? OPP

3. Whether the suit is bad for non-joinder of necessary parties? OPD

4. Whether Sh. Dalganjan Singh and Rajinder Singh gifted the suit land to the police department to establish and run police post and also gave irrevocable

licence to the police department before 1960 as alleged? OPD

5. Whether the suit is time barred? OPD

6. Whether the plaintiffs are estopped to file the present suit by their act, conduct and acquiescence? OPD

7. Relief.â€

9. After framing of the issues, parties to the lis were directed to adduce evidence.

10. Thereafter, both the parties have led oral, as well as, documentary evidence. Thereafter, the learned trial Court has decreed the suit, by deciding issues No.1 and 2, in affirmative, in favour of the plaintiffs and issues No.4 to 6 in negative, against the defendants and in favour of the plaintiffs, by granting the following relief to the plaintiffs:-

â€œ21. In wake of discussion made above while deciding the preceding issues, the suit filed by the plaintiffs is decreed. A decree of declaration is passed qua the suit property comprising of Khata/Khatauni No.59 min/89, Khasra Nos.19, 20, 21 and 22, measuring 359-84 sq. mts., situated at Mohalla Chakrera, Muhal

Nahan, District Sirmaur, H.P., in favour of the plaintiffs and the defendants are directed to hand over the vacant possession of the suit property to the plaintiffs

within a period of three months from the date of the order. They are further restrained by way of permanent prohibitory injunction from causing any interference in

it. Let decree-sheet be prepared accordingly and the file, after due completion, be consigned to Record room.â€

11. Thereafter, the applicants, who were arrayed as proforma defendants, had filed an application, under Section 152 of CPC, for correcting the

typing/clerical error in judgment and decree dated 16.01.2015, on the ground that in the said judgment and decree, there is no reference with regard to

the relief in favour of proforma defendants No.3 to 7, whereas, according to them, the plaintiffs had asserted their claim, on the basis of the fact that

the suit land was owned and possessed by the plaintiffs and the predecessor-in-interest of the proforma defendants.

12. According to the pleadings, made by the proforma defendants, the said error has come to the notice of the proforma defendants, when the execution of the decree was challenged, before this Court.

13. On the basis of the above facts, proforma defendants had prayed that the said application may be allowed by adding the line â€˜in favour of the plaintiffs and proforma defendants No.3 to 7, instead of â€˜in favour of the plaintiffsâ€™.

14. When, put to notice, the said application has been contested by respondents No.1 and 2, by taking the preliminary objections that the application is

not maintainable, as, the prayer, made in the application, does not fall, within the definition of "Section 152 of CPC", whereas, learned counsel

for the plaintiffs had made a statement that he has no objection, if the said application is allowed, as prayed for.

15. The learned trial Court, after hearing learned counsel for both the parties, had dismissed the application, vide order dated 22.09.2022. Relevant

portion of the said order is reproduced, as under:-

"7. Certified copy of the judgment and decree passed in civil suit No.86/1 of 2012 is on record and a perusal of the same reveals that this court after

appreciating the evidence in detail has passed the said judgment and decree and non-mentioning of names of pro forma defendants in the relief paragraph

bearing No.21 has been done on merit and does not appear to be a clerical or arithmetical mistake which can be corrected by resorting to provision of Section

152 of The Code of Civil Procedure, 1908. The proper course of action for the applicants/pro forma defendants is to file an appeal against the said judgment and

decree. With these observations, I deem it fit to dismiss the present application and the same stands disposed of accordingly. Be tagged with main case file after

registration and due completion."

16. The factual position, which emerges out, in this case, is not in dispute. Paragraph 1 of the plaint is reproduced, as under:-

"1. That the plaintiffs along with predecessor of proforma defendants Late Shri Surinder Singh were the exclusive owners in possession of the land comprised

of Khata Khatauni No.59 min/89, Khasra Numbers 19, 20, 21 & 22, measuring 359-84 sq. mts, situated at Mohalla Chakrara, Muhal Nahan, District Sirmaur,

H.P., as per extract of jamabandi for the year 2008-2009."

17. The proforma defendants, in the present case, had filed the admitted written statement. Even, in the affidavit, tendered by plaintiff No.1-Jitender

Singh, as Ex.PW-1/A, the material fact has been mentioned, in para No.1 of the affidavit, which is reproduced, as under:-

"1. That the deponent, plaintiff No.2 and predecessor of proforma defendants Late Shri Surinder Singh were the exclusive owners in possession of the land

comprised in Khata Khatauni No.59 min/89, Khasra Numbers 19, 20, 21 & 22, total measuring 359-84 sq. mts, situated at Mohalla Chakrara, Tehsil Nahan,

District Sirmaur, H.P."

18. The tone and tenor of the cross-examination of the plaintiffs, to the DWs, also demonstrates that the plaintiffs, in this case, have sought the relief, along with proforma defendants.

19. In this background, the material question now arises for determination, before this Court, is about the fact, as to whether the learned trial Court has fallen into an error, while dismissing the application, under Section 152 of CPC.

20. The Honâ€™ble Supreme Court, in case â€™Dwaraka Das Vs. State of M.P. and Anotherâ€™, reported in (1999) 3 Supreme Court Cases 500, has elaborately discussed the aforesaid question and held, as under:-

â€™6. Section 152 C.P.C. provides for correction of clerical arithmetical mistakes in judgments, decrees or orders or 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, 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 correction contemplated are of correcting only accidental omission 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 appeal or review application. It implies that the Section cannot be pressed into service to correct an omission which is intentional, how erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the province of Sections 151 and 152 of the CPC

even after passing of effective order in the Us 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. In the instant case, the trial court had specifically held the respondents-State liable to pay future interest only despite the prayer of the appellant for grant of interest with effect from the date of alleged breach which impliedly meant that the court had rejected the claim of the appellant in so far as pendente lite interest was concerned. The omission in not granting the pendente lite interest could not be held to be accidental omission or mistake as

was wrongly done by the trial court vide order dated 30th November, 1973. The High Court was, therefore, justified in setting aside the aforesaid order by accepting the revision petition filed by the State.â€

(Self-emphasis supplied)

21. If, the facts and circumstances of the present case are seen, in the light of the decision of the Honâ€™ble Supreme Court in Dwaraka Dasâ€™s

case (supra), it is not in dispute that the claim of the plaintiffs, in this case, was that they, along with the predecessor-in-interest of the proforma

defendants, were the exclusive owners in possession of the suit land.

22. In the evidence also, the plaintiffs have taken the plea that they, along with proforma defendants, are owners of the suit land. Even otherwise,

issues, which are framed, in this case, are also on the basis of the stand, as taken, by the plaintiffs and the learned trial Court has decided the said

issues in affirmative. Meaning thereby, the proforma defendants are also entitled for the relief, as claimed, in the plaint, by the plaintiffs. Correcting the

accidental omission of the words â€œand proforma defendantsâ€ in the relief is not having any effect on the nature of relief, granted by the learned

trial Court, nor the same falls in the definition of modification, altering or adding something in the relief, granted by the Court, in this case.

23. Merely, in the operative portion of the said judgment, due to omission, this fact has not been mentioned, does not preclude the learned trial Court

from correcting the said omission, as, the same falls within the definition of â€œaccidental omission/mistakeâ€™.

24. In view of the discussions, made hereinabove, the present Civil Revision is allowed and the order dated 22.09.2022, passed by the learned trial

Court, is set aside and the application, under Section 152 of CPC, is allowed, by adding the word, after the word plaintiffs â€œand proforma

defendantsâ€™, in para No.21 of the judgment and decree, dated 16.01.2015, passed by the learned trial Court.

25. Pending miscellaneous application(s), if any, shall also stand disposed of.