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Shahzad Khan Vs Pt. Sheo Kumar

Appln. No. 35 of 1951

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: July 30, 1956

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Section 152

Citation: AIR 1957 All 133 : (1956) 26 AWR 751

Hon'ble Judges: V.D. Bhargava, J

Bench: Single Bench

Advocate: S.D. Misra, for the Appellant;

Final Decision: Allowed

Judgement

V.D. Bhargava, J.
This is an application in revision against an order u/s 152, Civil P. C, refusing to amend the decree in the suit.

2. The facts of the case are that on 26-7-1901 a mortgage deed was executed by Bhairon Khan, the predecessor-in-interest of the applicant, in

favour of four persons who are now represented by the opposite parties. The plots mortgaged were 25 plots and the area of the plots given in the

mortgage-deed was 40 bighas, 8 biswas and 14 biswansis and was situate in village Dhuremau, district Rae Bareli.

3. In the plaint the property was -described as 29 plots measuring 19 bighas, The suit was decreed and the entire decretal amount has been

deposited and the property redeemed. It is alleged that the plaintiff is in possession of the entire mortgaged property, i.e. 40 bighas, 8 biswas and

14 biswansis. Some mistake cropped up in the decree on account of wrong description in the plaint. The application was opposed by the opposite

party in the Court below and the learned Judge dismissed the application for amendment.

Though it was admitted that there was no such mortgaged property, in the entire village where the disputed property given in the plaint is situate,

yet he came to the conclusion that the mistake was not of a clerical nature and, therefore, he refused to amend the decree. The applicants have

come up before this Court in revision and they have alleged that in the mortgage deed itself, which was filed with the plaint, the description of the

plots was 25 plots within an area of 40 bighas and, therefore, the mistake in the plaint cannot be said to be anything else but merely a clerical error.

Nobody appears for the opposite party to oppose the application.

4. There is ample authority for the proposition that u/s 152 it in open to the appellate Court to correct mistakes and do justice in the case. The

Court can u/s 152 amend a clerical error in a decree although the error may have occurred on account of a mistake of the parties themselves in

their pleadings and this mistake in the decree was on account of its being copied from the plaint. It has further been held that in such cases it is not

necessary to amend the plaint iteslf. It is enough to amend the decree.

There are some old cases of this Court such as Jai Singh Gir Vs. Sita Ram Singh and Others, and Allah Dia and Another Vs. Rahimuddin and

Others, where this Court had held that the only mistake that could be corrected u/s 152 and was a mistake of the Court itself and not any mistake

of the parties. On the contrary there are decisions of the late Chief Court of Oudh in Shiam Lal v. Mt. Moona Kuar AIR 1934 Oudh 352 (C) and

Ram Chandra Sahu v. Jamna Prasad ILR 10 Luc 496 : AIR 1935 Oud 92J (D). In the former case a learned Judge of the Chief Court held that

besides Section 152 there was ample power to correct mistakes. The learned Judge observed:

The CPC is not exhaustive, and therefore, judicial tribunals have always, when necessity arose, acted upon the assumption of their being

possessed of an inherent power to act ex dabito justitiae, and to do that real and substantial justice for the administration of which alone they exist.

Thus where a mistake is repeated in the judgment of the Court and the preliminary and final decree, the Court can amend the plaint, judgment and

the decree under its inherent power under Sections 151 and 152.

He further held if the Court below had refused to amend the decree in a proper case it was open to this Court in its revisional jurisdiction to make

the necessary corrections, as a refusal would tantamount to a refusal to exercise a jurisdiction legally vested in the Court under the provisions of

Sections 151 and 152; and the applicant would be entitled to ask the Court to amend the decree. That was very similar to the present case. There

also the property as described in the mortgage deed and as described in the plaint differed, and on account of this incorrect description of the

property in the plaint the preliminary and the final decrees both contained wrong particulars. The Chief Court allowed the amendment,

5. In AIR 1935 Oudh 92 : ILR 10 Luc 496 a Bench of the Oudh Chief Court held :

""It is the duty of every civil Court to correct any mistake in any judgment, decree or order or errors, arising therein from any accidental slip or

omission. This power is granted u/s 152 and u/s 151, the Civil Court is vested with inherent power to make such orders as may be necessary in the

ends of justice. The language of Section 152 is wide enough to cover the correction of mistakes made by the parties themselves, and the power of

the Court to make corrections necessary in the ends of justice is not confined only to powers exercisable u/s 152, but extensive Dowers could also

be exercised under Ss. 151 and 153.

In Badri Pande Vs. Chhangur Pandey, the plaintiff had applied that the plaint and the preliminary decree be amended. The learned Judge held: ""the

Court has jurisdiction to amend the decree as prayed for.

6. I accordingly allow the revision, set aside the order of the Court below and order that the decree shall be amended as prayed for. I make no

order as to costs.