

Ashok Vijaya Vs Jasbir Singh Sabarwal and Others

Court: Calcutta High Court

Date of Decision: Aug. 20, 2010

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 151, 152, 153
Constitution of India, 1950 â€” Article 227

Citation: (2010) 4 CALLT 201 : (2011) 4 CHN 308

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instance of a third party and is directed against the order dated May 31, 2010 passed by the

learned Civil Judge (Senior Division), Second Court, Alipore, District - South 24 Parganas in Title Suit No. 105 of 1977 thereby allowing an

application under Sections 152 & 153 of the CPC filed by the plaintiffs/decreeholders/opposite parties.

2. The predecessor-in-interest of the opposite party Nos. 1 & 2 instituted the Title Suit No. 105 of 1977 for eviction against the opposite party

No. 3 from the suit premises as described in the schedule of the plaint. Thereafter, he amended the schedule of the plaint by changing the premises

No. 4 to 6, Mayfair Garden Buildings keeping other particulars in tact. The said suit was decreed and the opposite party No. 3 was directed to

vacate the suit premises in favour of the plaintiff. The decree was affirmed by the Hon"ble High Court at Calcutta. Thereafter, he filed an

application for execution of the decree in 1990. The decree could not be executed for defect of the schedule of the suit premises. In that execution

application, he filed an application under Sections 152 & 153 read with Section 151 of the C.P.C. for correction of the decree with regard to the

suit premises. One advocate commissioner was appointed for inspection of the premises and he gave particulars of the suit premises and on the

basis of such report of the commissioner, the prayer for correction of the particulars of the said premises was sought for. By the impugned order,

the learned Civil Judge (Senior Division) allowed the application. Being aggrieved by the said order, the petitioner, third party, upon seeking

permission from the court, filed the application under Article 227 of the Constitution of India, for setting aside the impugned order passed by the

learned Trial Judge.

3. Mr. Basu, learned Advocate appearing on behalf of the petitioner, submits that the scope of Sections 152 & 153 of the C.P.C. is very much

limited to the extent of clerical mistake or arithmetical mistake and save and except such clerical mistake or arithmetical mistake, correction of the

schedule of the suit property is not permissible. The executing court cannot go beyond the decree. So the learned Trial Judge has committed wrong

in allowing the application under Sections 152 & 153 of the C.P.C.

4. On the contrary, Mr. Mukherjee, learned Advocate appearing on behalf of the opposite party, submits that the proposed correction has been

sought for in view of the report of the advocate commissioner and such correction relates to the suit premises as described in the schedule of the

plaint and for no other property.

5. Therefore, the point to be decided in this application is whether the impugned order can be sustained.

6. After hearing the submission of the learned Counsel of both the sides and on perusal of the application supported by affidavit and annexures, I

find that the said Title Suit No. 105 of 1977 was decreed on contest on August 25, 1990. Thereafter, the defendant/opposite party preferred an

appeal and that appeal was allowed by the learned Additional District Judge, Alipore by sending back the same to the learned Trial Judge on

remand. Thereafter, the plaintiff/decreeholder preferred a second appeal before the Hon"ble High Court at Calcutta and then the Hon"ble Court

affirmed the decree passed by the learned Trial Judge. Thereafter, the plaintiff / decree holder put the decree into execution being the Title

Execution Case No. 10 of 2001. That decree could not be executed because of the wrong description of the suit premises.

7. An advocate commissioner was appointed for local inspection and then upon holding a local inspection, he submitted a report stating the change

of the premises number in suit. Accordingly, the plaintiff/decreeholder filed the application under Sections 152 & 153 of the C.P.C.

8. During pendency of the suit, the premises in suit was described as flat No. 61 at premises No. 6, Mayfair Garden Buildings, P.S. Karaya,

Kolkata 700 019. Now, I find that the learned advocate commissioner held inspection in presence of the learned Advocate of both the sides and

then after completion of his inspection, he submitted the description of the said premises. Accordingly, the decree holders wanted to change the

schedule of the premises in suit in this way: Flat No. 61, at premises No. 6, Mayfair Road, Owners" Court Co-operative Housing Society Ltd.

Therefore, I find that the description as referred to in the report of the learned advocate commissioner relates to the same premises on which a

decree of ejectment had been passed against the defendant/opposite party. The decree passed by the learned Trial Judge has been affirmed by the

Hon"ble High Court in the second appeal. No doubt, as per scope of Sections 152 & 153 of the C.P.C., clerical or arithmetical mistake could be

corrected. But, in the instant case, both the parties to the suit have been fighting over the selfsame flat since 1977 and after submission of the report

of the learned advocate commissioner it was detected that the exact description of the suit premises should be as indicated above. So, this

premises is nothing but the suit premises over which the litigation is going on since 1977.

9. This being the position, I am of the view that the wrong description of the suit premises could well be corrected by applying the provisions of the

Sections 152 & 153 of the C.P.C. by giving a liberal construction of the sections. The defendant/judgment debtor/opposite party is very much

aware of the suit premises over which he has suffered a decree for ejectment.

10. Mr. Basu has referred to the decision of State of Punjab v. Darshan Singh reported in (2004) 1 WBLR (SC) 353 and thus he has submitted

that the corrections contemplated in Sections 152 & 153 of the C.P.c. are related to corrections only done by accidental omissions or mistakes

and not all omissions or mistakes which might have been committed by the Court while passing the judgment, decree or order. Thus, he has

submitted that according to this decision omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152

of the C.P.C. and the application should be rejected. In the instant case, the judgment debtor was well aware of the suit property he was

possessing. This decision relates to correction of the decree and the para 12 of the said decision clearly lays down that except making clerical or

arithmetical mistakes arising out or occurring from accidental slip or omission, amendment of the decree by way of addition or alteration is not

permissible. The proper course would be, by way of appeal or review of the said judgment within the time limit as prescribed under the law of

limitation. In the instant case, there is no question of alteration of the decree passed against the judgment debtor. The decree holder got the decree

for ejectment and it was affirmed by the Hon"ble High Court, Calcutta in the second appeal. So the decree of ejectment in respect of the flat No.

61, at 6, Mayfair Road against the judgment debtor sustains. It is not changed or altered by the impugned order. The alteration prayer for

amendment has not been sought for amendment or correction of such decree of ejectment, but the description of the suit premises in a better way

for proper execution of the same. The decree holder has not sought for any relief which was omitted or not granted by the learned Trial Judge or

the Hon"ble High Court, Calcutta. So, I am of the view that this decision is not applicable in the instant situation.

11. Therefore, after lapse of so many years since 1977, if the amendment sought for is granted, the petition will not be prejudiced in any manner.

On the other hand, if the application is allowed, the better description of the suit premises comes to the court for execution of the decree and such

correction or alteration by the impugned order will not cause any prejudice to the judgment debtor/opposite party. This being the position, any

unintentional mistake could well be rectified by way of Sections 152 & 153 of the C.P.C. The present petitioner has nothing to suffer in the fight

between the decree holder and the judgment debtor.

12. This being the position, I am of the view that the impugned order does not suffer from any perversity and that it is not without the jurisdiction of

the learned Trial Judge. So, the order impugned shall be sustained.

13. Therefore, I am of the view that there is nothing to interfere with the impugned order. So, the application is meritless and it is, therefore,

dismissed.

14. There will be no order as to costs.

15. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.