IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 07th OF FEBRUARY, 2024

CIVIL REVISION No. 256 of 2023

BETWEEN:-

1. BUTTO BAI W/O LAKSHMAN GOUD, AGED ABOUT 56 YEARS, R/O KUTELI, P.S. BARELA, DISTRICT JABALPUR (MADHYA PRADESH)

2. PYARI BAI W/O SURESH KUMAR GOUD, AGED ABOUT 53 YEARS, R/O VILLAGE DHANWAHI P.S. BIJADANDI DISTRICT MANDLA (MADHYA PRADESH)

.....APPLICANTS

(BY MS.KRATIKA INDURAKHIYA - ADVOCATE)

AND

1. DUMRI S/O SADDU GOUD (DECEASED) THROUGH LEGAL HEIRS
JAINWATI W/O LATE DUMRI LAL GOUD, AGED ABOUT 65 YEARS, R/O VILLAGE-GHOTA, P.S. BIJADANDI, TAHSIL NARAYANGANJ, DISTRICT MANDLA (MADHYA PRADESH)

2. GAYATRI D/O LATE DUMRI LAL GOUD, AGED ABOUT 28 YEARS, R/O VILLAGE-GHOTA, P.S. BIJADANDI, TAHSIL NARAYANGANJ, DISTRICT MANDLA (MADHYA PRADESH)

3. MOHAN LAL S/O LATE DUMRI LAL GOUD, AGED ABOUT 35 YEARS, R / O VILLAGE-GHOTA, P.S. BIJADANDI, TAHSIL NARAYANGANJ, DISTRICT MANDLA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI DURGESH SINGRORE - ADVOCATE)

This revision having been heard and reserved for orders coming on for pronouncement this day, JUSTICE HIRDESH passed the following:

ORDER

In this civil revision the applicants/revisionists being aggrieved by the impugned order dated 11.3.2023 passed by Civil Judge Class-II, Junior Division, Niwas, District Mandla in MJC No.36/2022 whereby the application filed by applicants under section 152 of the Code of Civil Procedure (for short "CPC") has been dismissed.

2. Brief facts of the case are that applicants/plaintiffs are daughters and respondent/defendant is son of Late Saddu Goud. The applicants/plaintiffs filed Civil Suit No.33-A/2016 for declaration, partition and separate possession over one-third share in their father's property. The trial Court vide judgment and decree dated 11.3.2017 held that each applicant/plaintiff has one-third share in father's property. The respondent/defendant being aggrieved with the judgment and decree of the trial Court preferred First Appeal before the District Judge, Mandla which was registered as Civil Appeal No.62-A/2018. The learned lower appellate Court affirmed the judgment and decree of the trial Court vide judgment and decree dated 07.10.2022 and dismissed the appeal.

3. It is further averred that on account of inadvertence on the part of applicant's counsel the disputed property were mentioned as "Khasra Nos.188, 198, 265 admeasuring 3.09 hectares" in the plaint, whereas the correct number and area of Khasra is "Kh.No.188, 198 & 165 admeasuring 3.90 hectares". The respondent/defendant never raised any objection in this regard. The written statement filed respondent/defendant to Civil Suit No.233-A/2016 has been brought on record as Annexure-A/5. It is stated from perusal of judgment dated 11.3.2017 it is clear that on 16.5.2018 there is mention of mistake in area as "3.09 hectares" and correct area is "3.90 hectares".

4. On 15.11.2022 the applicants/plaintiffs filed an application under

section 152 of CPC for changing Khasra No.265 into Khasra No.165. It is submitted that there is no dispute of identity of disputed land and both the courts below have mentioned in their judgment and decree as Khasra No.188, 165 & 198. The trial Court also discussed about renumbering of khasra as mentioned in Exhibit-P/3 and also mentioned current Khasra No.165 and its earlier Khasra No.98. But, the trial Court by impugned order rejected the application without appreciation of material available on record. Hence, this civil revision by the applicants/plaintiffs.

5. This revision has been filed by the applicants/plaintiffs on the ground that bare perusal of impugned dated 11.3.2023 it would be clear that same has been passed without properly appreciating the fact that parties went on trial and adduced, both oral and documentary, evidence in respect of the suit property and there was no dispute as to the identity of the suit property. It is further stated that trial Court in paragraph 28 of the judgment held that plaintiffs have a right to equal share in Khasra No.188, 165 and 198 alongwith the defendant. It is further submitted that there is no dispute of identity of disputed land, then if any party has committed error in mentioning wrong Khasra number of land, then it can be rectified by way of section 152 of CPC and accordingly, prayed for allowing the application and setting aside the impugned order.

6. Learned counsel for the applicants submitted that by default in place of Khasra No.165, it was wrongly mentioned as Khasras No.265. She also submitted that trial Court as well as lower appellate Court in their judgments and decrees mentioned Khasra No.165. The trial Court as well as lower appellate Court have already mentioned in their judgment as Khasra No.165. She also submitted that according to re-numbering slip ('parchi') the Khasra No.98 was allotted new number as "Khasra No.165".

7. The learned counsel for the respondent/defendant has prayed for rejection of this civil revision and submitted that that application was barred by provision of Order 2 Rule 2 of CPC.

8. Heard learned counsel for the parties and perused the record as also the impugned order. It has been found that the applicants filed aforesaid civil suit before the trial Court by mentioning Khasra No.265 area 0.30 hectares and the trial Court passed the judgment and decree in favour of the plaintiffs and mentioned Khasra No.265 area 0.30 hectares.

9. Learned Single Judge of Punjab & Haryana High Court in Civil Revision No.660/1976 [Mohinder Singh and others Vs. Teja Singh and others] vide order dated 29.8.1978 held that section 152 of CPC gives power to rectify any mistake in the judgment, decree or order or errors arising therein from accidental slip or omission and it must include an accidental slip or omission traceable to the conduct of the parties themselves. No doubt the Court cannot go into the disputed questions regarding the principle in dispute, but if the mistake is so palpable that nobody can possibly have any doubt as to what the parties meant or what the Court meant when it passed the judgment, decree or order, such a correction can be made even under section 152 of the Code.

10. Learned Single Judge of Allahabad High Court in case reported in ***2005 SCC OnLine All 1273 [In re:Km.Mona d/o Late Brij Raj Singh] (Testamentary Case No.5/2004 decided on 05.12.2005)*** has referred to decision in delivered on ***Appat Krishna Poduval Vs. Lakshi Nathiar, AIR 1950 Madras 751*** and held in paragraph 59 as under:-

> *"59. The Madras High Court held that where an application was filed for correction of an error as regards the survey numbers of an item of property in*

the plaint schedule and the decree schedule and there was no dispute as regards the identity of the property or boundaries to it, the amendment could be allowed under section 152, Code of Civil Procedure. It was further held that the asssignment deed of the property also had the same errors could not disentitle the plaintiffs to have the errors set right if they were entitled to it under the Code of Civil Procedure. It was further laid down that the amendment could not be refused on the ground that the decree sought to be amended was barred by limitation."

11. The Apex Court in the case of ***Niyamat Ali Molla Vs. Sonargon Housing Cooperative Society Limited and others, (2007) 13 SCC 421*** in paragraph 21 referred to paragraph 20 of decision of Calcutta High Court in the case of ***Bela Debi Vs. Bon Behary Roy, AIR 1952 Cal. 86*** which lays down as under:-

"*20. I shall now state, what in my opinion, is the true meaning of Section 152, Civil Procedure Code. I am not in favour of giving a narrow construction to Section 152. I do not agree that Section 152 must necessarily refer to an 'accidental slip or omission' of the Court itself, or its ministerial officers. It does not say so in the section itself, and should not be interpreted as such. Where it is the Court's own accidental slip or omission, or that of its ministerial officers, there can be no doubt that the section applies. But it gives power to rectify any accidental slip or omission in a judgment, decree or order, and might include an accidental slip or omission traceable to the conduct of the parties themselves. But it must be an 'accidental slip or omission'. A mistake made by the parties in a deed upon which the suit is founded, and repeated in the judgment, decree or order, may or may not be an 'accidental slip or omission'. Where it is clear, that such is the case, then I do not see why the Court cannot set it right. In doing so, what is going to be rectified is, the judgment decree or order, and it is not at all*

necessary to rectify either the pleadings or the deed. In making such corrections, however, the Court can only proceed on the footing that there could be no reasonable doubt as to what it really intended to say in its judgment, decree or order. It cannot go into any disputed questions. If there is a particular description of a property in a deed, and a suit has been instituted on the strength of that description, and a decree passed, it is not permissible in proceedings under Section 152 to go into disputed questions as to what property was intended to be dealt with, by the parties in the deed. I agree with Gentle, C.J. that such a question can only be dealt with, in appropriate proceedings under the Specific Relief Act (see T.M. Ramakrishnan Chettiar v. G. Radhakrishnan Chettiar [AIR 1948 Mad 13]). But it may so happen that the mistake is so palpable that nobody can possibly have any doubt as to what the parties meant or what the Court meant when it passed its judgment, decree or order. For example, suppose in a conveyance a property is described as '24 Chowringhee Road, Bhawanipur'. It would be clear to everybody what property was meant, and it cannot be seriously doubted that in stating that the property was in 'Bhawanipur', the parties had committed an 'accidental slip or omission'. In such a case, I would not go to the extent of holding that the Court has no power to correct the judgment, decree or order which has repeated the mistake. In doing so, the Court need not correct the pleadings or the document but its own decision. In my opinion, it is not necessary in such a case to amend the pleadings or to rectify the deed, therefore, no question arises as to whether the Court has power to do so. It is, however, quite clear that such cases must be of rare occurrence, and the scope thereof is severely limited. The power cannot be extended to the resolving of controversial points, and a decision as to what the parties intended or did not intent to do. Apart from this exceptional case, I hold that the Court cannot correct errors anterior to the proceedings before it. For such a purpose, the proper proceeding is by way of a suit under Section 31, Specific Relief Act. To this

extent, I agree respectfully with the view enunciated by Gentle, C.J. in T.M. Ramakrishnan Chettiar v. G. Radhakrishnan Chettiar [AIR 1948 Mad 13] and the view expressed by Young, J. in Shujaatmand Khan v. Govind Behari [AIR 1934 All 100 (2)] . Applying these principles to the facts of this case, I think that the rectification asked for is impossible. If there has been a mistake in the original agreement it is a mistake which is fundamental, and it is impossible without going into evidence, to decide as to what the parties meant. There are facts in favour of the contention put forward by either party and I cannot describe it as an error (if there is at all any error) as can be called 'an accidental slip or omission' as contemplated in Section 152. In any event, such slips or omissions cannot be rectified in proceedings under Section 152 or even under Section 151 of the Code."

12. In the above case ***Niyamat Ali Molla (supra)*** in paragraph 22 the Apex Court also referred to decision in the case of ***Lakshmi Ram Bhuyan Vs. Hari Prasad Bhuyan, (2003) 1 SCC 197***, in which, in paragraph 14 it has been held as under:-

"14. ... In our opinion, the successful party has no other option but to have recourse to Section 152CPC which provides for clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission being corrected at any time by the court either on its own motion or on the application of any of the parties. A reading of the judgment of the High Court shows that in its opinion the plaintiffs were found entitled to succeed in the suit. There is an accidental slip or omission in manifesting the intention of the court by couching the reliefs to which the plaintiffs were entitled in the event of their succeeding in the suit. Section 152 enables the court to vary its judgment so as to give effect to its meaning and intention. Power of the court to amend its orders so as to carry out the intention and express the meaning of the court at the

time when the order was made was upheld by Bowen, L.J. in Swire, Re, Mellor v. Swire [(1885) 30 Ch D 239 (CA)] subject to the only limitation that the amendment can be made without injustice or on terms which preclude injustice. Lindley, L.J. observed that if the order of the court, though drawn up, did not express the order as intended to be made then

'there is no such magic in passing and entering an order as to deprive the court of jurisdiction to make its own records true, and if an order as passed and entered does not express the real order of the court, it would, as it appears to me, be shocking to say that the party aggrieved cannot come here to have the record set right, but must go to the House of Lords by way of appeal."

13. In the present case, the suit was filed for partition and possession b y the applicants/plaintiffs before the trial Court by mentioning the Khasra No.265 area 0.30 hectares. It is stated that Khasra No.265 was wrongly mentioned, as the actual Khasra number is 165. From perusal of record of trial Court, document Exhibit-P/3 reflects that Khasra No.165 is mentioned. There is no mention of Khasra No.265. According to Exhibit-P/4 which is P-II Khasra Form there is also mention of Khasra No.165 but no mention of Khasra No.265. Further, from perusal of paragraph 18 of judgment of trial Court there is mention of Khasra No.165. In paragraph 28 also there is mention that plaintiffs Butto Bai, Pyari Bai and son-Dumari are entitled in equal shares of Khasra No.188, 165 and 198. The first appellate Court also mentioned in paragraph 08 that the land being Khasra No.165 in place of 265. So, considering the documents it is clear that Khasra No.265 area 0.30 has wrongly been mentioned in place of Khasra No.165. Therefore, in view of above discussion it is clear that there is no dispute of identity of the disputed land. As

per case laws referred to above the Apex Court has held that it can be rectified under the provision of section 152 or even in under section 151 CPC, if there is no dispute with regard to identity of disputed land.

14. Thus, in the considered opinion of this Court in present case due to mistake occurred on account of accidental slip it has been mentioned in plaint as Khasra No.265 in place of Khasra No.165 and the same was not even taken note of by the defendants while contesting the suit. Infact, there was no dispute with regard to identity of land. It has been established in various decisions referred to above that if there is not dispute of identity of land, then correction of Khasra number can be effected. Therefore, it is required that necessary correction be made in the plaint, judgments and decrees of the trial Court as also of lower appellate Court under section 152 of CPC.

15. Consequently, the trial Court committed error of law in not allowing the application of applicants under section 152 of CPC. Hence, the impugned order of the trial Court dated 11.3.2023 is set aside. Let necessary amendment be carried in the plaint and judgements & decrees of both the courts below.

16. In the result, the civil revision is disposed of accordingly.

(HIRDESH)
JUDGE

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