

Gulzara Singh v. Devinder Singh, 2004 PLRonline 0103

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PUNJAB AND HARYANA HIGH COURT

Before : Justice Hemant Gupta.

Gulzara Singh – Appellants

Versus

Devinder Singh – Respondents

Civil Misc. No. 1703-C of 1999 in Regular Second Appeal No. 925 of 2003.

3.7.2004.

Civil Procedure Code, 1908 (V of 1908) – Court dismissed the second appeal *in limine* with words ‘No merit. Dismissed.’ – Dismissal of appeal *in limine* would amount to merger – Dismissal or appeal *in limine* by High court has the effect of merger of the judgment of the lower Appellate Court with that of High Court. *Smt. Daya Wanti v. Yadvindra Public School, Patiala and others, (1996-1) 112 PLR 208 , followed. [Para 9]*

Civil Procedure Code, 1908 (V of 1908) Section 153A – Whether the application for correction or the typographical or clerical mistake would lie before this Court or before the learned District Judge who has dismissed the appeal by passing a speaking order – It enables the court which has passed the decree to exercise the power of correcting clerical and typographical mistake even though the appeal preferred has been dismissed *in limine* – Such provisions does not oust the jurisdiction of the appellate court to correct typographical or clerical mistakes – Do not find any substance in the objection raised by the learned counsel for the appellants that the application for correction or typographical or clerical mistake is not maintainable before this Court even though the appeal was dismissed *in limine* by this Court. *Kehar Singh v. Piara Singh and another, (1990-1)97 PLR 29, followed. [Para 10, 11, 12]*

Civil Procedure Code, 1908 (V of 1908) Section 152 and 153 – Mistake in the judgment and decree which has arisen not account of any mistake of the court but in view of the mistake in the plaint can be corrected in exercise of the powers under Sections 152 and 153 of the Code – Court can under Section 152 of the Civil Procedure Code amend clerical error in decree although the error may have first occurred in the pleadings and it is not necessary to first amend the pleading in such a case. [Para 13]

For the Appellants :- Mr. C.B. Goel, Advocate. For the Respondents :- Mr. G.S. Punia,

Advocate.

JUDGMENT

Hemant Gupta, J. – The plaintiff-respondents have moved the present application under Sections 152 and 153 read with Section 151 of the Civil Procedure Code for correcting typographical error or accidental slip in the decree passed by the trial Court on 18.9.1990 affirmed by the learned District Judge on 5.2.1993 and by this Court in second appeal on 7.10.1993.

2. It has been alleged that the applicant-plaintiffs have filed a suit for specific performance of an agreement to sell dated 12.9.1987 and the sale deed dated 22.9.1987 executed by defendant Surinder Singh. The suit was filed with regard to the land measuring 18 Kanals 16 marlas being 488/128th share of defendant No. 1 in the total land measuring 51 kanals 8 marlas. The disputed khasra number was described in the suit as 21/1 (9-9) as per Jamabandi for the year 1984-85. In agreement to sell dated 12.9.1987 the details of khasra number was not mentioned though khata No. 183/288 was mentioned with the total area of the land measuring 51 kanals 8 marlas.

3. It has further been pointed out that as per Jamabandi for the year 1984-85 produced before the trial court there is no khasra No. 21/1 (9-9) or Khata No. 182/261. However, the correct Khasra No. is 22/1 (9-9). While executing sale deed on 22.9.1987, the petitioner has given the details of khasra No. 21/1 (9-9) was mentioned instead of correct khasra No. 22/1 (9-9) but in the last para of sale deed dated 22.9.1987 Ex. P2 the correct khasra number have been mentioned i.e Rect. No. 30 khasra No. 22/1 (9-9). It is pointed out that while drafting plaint, khasra number mentioned by the petition writer in the opening part of sale deed dated 22.9.1987 were written although in the sale deed itself correct khasra No. 22/1 (9-9) was mentioned in the later part of the document.

4. Said mistake came to the notice of the plaintiffs during the execution. The plaintiffs, therefore, moved an application under Sections 152, 153 read with Section 151 of the Civil Procedure Code before the trial court. The learned trial court vide order dated 7.12.1995 passed an order for correcting typographical mistake. Defendants have filed Civil Revision No. 431 of 1998 against the said order. One of the objections in the said revision petition is that the learned trial court i.e. the court of Additional Senior Sub-Judge had no jurisdiction to order the corrections after the judgment of the trial court has merged in the judgment of the learned District Judge.

5. The plaintiffs moved the present application before this Court on the ground that the judgment of the trial court stood merged with the order passed by this court on 7.10.1993 when this court dismissed the Regular Second appeal *in limine* after issuing notice to the plaintiffs.

6. The defendants opposed such an application but admitted that the sale deed was executed on a non-judicial stamp paper worth Rs. 6,000/- after receiving the balance sale consideration of Rs. 18,000/- for the land measuring 18 kanals 16 marlas. Said sale deed was executed on 22.9.1987. The plaintiffs sought specific performance in respect of Khasra

No. 30/22/1 (9-9) and Khasra No. 22/1 (9-9). It has been pointed out that the appellants and the subsequent vendees who have purchased Khasra No. 30/22/1 measuring 4 kanals Min from Sohan Singh son of Dhanna Singh co-sharer vide sale deed dated 9.12.1996 failing to the share of Sohan Singh in partition. Remaining portion of Khasra No. 30/22/1 measuring 3 kanals was purchased from Sohan Singh by the appellants Gulzara Singh and Piara Singh vide sale deed dated 9.12.1996 or 30.5.1988 were not the subject matter of the suit, therefore, the plaintiffs cannot now turn around and claim Khasra No. 30/22/1 by seeking amendment of judgment and decree.

7. Learned counsel for the appellants-plaintiffs contended that this court has jurisdiction to correct the typographical mistake or accidental slips in the pleadings which led to passing of the decree in exercise of the powers conferred under Sections 152 and 153 of the Code, in exercise of such powers, the court has power not only to correct typographical or clerical mistake of the court but also anterior to the passing of the decree. He relied upon a Division Bench Judgment of this Court **Prital Singh v. P. Didar Singh and another, 1976 Revenue Law Reporter 586; Smt. Daya Wanti v. Yadvindra Public School, Patiala and others, (1996-1) 112 PLR 208** to contend that dismissal of appeal *in limine* will amount to merger of the judgment of the courts below with the order passed by this court and thus the application for amendment of the judgment and decree would be maintainable only before this Court. Learned counsel for the applicants has also relied upon another Division Bench judgment of this court **Kehar Singh v. Piara Singh and another, (1990-1)97 PLR 29** to contend that the provisions of Section 155A of the Civil Procedure Code are the enabling provisions to enable the trial court to exercise the jurisdiction to correct the clerical or typographical mistake even when the appeal is dismissed *in limine*. It is contended that the Appellate Court which has dismissed the appeal *in limine* is not devoid of its power to exercise jurisdiction of correction of typographical or clerical mistake in terms of the provisions of Section 153-A of the Code.

8. On the other hand Mr. G.S. Punia, learned counsel appearing for the appellant contended that the appeal having been dismissed *in limine* by this Court, the application for correction of clerical or typographical mistake would be maintainable only before the District Judge who has passed a decree of affirmation and not before the learned trial court. It is further contended that the dismissal of appeal *in limine* does not amount to merger of the decree of the courts below with the order passed by this court in terms of provisions of Section 153-A of the Code and, therefore, the application before this court is not maintainable. Reliance was placed upon **Kilstoormali and others v. Sattar Mahmood and others, AIR 1958 Rajasthan 276** and **T.M. Ramakrishnan Chettiar and others, AIR 1948 Madras 13** to contend that the clerical and typographical mistakes under Section 152 or 153 of the Code which directly arise out of the proceedings itself and not for correcting errors which are anterior to the proceedings particularly in document upon which suits are brought. Reliance is also placed upon a Full Bench Judgment of Kerala High Court in **Kannan and others v. Narayani and others, AIR 1980 Kerala 76** to contend that except in cases to which section 153A [CPC](#). applies, where there has been an appeal the decree under appeal merges in the decree in appeal and it is only the Appellate Court that could correct or amend the decree under Section 152 of the Code. Since the appeal by this Court has been dismissed *in limine*, therefore, it is the court of District Judge to entertain

the application for correction of the judgment and decree.

9. After hearing the learned counsel for the parties and going through the case law referred to decree can be corrected by this court in exercise of the powers conferred under Sections 152 and 153 read with Section 151 of the Civil Procedure Code. This court dismissed the second appeal on 7.10.1993 in the presence of the counsel for the parties *in limine* with words 'No merit. Dismissed.' The question which arises is whether such an order will amount to merger of the judgments of the courts below with the order passed by this court on 7.10.1993 ? The Full Bench of this Court in Daya Wanti's case had the occasion to consider this precise question wherein earlier Division Bench judgment of this Court in Matu Ram's case i.e. (1988-1)93 P.L.R. 8 holding that the dismissal of appeal *in limine* would amount to merger. Keeping in view the principles of law laid down by Full Bench of this Court in Daya Wanti's case (supra), the dismissal or appeal *in limine* by this court has the effect of merger of the judgment of the lower Appellate Court with that of this Court.

10. The next question which arises is whether in view of the provisions of section 153A Civil Procedure Code the application for correction or the typographical or clerical mistake would lie before this Court or before the learned District Judge who has dismissed the appeal by passing a speaking order. Section 153A of the Civil Procedure Code reads as under :

"153-A. Power to amend decree or order where appeal is summarily dismissed. – Where an appellate court dismisses an appeal under Rule 11 of Order 41, the power of the court to amend, under Section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the court or first instance."

11. A perusal of the said section would show that it enables the court which has passed the decree to exercise the power of correcting clerical and typographical mistake even though the appeal preferred has been dismissed *in limine*. Such provisions does not oust the jurisdiction of the appellate court to correct typographical or clerical mistakes. This question has been dealt with by Division Bench of this Court in Kehar Singh's case (supra) wherein relying upon the judgment of Allahabad High Court in **Ram Bharosey Lal v. Rameshwar Dayal, AIR 1984 Allahabad 187**, held that Section 153-A of the Code is enabling Section and does not debar the superior court to exercise its own powers to amend the decree. This Court held to the following effect :

"We are, therefore, of the view that this Court can and does hereby exercise its own powers to amend the decree. Said Section 153-A of the Code is an enabling section and it does not debar the superior court to exercise its own powers to amend the decree. We are supported in this view by a case – **Ram Bharosey Lal v. Rameshwar Dayal**, where the following observations have been made :

"On its language, this provision is enabling in character which permits the court of first instance also to correct an error in the decree irrespective of the fact that the decree had merged in the decree of a superior court. The provision does not divest the superior court,

of the jurisdiction to the effect correction in the decree itself.”

12. In view of the above, I do not find any substance in the objection raised by the learned counsel for the appellants that the application for correction or typographical or clerical mistake is not maintainable before this Court even though the appeal was dismissed *in limine* by this Court.

13. Now the question arises is whether the mistake in the judgment and decree which has arisen not account of any mistake of the court but in view of the mistake in the plaint can be corrected in exercise of the powers under Sections 152 and 153 of the Code. This question has been dealt with by a Division Bench of this Court in *Pritam Singh's case* wherein it has been held that a court can under Section 152 of the Civil Procedure Code amend clerical error in decree although the error may have first occurred in the pleadings and it is not necessary to first amend the pleading in such a case. It was held to the following effect :

“The learned counsel for the appellant next contended that the decree was correctly drawn in this case according to the Khasra numbers mentioned in the plaint and as such there was no clerical or accidental error in the decree. No amendment of the decree, therefore, could be ordered under Section 152 of the Civil Procedure Code unless the mistake was first corrected in the plaint which would necessarily attract the application of the provisions of Section 153 of the Code. The argument, however, has no merit. It is now almost a settled law that a Court can under Section 152 of the Code amend clerical errors in a decree although the error may have first occurred in the pleadings and it is not necessary to first amend the pleadings in such a case.

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We are, therefore, of the considered view that a mistake in the decree can be corrected by the Court under Section 152 of the Civil Procedure Code even though it may have been copied from the pleadings of the parties itself and it is not necessary for the correction of the decree to first amend the pleadings.”

14. Subsequently, in *Mohinder Singh's case* (supra) this Court ordered the correction of khasra number wrongly mentioned in the plaint. Still later in *Har Chand Singh's case* (supra) this Court found that Section 152 of the Code deals with two kinds of situations – firstly correction of clerical or arithmetical mistake of judgments, decrees or orders and secondly errors arising in those judgments and decrees from any accidental slip or omission. Such mistake or slips may at any time be corrected by the court either or its own motion or on the application of any of the parties. The court held that errors in the plaint followed by the decree has occasioned from an accidental slip or omission may be at the time of drafting of the plaint on the basis of incorrect jamabandi provided by the revenue authorities. It was, thus, held that the second part of the section deals with an error which is not at the instance of the court but could have been occasioned by some outside agency as well.

15. In view of the binding precedents of this court, the reliance of the counsel for the

appellant on the judgments of Madras High Court and Kerala High Court is misconceived. Consequently, bound by the judgments of this Court, I find that the contention raised by the learned counsel for the appellants deserves to be rejected.

16. In the present case the agreement of sale dated 12.9.1987 does not contain any khasra number, however, the sale deed which was executed on 22.9.1987 but not registered has caused the confusion. The relevant part of the said sale deed reads as under :-

“Whereas land measuring 18 kanal 16 marla i.e. 468/1282 share out of 51 Kanal 8 Marla bearing khasra Nos. detailed as under : 20/12/2-18, 13/6-7, 14/1/1-10, 17/2/1-0, 18/8-0, 19/7-10, 20/1/5-5, 21/1/9-9, 23/7-9, 23/7-8, 24/1/0-17, 27/8-10, 162/0/10, 310/0-4, kittas 13 comprising of khata Nos. 183/268 Jamabandi for the year 1984-85 situated in estate of village Lakhanpur, tehsil Phagwara, belong to me as co-sharer.

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Now I have been left with no rights *qua* the land, possession has been delivered to vendees as owners. I would have no objection in case the mutation in this respect is sanctioned in my absence. Possession of land bearing khasra Nos. 30/20/1/5-5, 30/22/1/5-9 Min. 23/7-18 310/0-4 Kitta 4 has been delivered at the site to vendees as owners.”

17. It is the case of the plaintiffs that description of the land was taken from the first part of the sale deed dated 22.9.1987 although the second part while describing the land possession of which was handed over, the correct khasra No. 30/22/1 was mentioned. It is further argued that there is no khasra No. 21/1 (9-9) in the jamabandi for the year 1984-85. Thus, it is only typographical mistake in the plaint on account of wrong description in the opening part of the sale deed which led to mistake in the judgment and decree. Therefore, it is only an accidental slip and typographical mistake which can be corrected by this Court.

18. It is further noticed that in the sale deed dated 9.12.1986, the land measuring 4 kanals has been purchased by Gulzara Singh and Piara Singh whereas the possession of the remaining land out of khasra No. 22/1 i.e. 5 kanals 9 marlas was delivered to the plaintiffs. Subsequent sale deed in favour of the appellant dated 30.5.88 is after the filing of the suit and this will not affect the rights of the plaintiffs.

19. I do not find any substance in the argument of the learned counsel for the appellants that the remedy of the plaintiff is to file a separate suit and such decree cannot be amended when the appellants have no occasion to contest the claim of the plaintiff in respect of khasra No. 22/1. Vide sale deed dated 9.12.1996 the appellants have purchased 4 kanals out of total land measuring 9 kanals 9 marlas in khasra No. 30/21/1. The plaintiffs have got balance 5 kanals 4 marlas as per the sale deed dated 42.9.1987. Therefore, the rights of the appellants in respect of the land purchased prior to the agreement of sale in favour of the plaintiffs are not jeopardised in any manner.

20. Consequently, the application for amendment of the judgment and decree is allowed with no order as to costs.

Application allowed.