

Prakash Bhatt and ors. Vs. Devki Nandan Bhatt and ors.

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Court : Uttaranchal

Decided On : Mar-15-2005

Reported in : AIR2005Utr62

Judge : Prafulla C. Pant, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 89, 151 and 152 - Order 41, Rule 35

Appeal No. : Correction Application No. 5467 of 2004 and Modification Application No. 5981 of 2004 in Appeal F.O.

Appellant : Prakash Bhatt and ors.

Respondent : Devki Nandan Bhatt and ors.

Advocate for Def. : Menka Tripathi and; M. Prakash Bhatt, Adv.

Advocate for Pet/Ap. : P.B. Goswami, Adv.

Judgement :

Prafulla C. Pant, J.

1. These two applications No. 5467 of 2004 and 5981 of 2004 have been moved on behalf of respondent Nos. 1 and 2 for correction/amendment in the judgment and Order dated 18.2.2003 passed in A.O. No. 198 of 2002 and 199 of 2002 and

decree followed therefrom.

2. Heard learned counsel for the parties at length and perused the entire record.

3. This case has a chequered history. A Suit No. 13 of 1999 was Instituted by the appellant. Sri Prakash Bhatt against Sri Ganesh Bhatt and Sri Devki Nandan Bhatt (present respondents) for perpetual prohibitory injunction that the defendants be restrained from interfering in the peaceful possession of plot Nos. 4 and 5 situated at Vernon Cottage Compound, Tallital, Nainital owned by him. Another Cross Suit No. 51 of 2000 was filed by Sri Devki Nandan Bhatt and Sri Ganesh Bhatt (present respondents) against Sri Prakash Bhatt, Smt. Sunita Pandey, Sri Urba Dutt Pandey, Sri Radha Ballabh Pandey, Smt. Asha Pant and Sri Sharat Chand Tiwari (defendant-respondents) praying that they be restrained from using 6 feet wide footpath by the plaintiff which lies between plot Nos. 4 and 5 on one side and plot No. 7B on the other side in said compound. Both the suits were tried together and disposed of vide judgment and Order dated 11.10.2001, passed by learned Civil Judge (Junior Division), Nainital whereby Suit No. 13 of 1999 was decreed with costs and the Suit No. 51 of 2000 was dismissed as against the defendants No. 1 to 4 but decreed as against remaining defendants No. 5 and 6. It appears that against said Judgment and decree, three appeals were filed before the First Appellate Court, viz.. Civil Appeal No. 59 of 2001 (against decree in Civil Suit No. 51 of 2000) and Civil Appeal No. 60 of 2001 (against decree in Civil Suit No. 13 of 1999), both filed by Sri Devki Nandan Bhatt and Sri Ganesh Bhatt (present respondents) while Civil Appeal No. 61 was filed by Smt. Asha Pant and Sharat Chand Tiwari (defendants No. 5 and 6 in Suit No. 51 of 2000) in respect of decree passed against them. All the three appeals were heard together by the First Appellate Court and disposed of vide common Judgment and Order dated 26.7.2002 whereby all the three appeals were allowed and the judgment and decree passed by the learned trial court was set aside. However, the learned First Appellate Court remanded the case to the trial court for deciding the suits afresh after getting surveyed the land in dispute. Against said judgment and decree dated 26.7.2002, appellant Sri Prakash Bhatt filed Appeal From Order No. 198 of 2002 in respect of Civil Appeal No. 59 of 2001 arising out of the Civil Suit No. 51 of 2000 and another Appeal From Order No. 199 of 2002 in respect of Civil Appeal No. 60

of 2001 arising out of Civil Suit No. 13 of 1999.

4. Both the appeals from Order were taken up together by this Court and on 16.9.2000 following Order was passed :

'Learned counsel for the parties made a request jointly that a Conciliator be appointed under the amended Section 89 of the C.P.C. so that he may get this dispute settled on spot as the dispute is between neighbours.

Learned counsel for the parties further made a request that Sri Nand Prasad, Advocate be appointed Conciliator, who shall settle the dispute outside the Court and shall file memorandum of settlement in the Court so that the case may be decided in terms of settlement.

Since the Conciliator has been appointed, till the settlement is decided by the Conciliator outside the Court the further proceedings before the court below is hereby stayed.'

16.9.2002.

Sd.

P.C. Verma, J.

In pursuance of the above Order it appears that the Conciliator submitted his report dated 25.10.2002, which reads as under :

'Report of the Conciliator (Nand Prasad, Advocate, Nainital) :

(i) Vide Order dated 16.9.2002 passed by the Court I was appointed the Conciliator under Section 89 of the Code of Civil Procedure.

(ii) In Order to acquaint myself with the facts of the case I collected copies of the pleadings from the parties and went through them.

(iii) After giving notice to the parties, I Inspected the. spot in the presence of the parties and their counsel on 13.10.2002 from 2 p.m. to 4 p.m. Sri Satish Chandra

Pant, Advocate whom I had informed to remain present on behalf of the respondent No. 3, i.e., his wife, was not available at the time of inspection.

(iv) It is to be noted that the land on which the respondents No. 1 and 2 claimed their path 6 feet wide and about 35 feet in length, is asserted by the appellants to be the part of their land allegedly purchased long back by them.

(v) Considering the close relationship between the parties and time consumed in the litigation so far and also an indefinite future of the case, I put forth a proposal to the parties that the alleged piece of the land over which the path is claimed may be transferred by the appellants to the respondents No. 1 and 2 in consideration of some reasonable price.

(vi) The parties seemed to accept the proposal and the respondents No. 1 and 2 even orally informed me that they would pay not more than five thousand rupees as a consideration for the transfer of the alleged path land to them by the appellants,

(vii) However, later on the respondents No. 1 and 2 resiled from their stand and declined to pay anything to the appellants.

(viii) The parties may still be persuaded to end the tedious litigation by way of an amicable settlement.

25.10.2002

Sd.

Nand Prasad, Advocate

Conciliator'

5. On the basis of the above report, both the appeals were decided on 18.2.2003 as under :

'The parties' counsel agreed that these appeals may be disposed of in terms of the report of the conciliator which has been treated to be a compromise deed between

the parties. Therefore, these appeals are disposed of in terms of the report submitted by the conciliator.

However, it is made clear that there shall not be any encroachment on the land of Smt. Asha Pant and Sri Sharat Chandra Tiwari and construction shall be made after the measurement of the land of the parties for which the parties shall apply before the Lake Development Authority. If the Surveyor is available with the Lake Development Authority then the survey shall be carried out otherwise the Lake Development Authority shall request the S.D.M. concerned to provide Surveyor for the measurement of the land, so that the dispute between the parties may be settled in terms of the compromise. The survey shall be completed within 15 days. Thereafter, parties shall abide by the demarcation made by the Surveyor,

All the cases pending relating to the dispute in these appeals are hereby disposed of finally. 18.2.2003 Sd.P.C, Verma, J.'

In pursuance of the paragraph 2 of the aforementioned Order dated 18.2.2003, a Surveyor appears to have inspected the spot and submitted his report dated 1.9.2003, which is addressed to the Sub-Divisional Magistrate, Nainital and reads as under :

fo'k;& ouZu dkVst dEikm.M ykSxO;w]rYyhrky] uSuhrky lykV 4 o 5 rFkk 7ch- ds chp tks 6 QqV pk SM+k jkLrk nf{k.k if'peekxZ ls izkFkhZ ds lykV 7, dks tkus dk g SA mldk eki tks[k djkus ds lEcU/k esaA

egksn;]

mijksDr fo'k;d vkids i= la[;k 119 3@jk- 2003 fnukad 21 vxLr 2003 ds e esa esjs }kjk fnukad 23-8-2003 dks fookfnr LFkyds losZa gsrq fnukad 26-8-2003 dh frFkh fu;e dj e la[;k 1 ls 10 rd dsO;fDr;ksa dks frfFk ls voxr dj;k;k x;kA ftldh lwpuk egksn; dks Hkh nh xbZ FkhAftl ij vki }kjk fnukad 31-8-2003 dh frfFk fu;e dh xbZ ftlds vuqikyu esafu;ekuqlkj LFky ij igqap dj dk;Zokgh dh xb ZA

ekSds ij oknh izfroknh izkf/kdj.k ds vf/kdkjhuxjikfydk ds izfrfuf/k ,oa Jh uUn izlkn ,MoksdsV dkSulhysVj vkfn ekstwn feysA

ekStwnk O;fDr;ksa dh mifLFkfr esa fu;ekuqlkjIhekadu dk;Z izkjEHk fd;k x;kA lykV ua- 5 ds HkwLokeh }kjk fookfnr LFky dhjftLVh fn[kkbZ xbZ rFkk uD'kk izLrqr fd;k x;kA uD'ks dk voyksdu djus ij uD'ksesa rhu LFkkbZ fcUnq ,d dkyk iRFkj] tks lykV ua- 6 ds mkj iwoZ dksus ijVs<+h nhokj rFkk lykV ua- 5 esa cuk iqjkuk edku feyA lykV ua- 5 ds HkwLokehus mDr edku ds fy, ,rjkt fd;k rFkk ekuuh; flfoy tt v-[k-egksn; uSuhrky dh fVli.kh fnukad 18-8-2000 izLrqr dhA iqu% lykV ua- 6 dhiwohZ esM tks mkj iwoh dksus ij Vs<+h gS fd IR;rk ds fy;s lykV ua- 1 ls 7oh- rd ds lykVksa dks ukik x;kA lykV ua- 6 dh iwohZ esM+ tks 74 gS dks lgh ik;k;k tks ,d LFkk;h fcUnq gS rFkk lykV ua- 5 ij cus iqjkus edku dh tkap dh x;hedku lgh ik;kA ftlds mkj esa 14 rFkk if'pe esa 7* 4** ds u;s dejksa dk fuekZ.kfd;k x;k gSA iqjkus edku dh Nr pkjksa vks 1* 4** ckgj fudyh ikbZA mkjds u;s dejksa ,oa iqjkus edku dks 'kkfey dj edku dh mkj nf{k.k yEckbZ 40*ekSds ij ik;kA tgka ls lykV ua- 5 ds Lokeh }kjk yxkbZ xbZ tkyh dh nhokj dh tM+rd lh/ks 17* ekSds ij ik;k rFkk iqjkus edku ds if'pe esa cus dejs dh yEckbZekSds ij 35* 9** ik;kA tgka ls lh/ks mkj esa tkyh dh nhokj rd ukus ij 28* 9**ik;kA lykV ua- 6 ds mkj iwohZ dksus dh nhokj tks 2 nf{k.k ls Vs<+h gS dkysiRFkj rd ,d Mksjk Mkyk x;k tks layXu uD'ks esa yky js[kk ls fn[kk;k x;k gSAuD'ks ds vuqlkj tks yEckbZ 17* fudyh 12* gksuh pkfg;s Fkh rFkk tks yEckbZ 28*9** fudyh dsoy 24** gh fudyuh pkfg;s FkhA bl izdkj lykV ua- 6 ds LFkk;h fcUnqdkyk iRFkj ,oa iqjkus edku tks LFkk;h fcUnq gS ds vuqlkj lykV ua- 7 ch ds nfPk.kdksus ls tks jkLrk iwoZ dks lykV ua- 7, dh vksj tkrk gS if'pe esa 4* 9** rFkkiwoZ esa 5* rd tkyh yxkrkj lykV ua- 5 ds HkwLokeh }kjk cUn djuk ik;k

Ihekadu djus ds i'pkr~ mifLFkr O;fDr;ksa ds gLrk{kj fy;s x;sA mlds i'pkr~ lykV ua- 5 ds HkwLokeh }kjk 3 ls 15 rd dkxt fn;s;s rFkk lykV ua- 2 ds Lokeh }kjk Hkh ,d izkFkZuk i=] fn;k x;k tks layXu g SA jh,l- lh- iUr ,Moksdsv ,oa nsodhuUnu }kjk fn;s x;s uD'kksa dh Nk;k izfr;ka HkhlayXu g SA

Ihekadu la;k Isok esa izsf'kr g SA

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6. Earlier respondents No. 1 and 2 appear to have moved an application No. 3770 of 2004 for correction in decree in pursuance of the Order dated 18.2.2003, whereby the, appeals were disposed of. The said application was rejected vide Order dated 28.8.2004, which reads as under :

'Heard learned counsel for the parties.

The application is misconceived. Hence rejected.'

28.8.2004

Sd.

P.C. Verma, J.

7. Now, the two applications No. 5467 of 2004 and 5981 of 2004 have been moved under Section 151 read with Section 152 of the Code of Civil Procedure, 1908 for corrections in judgment and decree.

In Application No. 5467 of 2004 it has been prayed that the respondents No. 1 and 2 be heard on the point of correction and decree so as it conforms to the judgment dated 18.2.2003 under Order XLI, Rule 35 of the Code of Civil Procedure. In Application No. 5981 of 2004 it has been prayed that Order dated 18.2.2003, be modified making the direction clear to the effect that the appellants Prakash Bhatt and others be asked to remove the obstruction from the footpath in question.

8. On aforesaid applications on 1.11.2004 following orders were passed :

'Lay before Hon'ble the Chief Justice to nominate the Bench for this case.'

1.11.2004

Sd,

P.C. Verma, J.

Hon'ble the Chief Justice nominated this Bench for the disposal of aforesaid applications.

9. The scope under Section 152 of the Code of Civil Procedure, 1908 is limited and the Court while amending the judgment and decree cannot sit as an appellate court over its own orders. More particularly, Section 152 is confined only to the clerical and arithmetical mistakes In the Judgment and decrees. Said Section Is being quoted below :

'152. Amendment of judgments, decrees or Orders.--Clerical or arithmetical mistakes In judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.'

10. However, when a prayer is made for correction in Judgment and Order under Section 151 of the Code of Civil Procedure, 1908 read with its Section 152, it can be said that the Court can make corrections to make the Order meaningful, provided the Order is vague and leads to no meaning. In Samarendra Nath Sinha and Anr. v. Krishna Kumar Nag, AIR 1967 SC 1440, the Apex Court has held that the errors arising from accidental slip can be corrected not only in decree drawn up but also in the judgment pronounced and signed by Court. In Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan and Ors., 2003 (1) AWC 348 (SC) : 2003 (1) SCCD 98 : (2003) 1 SCC 197, the Apex Court has held that the operative part of judgment should be clear and precise so that in case objections are raised later, a bare reading of the judgment and decree would be enough to show that the two agree with each other. In the light of aforesaid judgments of Apex Court, I am of the view that Judgment and Order passed by the Court must be meaningful. In other words, it should not be so vague as to disentitle the party from the fruits of decree. It is pertinent to mention here that earlier a contempt petition No. 118 of 2004 was also filed by the respondent, Devki Nandan Bhatt against the appellants complaining non-compliance of the Order dated 18.2.2003, but the same was rejected on 4.10.2004 on the ground that it cannot be said if the alleged contemnor has committed wilful disobedience of the Court's Order as the same was not clear what is required to be done by the concerned party and within what period. A copy

of the said Order is annexed with the Application No. 5981 of 2004.

11. Copy of the plaint of Civil Suit No. 51 of 2000 shows that in para 4, respondents (plaintiffs of said suit) have alleged 6 feet wide raasta land between the plots No. 4 and 5 on one side and plot No. 7B on the other. In reply to this, appellants (the defendant of said case) have admitted in their written statement the existence of 6 feet wide raasta land by stating :

^----- tc izfreoknh la;k 1us viuk okn nk;j fd;k Fkk rks ml o[r Hkh Hkw[k.M la;k 4 o 5 ds ihNs o 7ch dsvkxs djhc 6 QqV jkLrk QqVikFk [kkyh Fkk vkSj ml ij fdlh rjg dk dksbZ Hkh vojks/kugha fd;k x;k Fkka-----**

That makes it established that 6 feet wide raasta was admitted to the parties.

12. Now, if the Surveyor's report is made part of the impugned Order dated 18.2.2003, the decree would become meaningful and a specific direction may be given to the concerned party to remove the encroachment within the specific period. From the Surveyor's report read with the map annexed thereto, quoted above it is clear that the appellant who is owner of plot No. 5 has encroached upon the disputed raasta land to the extent of 4 feet 9 inches in the West and 5 feet in the East by fixing an angle net. The judgment and Order dated 18.2.2003 and decree filed thereto, therefore cannot be left unexecutable even after the Surveyor's clear cut finding as to the encroachment nor the Court can remain a silent spectator as it is a right of the decree holder to get the fruits thereof.

13. In the circumstances, in the interest of justice, It is necessary to clarify that in the Order dated 18.2.2003 passed by this Court in A.O. No. 198 of 2002 and 199 of 2002 the Surveyor's report dated 1.9.2003 alongwith the map, shall be part of it and the decree prepared therefrom. Accordingly, the Application No. 5467 of 2004 and 5981 of 2004 are disposed of with the direction that the appellant shall remove the encroachment, mentioned in the report dated 1.9.2003 of the Surveyor, made by fixing angle net over the 6 feet wide disputed raasta land to the extent of 4 feet 9 inches in the West and 5 feet in the East. The encroachment shall be removed within a period of one month by the present appellants, failing which the decree holder can get the decree executed through the trial court. The Order dated

18.2.2003 and the decree passed in pursuance thereof shall stand corrected accordingly.

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