

**Lakshmi Vs. Khader Basha**

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**Court :** Chennai

**Decided On :** Mar-13-2001

**Reported in :** (2001)2MLJ199

**Judge :** Prabha Sridevan, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 9, Rule 9 - Order 22, Rule 4

**Appeal No. :** C.R.P. Nos. 3779 and 3780 of 1999

**Appellant :** Lakshmi

**Respondent :** Khader Basha

**Advocate for Def. :** Mrs. Hemalatha, Adv.

**Advocate for Pet/Ap. :** Mr. Irwin Aaron, Adv.

**Judgement :**

ORDER

1. The plaintiff is the petitioner. The plaintiff filed O.S.No.2393 of 1993 against the respondent herein and one Nazeer, who is now deceased, for vacant possession of the suit property. The petitioner's husband, one Sreenivasagam filed O.S.No.5751 of 1994 for permanent injunction against the respondent herein and the same Nazeer referred to above. The said Nazeer died on 17.11.1994 leaving

behind his wife and three children. An application was filed by the petitioner herein for bringing on record, the legal representatives in O.S.No.2393 of 1993. Since the relief in O.S.No.5751 of 1994 was only for bare injunction, restraining the respondents not to interfere with the electricity connection, the petitioner was advised to give up the case against the Nazeer who was the first defendant in the suit, since he had died. But, by mistake, learned counsel, instead of making the endorsement in O.S.No.5751 of 1994, made the endorsement in O.S. No. 2393 of 1993, which is a suit for delivery of possession. This is the case of the petitioner, who, thereupon, filed I.A.Nos.12980 and 12981 of 1998 to set aside the order passed pursuant to the endorsement and to restore the suit, which was dismissed against the first defendant. The learned Judge dismissed the applications on the ground that he had no power to set aside the endorsement and there is no provision for the same in the C.P.C.

2. Mr. Irwin Aaron, learned-counsel for the petitioner submitted that the O.S.No.2393 of 1993 was a suit for recovery of possession and there was no reason, why the petitioner would make an endorsement, that she was not proceeding against the first respondent and she was giving him up. The genuine reason given by the petitioner was rejected by the court below erroneously. He was referring to the application filed by her under Order 22, Rule 4, C.P.C. for bringing on record, the legal representatives, which is I.A.S.R.No.3623 of 1995 and the petitioner had taken steps to bring on record, the legal representatives. The court below ought to have considered the effect of that, while disposing of the application. The endorsement made on 7.6.96 to give up the deceased first respondent was made only on account of a genuine mistake and this ought to have been accepted by the court. He referred to three decisions reported in *Rameswar Sarkar v. State of West Bengal and others*, : AIR1986 Cal19 Mohd. *Shamsuddin Quadri v. State Bank of Hyderabad, Nallakuntia Branch*, 1984 An. WR 228 and *Dadu Dayal Mahasabha v. Sukhdev Arya and another*, .

3. Learned counsel for the respondent, on the other hand, said that the suit in O.S.No. 5751 of 1994 was filed by one Advocate by name P.G. Padmanabhan and the suit in O.S.No.2393 of 1993 was filed by an Advocate, one A.V. Munuswamy and therefore, the averment that the advocate instead of making an

endorsement in O.S.No.5751 of 1994, made the endorsement in O.S.No.2393 of 1993, cannot be correct. And it is also stated that there is no petition for bringing the legal representatives of the deceased first respondent in O.S.No.5751 of 1994 and therefore, this order was perfectly correct and need not be interfered with.

4. Since the point, that the same counsel did not appear in both the matters and therefore the reason given by the counsel for the petitioner cannot be correct, was advanced, I thought it necessary to call for the records of the lower court in O.S.No.5751 of 1994. It is seen from the records that though O.S.No.5751 of 1994 was filed by Advocate P.G. Padmanabhan, a memo has been filed on 28.2.1996 only by counsel A.V. Munuswamy who is the same counsel who has appeared in the lower court for the petitioner herein in O.S.No.2393 of 1993. In this, a memo has been filed that they have to bring the legal representatives on record. The counsel for the petitioner has also filed in the typed set of papers, certified copy of the petition filed in O.S.No.2393 of 1993 to bring on record, the legal representatives of the said Nazeer. The certified copy is dated 29.10.1999 as per the typed set of papers that has been filed into court on 2.12.1999. Therefore, the case of the petitioner that both O.S.No.2393 of 1993 and O.S.No.5714 of 1994 were handled by the same counsel, namely, A.V.Munusamy at the relevant time is borne out by records.

5. It is also seen, that the petitioner had filed an application to bring on record, the legal representatives in O.S. No.2393 of 1993. It is the case of the petitioner as seen from the affidavit filed in support of the petition that by mistake, the endorsement was made in O.S.No.2393 of 1993 instead of making it in O.S.No.5751 of 1994. It must be remembered that the plaintiff in the two cases are husband and wife and the respondents are the same. Therefore, the possibility of such a mistake and confusion arising in the mind of the counsel cannot be ruled out.

6. Now we shall look at the decisions cited by the learned counsel for the petitioner. The Supreme Court, in Dadu Dayal Mahasabha Case, dealt with the inherent powers of the Court to vacate its own order obtained by fraud or misrepresentation. This does not apply to this case, However, the decision reported in

Quadri v. State Bank of Hyderabad, Nallakuntia Branch, 1984 A.WR 228 seems to be almost identical. In that case, two suits were filed by a Bank; O.S.No.1225 of 1980 and O.S.No.1233 of 1980. In O.S.No.1233 of 1980, the court had recorded satisfaction of the claim. When O.S.No.1225 of 1980 was posted for trial, the Bank's advocate filed a petition stating that the subject matter of the suit was settled out of court. Accordingly, the Bank's advocate endorsed on the plaint that the claim was satisfied. The defendants counsel endorsed 'No objection' and the suit was dismissed. It was later realised that there was no satisfaction of the claim in O.S.No.1225 of 1980 and because of the mistake of the counsel, the endorsement had been made. So, the plaintiff Bank filed application under Order 9, Rule 9 and Section 151, C.P.C. The A.P. High Court, relying on the decision of the Supreme Court in Patam Sen v. State of Uttar Pradesh, , held:

'The inherent powers saved by Section 151 of the Code are, with respect to the procedure to be followed by the court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses.'

The A.P. High Court upheld the order of the court below in pointing that the endorsement of satisfaction was made by the plaintiff's advocate by a mistake and that the power to recognize that mistake and restore the parties to their original position came within the scope of the inherent powers of the Court, which must necessarily be exercised to achieve the ends of justice.

7. In Rameswar Sarkar case, : AIR1986 Cal19 the petitioner filed a suit for money. The Judge took the view that the matter should be referred to arbitration. Since the petitioner was not willing to go to arbitration, he filed an application to withdraw the suit. Thereafter, he filed an application under Section 151, C.P.C. for withdrawal of the application for withdrawal of the suit. The Calcutta High Court held that, if through a mistake, the plaintiff had withdrawn the suit, the Court was not powerless to allow him to withdraw the said withdrawal application in exercise of its inherent power.

8. Of course, exercise of these powers by the Court will always be for justifiable reasons. In this case, from a narration of facts that I have extracted above, it is obvious that in view of the fact that the parties were the same, and since the same

counsel was dealing with both the suits, this mistake had arisen. The intention of the parties to prosecute O.S.No.2393 of 1993 is also apparent from the fact that they had filed an application to bring on record, the legal representatives of the deceased 1st respondent. As regards the scope of Section 151 of the Code, Courts have held that nothing can limit or affect the inherent power of the Court to meet the ends of justice and this is why, Courts recognized the inherent power since it is not possible to fore-see all the possible circumstances that may arise not to provide for appropriate procedure to meet all those situations. In the instant case, if we deny the petitioner, the right to rectify a genuine blunder which was committed, the cause of justice will suffer. The order of the court below is set aside. Both the C.R.P.s are allowed. No costs. C.M.P. 21214 of 1999 is closed.

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