

Krishna Devi Vs. Krishan Lal and anr.

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Court : Jammu and Kashmir

Decided On : Jul-18-1986

Reported in : AIR1988J& K25

Judge : K.K. Gupta, J.

Acts : Jammu and Kashmir Code of Civil Procedure (CPC) , 1977 - Section 152

Appeal No. : Civ. Rev. No. 45 of 1986

Appellant : Krishna Devi

Respondent : Krishan Lal and anr.

Advocate for Def. : S.D. Sharma, Adv.

Advocate for Pet/Ap. : J.L. Sehgal, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

K.K. Gupta, J.

1. Krishan Lal and Vaishno Devi, respondents herein filed a suit in the Court of Sub-Judge, Udhampur for mandatory injunction directing Smt. Krishana Devi and others, petitioners herein to remove the obstruction of a passage closed by them

by raising a wall. This suit of the respondents herein was decreed on 19-12-84 and the appeal filed subsequently by the petitioners before the District Judge, Udhampur was withdrawn by them on May 29, 1985. Later on the respondents filed two applications before the Sub-Judge Udhampur under Sections 151 and 152, C.P. C. for rectifying the mistake occurring in the judgment and for amendment of the decree-sheet on the grounds that the decree passed by the Trial Court was not executable as by error the Court failed to mention the measurement of the passage, the obstruction of which was required to be removed. After obtaining objections from the other side the learned Sub-Judge accepted the prayer of the respondents and directed for inserting the words 'passage measuring 44' X 8' situate in Karlai Kanglu' in the judgment. Aggrieved by this order the petitioners who were defendants in the main case have come up in revision before this Court.

2. I have heard the learned counsel for the parties and perused the record before me. Learned counsel appearing on behalf of the petitioners has argued that the judgment of the Trial Court dt. 19-12-1984 was appealable and there is no circumstance to invoke the powers under Section 151, C.P.C. by the Court in order to change the basic structure of the judgment. According to him there was no clerical or arithmetic error in the judgment and as such the provisions of Section 152, C.P.C. would not have been made applicable. Learned counsel for the respondents, on the other hand, has contended that in accordance with the judgment and decree of the Trial Court respondents were required to remove the obstruction caused by them to the passage leading to their house and while executing the said decree a difficulty was felt regarding measurement of the passage which necessitated the respondents to file an application for making a clarification as inadvertently measurement which was in existence in the plaint as well as in the judgment itself was not incorporated in the decree sheet. I have considered these contentions raised by either side.

3. Order XX, C.P.C. deals with the judgments and the decrees. Rule 3 of this Order provides that the judgment when once signed shall not afterwards be altered or added to, save as provided by Section 152 or on review. In accordance with this provision of law the jurisdiction of the Court to reconsider its order ceases

once the judgment is signed except as provided by Section 152 or on review. The Court cannot, after the judgment is signed, alter or add to it in any manner, except as provided by this Rule. Rule 6 of this Order contemplates that the decree shall agree with the judgment and it should be drawn in accordance with the judgment passed. Before considering Section 152, C.P.C. it is worthwhile to refer to Section 151 which relates to exercise of inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of law. In accordance with the provision laid down in Section 151 the Courts have power to do justice and to redress a wrong. It has also powers inherent in it to do right and to undo wrong in the course of administration of justice. Court, however, cannot override the express provision of law and also the general principles of law. Section 152, C.P.C. provides that clerical or arithmetical errors in the judgment, decree or order or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either on its own motion or on the application of any of the parties. It appears from Order XX, Rule 3, C.P.C. that a judgment once signed cannot afterwards be altered or added to, save as otherwise provided by Section 152 or on review. Order XX, Rule 6 provides that the decree shall be drawn up so as to accord with the judgment. The only exception to the abovesaid general rules are contained in Section 152, C.P.C. which can be summarised in the following manner : --

1. Under Section 152 a clerical or arithmetical mistake or an error arising from an accidental slip or omission may be corrected by the Court even though the decree is in conformity with the judgment;
2. Under the inherent powers of the Court under Section 151 a decree which is at variance with the judgment can be amended to accord with the judgment;
3. A decree or order may be varied or amended in any other case by a review of judgment or by an appeal from the decree.

The Court in case, *Aziz Dar v. Ahwar Dar*, reported in 1979 Kash LJ 81 while deciding the point whether the Court has inherent powers to rectify the decree in order to make it effective and executable has held that every attempt is to be made to save the decree from becoming dead and it is with a view to meet this

situation that the Court has been armed with inherent powers under Section 151, C.P.C. to pass such order as would promote the ends of justice or prevent the abuse of the process of the Court. In case, *Samarendra Nath Sinha v. Krishan Kumar Naag*, reported in AIR 1967 SC 1440, their Lordships of the Supreme Court while dealing with Sections 151 and 52 have come to the following findings : --

'Now it is well settled that there is an inherent power in the Court which passed the judgment to correct a clerical mistake or an error arising from an accidental slip or omission and to vary its judgment so as to give effect to its meanings and intentions.

'Every Court' said Bowen L.J. in *Mellor v. Swire*, (1985) 30 Ch D239 has inherent power over its own records so long as those records are within its power and that it can set right any mistake in them. An order even when passed and entered may be amended by the Court so as to carry out its intention and express the meaning of the Court when the order was made.'

In *Jankirama Iyer v. Nilakanta Iyer*, AIR 1962 SC 633 the decree as drawn in the High Court had used the words 'Mesne profits' instead of 'net profits'. In fact the use of words 'net profits' came to be made probably because while narrating the facts, these words were inadvertently used in the judgment. This Court held that the use of the words 'mesne profits' in the context was obviously the result of inadvertence in view of the fact, that the decree of the trial Court had specifically used the words 'net profits' and therefore the decretal order drawn up in the High Court through mistake could be corrected under Sections 151 and 152 of the Code even after the High Court had granted certificate and appeals were admitted in this Court before the date of the correction. It is true that under Order 20, Rule 3 of the Code once a judgment is signed by the Judge it cannot be altered or added to but the rule expressly provides that a correction can be made under Section 152. Under Section 152, 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 on its own motion or on an application by any of the parties. It is thus manifest that errors arising from an accidental slip can be corrected subsequently not only in a decree drawn up by a ministerial officer of the

Court but even in a judgment pronounced and signed by the Court.'

4. Respondent plaintiffs suit was that the petitioners-defendants had caused obstruction to their passage in a lane measuring 44' X 8' situate in village Karlai Kanglu, Tehsil Udhampur and they had prayed for removing such obstruction. This measurement has been shown in the title of the plaint and also in its relief column. The learned Sub-Judge in his judgment has also mentioned about this measurement. In the end, however, the learned Sub-Judge while decreeing the suit of the plaintiff has only mentioned for removing the obstruction raised by the defendants in the passage leading to the house of the plaintiffs. The defendants filed an appeal in the court of Learned District Judge, Udhampur, which was later on withdrawn by them. The judgment of the Trial Court has thus become final. It appears that the plaintiffs-respondents filed an execution petition before the learned Sub-Judge on June 3, 1985 and a difficulty was felt in execution of the decree in the absence of the measurement of the passage in the judgment. The learned Sub-Judge while allowing the applications of the respondents filed under Sections 151 and 152, C.P.C. has come to the following conclusions : --

'Section 152, C.P.C. provides that the 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 on its own motion or on the application of any of the parties. This section is actually an exception to the general rule contained in Order 20, Rules 3 & 6, C.P.C. that a judgment, decree or final order once drawn up and signed by the judge cannot be altered, varied or amended in any manner even with the consent of the parties.

Applying this principle in the present case I have come to this conclusion that these two applications merit, acceptance for the reasons given below: --

1. In the light of the facts and pleadings of the parties it is clear that actual subject matter of the dispute between the parties in the main suit was the passage measuring 44' X

2. As per the judgment dt. 19-12-1984 the then learned Sub-Judge has decreed the suit regarding the said above passage as prayed for by the plaintiffs in their

plaint;

3. That there is no ambiguity with regard to the identity of the said suit lane/passage in the plaint and the judgment dt. 19-12-1984 which is clear from the perusal of the pleadings and the said judgment, except this, that measurement of this passage mentioned above has not been mentioned in the last operative part of the judgment though the same has been mentioned in the last para of the judgment at page 8;

4. The decree sheet has not been drawn up as per the judgment dt. 19-12-1984 in the case as the measurement of the lane has been clearly mentioned at page 8 by the then learned Sub-Judge, Udhampur in this judgment;

5. That the object of Section 151 read with Section 152, C.P.C. is to further and promote the ends of justice where it might otherwise get defeated on account of any inadvertent error or omission in the judgment, decree or order; and

6. That the Court in light of the principles laid down in the above mentioned rulings can at any time under Section 151 read with Section 152, C.P.C. correct such mistakes or remove such errors as in such circumstances the Court cannot allow a decree to be wrecked because of some mistake in it or in the judgment.'

5. A competent Court has passed a decree regarding the obstruction of passage which was required to be removed and this decree cannot be made inexecutable simply by accidental slip of some words which the Trial Judge failed to mention in the operative portion of the judgment. It is very much clear from the order that the passage was 44' X 8' and the intention of the Court was to remove the obstruction of such passage. By allowing the prayer of the respondents to incorporate the measurement in the judgment, the trial Court has not varied or altered the judgment or the decree in any manner. It has only allowed correction which had been lost due to by accidental slip at the time of judgment.

6. For the aforesaid reasons, I find no merit in this revision, which is dismissed.