

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1999 of 2017

- =====
1. Ram Chandra Sah S/o Pati Sah
 2. Ashok Sah S/o Pati Sah
 3. Surendra Sah S/o Pati Sah
 4. Smt. Neelam Devi W/o Ram Chandra Sah All are resident of Village-
Dharhara Khurd, P.O. - Dharhara Kala, P.S.Amnaur, District- Saran.

... .. Petitioners

Versus

1. Akhilesh Prasad Yadav S/o Sri Ambika Prasad Yadav
2. Dewendra Prasad Sah S/o late Bisundeo Sah
3. Smt. Pushpa Devi W/o Sri Chhatilal Sharma All are resident of Village-
Dharhara Khurd, P.O. - Dharhara Kala, P.S.Amnaur, District- Saran.
4. Naulakh Rai S/o late Ramdeo Rai Resident of Village and P.O. Dharhara
Kala, P.S. Amnour, District- Saran.
5. Bas Mohammad S/o Oil Mohammad Resident of Village- Pachpatiya ,
Deoriya, P.O. and P.S. Awtar Nagar, District Saran.
6. Sabnaz Bibi @ Sahnaz Bibi W/o late Mohammad Hanif resident of Village-
Dharhara Khurd, P.O. - Dharhara Kalam, P.S.Amnaur, District- Saran.

... .. Respondents

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Constitution of India--Article 227---Code of Civil Procedure, 1908---section 151, 152, 153; Order XLI Rule 31, 35---Modification of decree---petition to set aside order passed by Learned First Appellate Court wherein Petitioners' prayer to pass a decree with respect to recovery of possession as well was rejected---earlier, title suit of the plaintiffs/petitioners was decreed in their favour and the learned first appellate court confirmed the judgment and decree of the learned trial court---no issue or point with regard to possession or dispossession was framed and no relief regarding confirmation of possession was sought initially though subsequent relief regarding recovery of possession came to be added by way of amendment application at the appellate stage which got rejected---plea that the learned first appellate court erred in holding that no evidence has come on record regarding dispossession as the plaint was already amended regarding dispossession of the plaintiffs.

Held: When a subsequent relief was brought to the notice of the Court though at the appellate stage, the said fact about dispossession of the plaintiffs ought to have been taken note of by the learned first appellate court and it ought to have framed point for determination on this issue---since amendment in the plaint has already been made on the point of dispossession and further relief was sought in the plaint at the appellate stage then the learned appellate court either could have framed issue on this point and considered the evidence or could have remanded the matter to the learned trial court after framing the issue on the point of dispossession---when a relief has been prayed for and the learned first appellate court failed to record its finding with regard to said relief, such error could be corrected under Section 152 of the Code and even under Section 151 of the Code--- hands of the learned first appellate court are not tied and it could look into all such matters arising out of any inadvertent error---impugned order set aside. **(Para 7, 8, 9)**

2003(1) SCC 197

.....Relied Upon.

(2004) 1 SCC 328, (C.R.P. (PD) No. 1001 of 2015, (1999) 3 SCC 500

.....Disagreed with.

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... .. Respondents

Appearance :

For the Petitioner/s : Mr. Krishna Ranjan, Advocate
Mr. Amit Bhushan, Advocate
For the Respondent/s : Mr. Brij Kishor Mishra, Advocate
Mr. Sachida Nand Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
Date : 16-05-2024

The present civil misc. petition has been filed under Article 227 of the Constitution of India, challenging the order dated 7th of July, 2017 passed by the learned Additional District Judge, Saran at Chapra in Title Appeal No. 55 of 2013/136 of 2014, by which the learned Additional District Judge, Saran at Chapra, rejected the petition dated 05.07.2017 filed on behalf of



the plaintiffs/respondents/petitioners under Section 151, 152 and 153 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') wherein a prayer was made to pass a decree with respect to recovery of possession as well.

02. The conspectus of fact as it appears from the record is that the plaintiffs/petitioners filed Title Suit No. 395 of 2008 against the defendants/respondents seeking declaration that plaintiffs were having title over the suit land as mentioned in Schedule-*Ka* of the plaint and also for declaration that sale-deed dated 9th of June, 2008 executed by the defendant no. 5 in favour of the defendant nos. 1 to 4 in respect of Schedule-*Kha* land was illegal, without consideration, inoperative and was executed by a person having no title over the said land. It further appears that disputed land originally belonged to one Binda Rai, who had a daughter named Shakunti, who was invalid and died unmarried while staying with her father. After death of Binda Rai, his nephew Moharam Rai came in possession of the suit land. Moharam Rai had two sons, namely, Haneef Mian and Vakeel Mian, who came in possession over the land left by their father. In subsequent partition, the land mentioned in Schedule-*Ka* of the plaint has been allotted in the share of Haneef Mian, who died leaving behind his son, Md. Hasnain and widow



Shahnaz Bibi, who came in possession over the Schedule-*Ka* land. The plaintiffs are purchasers from the heirs of Haneef Mian through different registered sale-deeds dated 03.05.2008 and 14.05.2008 and came into possession of the suit land. Thereafter, the plaintiffs came to know about the claim of the defendant nos. 1 to 4 with regard to suit land on the basis of purchase from defendant no.5 by sale-deed dated 09.06.2008.

The claim of the plaintiffs was contested by the defendants, who set up their own story in their defence. The defendants claimed that daughter of Binda Rai was not invalid and she did not predecease Binda Rai. Marriage of Shakunti was solemnized with one Olee Mohammad and she died in the year 1996. The suit property never went into possession and Moharam Rai and all documents are showy documents prepared by Moharam Rai. For this reason, no land ever came in possession of Haneef Mian and the land remained in possession of Shakunti and her husband. Shakunti had four sons, namely, Bas Mohammad, Dah Mohammad, Lal Mohammad and Sobrati. Bas Mohammad transferred his share of land which was in his possession on 09.06.2008 vide a registered sale-deed in favour of the defendants for consideration amount of Rs. 2 ½ lacs.

The learned trial court on consideration of evidence



of the parties decreed the suit in favour of the plaintiffs. Being aggrieved and dissatisfied with the judgment and decree dated 15.03.2013 of the learned trial court, the defendants filed Title Appeal No. 136 of 2014 and during pendency of the appeal, defendant nos. 1 to 4 forcefully dispossessed the plaintiffs from the land as mentioned in Schedule-(Ga) on 22.01.2014. The plaintiffs filed an amendment petition seeking amendment in the plaint in first appellate court, which was allowed and new relief was added in the plaint and the details of land from which the defendants dispossessed the plaintiffs was added in Schedule-(Ga) vide order dated 11.04.2014. Thereafter, the learned first appellate court heard the parties and after going through the material available on record, dismissed the appeal vide judgment and decree dated 07.06.2017. Though the learned first appellate court mentioned in the judgment about dispossession of the plaintiffs from the land as mentioned in Schedule-(Ga), but it failed to give any relief with respect to same and further failed to give directions to the defendants to handover the possession with respect to Schedule-(Ga) land though there has been concurrent finding of the two courts regarding right, title and possession of the plaintiffs over the suit land. The plaintiffs/petitioners came to know about the discrepancy in the



judgment of the learned first appellate court, filed an application under Sections 151, 152 and 153 of the Code, making a prayer to pass a decree with respect to recovery of possession as well. However, learned first appellate court rejected the said petition vide its order dated 07.07.2017.

03. Learned counsel appearing on behalf of the plaintiffs/petitioners submitted that the learned first appellate court rejected the petitioner mainly on the ground that no evidence has come on record regarding dispossession but it failed to appreciate that in course of trial witnesses have stated about the dispossession of the plaintiffs and the learned trial court gave a finding in favour of the plaintiffs, which has been affirmed by the learned first appellate court. Learned counsel further submits that learned first appellate court also overlooked the fact that amendment in plaint has been allowed regarding dispossession of the plaintiffs and said order has not been challenged by the defendants. Learned counsel further submitted that the learned first appellate court did not consider the admission made on behalf of the defendants/respondents in their additional written statement that the defendants were in possession of the disputed land. After admission in written statement, no further evidence was required for the petitioners to



prove the said fact before the learned first appellate court. Learned counsel relied on a decision of learned Single Judge of this Court in the case of *Gorakh Giri Vs. Surendra Giri*, reported in *(2004) 2 PLJR 254*, wherein the learned Single Judge allowed the civil revision setting aside the order of the learned first appellate court in rejecting the application filed by the petitioner under Sections 151, 152 and 153 of the Code for incorporating the reliefs, prayed for in the suit, in the judgment and decree, which have been omitted by the appellate court while allowing the appeal after setting aside the dismissal of the suit by the trial court. Thus, the learned counsel submitted that the order of the learned first appellate court is not sustainable and the same be set aside and the learned first appellate court be directed to modify the judgment incorporating the relief sought by the plaintiffs/petitioner vide amendment made in the plaint regarding recovery of possession.

04. On the other hand, learned counsel appearing on behalf of the defendants/respondent nos. 1 to 4 vehemently contended that no relief can be granted to the plaintiffs/petitioners in the civil misc. jurisdiction against an order passed pursuant to judgment dated 07.06.2017 and decree dated 20.06.2017, especially in view of the fact that the learned



first appellate court dismissed the petition filed under Sections 151, 152 and 153 of the Code on the ground that no oral or documentary evidence was adduced before the learned trial court proving dispossession of the plaintiffs from the suit property, which was subject matter of title suit, nor any issue was framed for its adjudication. Hence, the order under challenged is just and proper, requires no interference by this Court. The learned counsel further submitted that the answering respondents have preferred Second Appeal No. 395 of 2017 before this Court challenging the judgment and decree dated 07.06.2017 and 20.06.2017, respectively, passed in Title Appeal No. 55 of 2013/136 of 2014. The second appeal is pending for adjudication and the plaintiffs have been made respondent nos. 1 to 4 in the said second appeal. Learned counsel further submitted that if the plaintiffs have any grievance, they could have challenged the finding of the first appellate court in the second appeal, but they have chosen to file a petition before the learned first appellate court under Sections 151, 152 and 153 of the Code and these provisions are not attracted and have no application so far as relief claimed by the plaintiffs is concerned. Learned counsel referred to the decision of Hon'ble Supreme Court in the case of *State of Punjab Vs. Darshan Singh*,



reported in **(2004) 1 SCC 328** where the Hon'ble Supreme Court discussed the power of the Court under Section 152 of the Code. The Hon'ble Supreme Court held that exercise of said power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order and the omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152. Another decision relied on by the learned counsel for the defendants/respondents is in the case of ***S. Perumal Vs. V. Banupriya (C.R.P. (PD) No. 1001 of 2015 and M.P. No. 1 of 2015) [decided on 04.01.2016]*** of ***High Court of Madras*** which in turn relied on decision in the case of ***State of Punjab Vs. Darshan Singh*** (supra) and also on the decision in the case of ***Dwaraka Das vs State Of Madhya Pradesh***, reported in **(1999) 3 SCC 500**. Learned counsel further submitted that the correction contemplated under Section 152 are for correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152. Learned counsel further submitted that purely a question of law is involved in the



present matter and as the plaintiffs had chosen a wrong forum and thereafter came before this Court under some misconception, the impugned order is fit to be sustained and the present civil misc. petition is liable to be dismissed.

05. Sections 151, 152 and 153 of the Code read as under:-

“151. Saving of inherent powers of Court.— *Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.*

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.*

153. General power to amend. — *The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question*



or issue raised by or depending on such proceeding.”

Section 151 of the Code provides that the Court has inherent powers to pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Section 152 of the Code empowers the Court to correct clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. At the same time, Section 153 provides general power to the Court to amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

Obviously, the powers discharged under Sections 151, 152 and 153 of the Code has singular purpose that no party should suffer due to mistake of the Court and ends of justice or administration of justice is not defeated by clerical or arithmetical mistakes, omissions or such similar error.

06. Order XLI Rule 31 of the Code reads as under:-

“31. Contents, date and signature of judgment. — *The judgment of the Appellate Court shall be in writing and shall state—*

- (a) the points for determination;*
- (b) the decision thereon;*



*(c) the reasons for the decision; and
(d) where the decree appealed from
is reversed or varied, the relief to which
the appellant is entitled,
and shall at the time that it is
pronounced be signed and dated by the
Judge or by the Judges concurring
therein.”*

So, the judgment of the appellate court shall state the points for determination and the decision thereon. Order XLI Rule 35 of the Code provides that the decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made. At the same time, it also provides that the decree shall also state the amount of costs incurred in the appeal.

07. Coming back to the facts of the case, the prayer in the suit of the plaintiffs/petitioners was only with regard to declaration of their right, title and possession over the suit land while seeking declaration regarding sale-deed of the defendants to be forged, fraudulent, void and inoperative. The suit of the plaintiffs/petitioners was decreed and the learned first appellate court confirmed the judgment and decree of the learned trial court. The learned trial court framed the issue of plaintiffs having right, title and ownership over the suit land. Similarly, one of the points for determination before the learned first



appellate court was whether the plaintiffs have right, title and ownership over the suit land. Apparently, no issue or point with regard to possession or dispossession was framed and it appears that no relief regarding confirmation of possession was sought initially though subsequent relief regarding recovery of possession came to be added by way of amendment application at the appellate stage. When a subsequent relief was brought to the notice of the Court though at the appellate stage, the said fact about dispossession of the plaintiffs ought to have been taken note of by the learned first appellate court and it ought to have framed point for determination on this issue. From the judgment of the learned first appellate court, it appears that the factum of dispossession has been taken note of by the learned first appellate court. However, no point for determination was formulated on this aspect of the matter. Further, another aspect of the matter is that there has been concurrent finding about right, title and ownership of the plaintiffs and in the additional written statement, the defendants have categorically stated about the suit land being in their possession. If right, title and ownership of the plaintiffs over the suit land has been declared by both the Courts, natural corollary in the light of admitted position about defendants/respondents being in possession



would be that the learned first appellate court ought to have taken note of this fact and while passing the judgment and issuing the decree, the learned first appellate court ought to have recorded its finding on the point of dispute in categorical terms, a duty in which the learned first appellate court failed. Apparently, an error has been committed by the learned first appellate court.

08. A plea has been taken on behalf of the respondents that second appeal is pending and all the issues raised here ought to be raised in the second appeal. I think the contention of the respondents is misconceived. When no orders have been passed with regard to dispossession of the petitioners, there was nothing for the petitioners to assail in the second appeal as the petitioners have got judgment and decree in their favour both at the trial court and at the appellate court. If the petitioners were aggrieved by any of the finding of the learned first appellate court, then certainly it would have been incumbent upon the petitioners to challenge such finding, but the same is not the case here since the petitioners are aggrieved by first appellate court not recording any finding and at the first instance, the petitioners filed their petition under Sections 151, 152 and 153 of the Code making a prayer to the learned first appellate court to pass a decree with respect to recovery of possession, the



learned first appellate court was duty bound to consider the prayer. The learned first appellate court could not have shirked its responsibility merely by saying that as no evidence was led on this point, so no orders could be passed. If no evidence was led, there were two options before the learned first appellate court since the amendment in the plaint has already been made on the point of dispossession and further relief was sought in the plaint at the appellate stage then the learned appellate court could have framed the issue on this point and considered the evidence with regard to the said issue and thereafter disposed of the matter by passing appropriate orders. Another option available to the learned first appellate court was to remand the matter to the learned trial court after framing the issue on the point of dispossession and directing it to record the evidence if the evidence was found insufficient and send back the matter to the learned first appellate court for passing the orders. But the learned first appellate court did not exercise any of the options and went on to reject the petition of the petitioners by a cryptic order, observing that as no evidence was made or no arguments was made, it was not in a position to pass any orders on the point of dispossession and relief sought in connection thereto.

09. It has been rightly contended by the learned



counsel for the respondents that the corrections contemplated under Section 152 are for correcting accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the court while passing the judgment. This is the general principle associated with Section 152 of the Code but when a relief has been prayed for and the learned first appellate court failed to record its finding with regard to said relief, such error could be corrected under Section 152 of the Code and even under Section 151 of the Code. The hands of the learned first appellate court are not tied and it could look into all such matters arising out of any inadvertent error. I do not think there is much merit in the submission of learned counsel for the respondents that the petitioners have chosen a wrong forum. The petitioners have rightly approached the first appellate court with their grievance. For this reason, the decisions cited by the learned counsel for the respondents *State of Punjab Vs. Darshan Singh* (supra), *S. Perumal* (supra) and *Dwaraka Das* (supra) are not helpful to the cause of the respondents.

10. On the other hand, I place my respectful reliance on the decision of the Hon'ble Supreme Court in the case of *Lakshmi Ram Bhuyan vs Hari Prasad Bhuyan & Ors.*,



reported in **2003(1) SCC 197** wherein the Hon'ble Supreme Court held that if there is an accidental slip or omission in manifesting the intention of the Court, Section 152 enables the Court to vary its judgment so as to give effect to its meaning and intention.

11. In the light of the discussion made here-in-before, I am of the considered opinion that the learned first appellate court committed an error of jurisdiction when it rejected the petition dated 05.07.2017 filed by the petitioner and hence, the impugned order dated 7th of July, 2017 passed by the learned Additional District Judge, Saran at Chapra in Title Appeal No. 55 of 2013/136 of 2014 stands set aside with direction to the learned first appellate court either to remand the matter to the learned trial court after framing the issue on the point of dispossession and to record evidence if further evidence is required for purpose of determination of such issue and the learned trial court would remit the matter back to the learned first appellate court for passing the judgment or the learned appellate court would frame the issue on the point of dispossession and consider the evidence with regard to the said issue and thereafter dispose of the matter by passing appropriate orders. The above exercise must be completed within three months from the date of



receipt /production of copy of this judgment.

12. With the aforesaid directions, the present Civil Misc. Petition stands allowed.

13. This Court has not expressed any opinion on the merits of the case in any manner and whatever has been observed, is only for the purpose of disposal of the present petition and the learned trial court will not be prejudiced by any of the observations made by this Court.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	30.04.2024
Uploading Date	18.05.2024
Transmission Date	NA

