Courts if allowed to stand would occassion a failure of justice or casue an irreparable injury.

(24) Applying the principle stated above to the facts of the present case no doubt is left that the defendant-petitioner would not suffer in any manner by the impugned orders in view of the fact that if the plaintiff-respondents ever file a fresh suit then all objections would remain open to them.

(25) For the reasons recorded above, the order dated 14th October, 1999 are upheld subject to the observations made in the foregoing paras. The revision petitioners fail and the same are dismissed without any order to cost.

R.N.R.

Before M.M. Kumar, J

JAGDISH CHAND GUPTA & ANOTHER—*Petitioners*

versus

DR. RAJINDER PARSHAD & OTHERS—*Respondents*

C.R. No. 2570 OF 2000

20th March, 2002

Code of Civil Procedure, 1908—Ss. 151, 152, 153, & 153-A—Preliminary decree of partition passed by the Trial Court affirmed by the 1st Appellate Court as well as the High Court—Executing Court ordering execution of the decree—Whether 1st Appellate Court can modify the decree by making an amendment in its judgment & decree—Held, no—Court has jurisdiction only to correct mistakes which are clerical in nature and not substantive in character.

Held, that the Addl. District Judge has allowed substantive amendment in the judgment and decree dated 15th May, 1999 and declared that the plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2 would be entitled to 1/7th share in the suit property alongwith their sisters who have been impleaded as defendant-respondents No. 2 to 5. As a matter of fact, the Addl. District Judge on 15th May, 1999 had dismissed the appeal by affirming the finding on all the issues reached by the Trial Court. Under

sections 152, 153, 153-A of the Code mistake in the judgment could be corrected which are of clerical nature, not which are of substantive character. Therefore, the impugned order passed by the Additional District Judge cannot be sustained.

(Paras 15 & 16)

Sanjay Bansal, Advocate for the petitioner

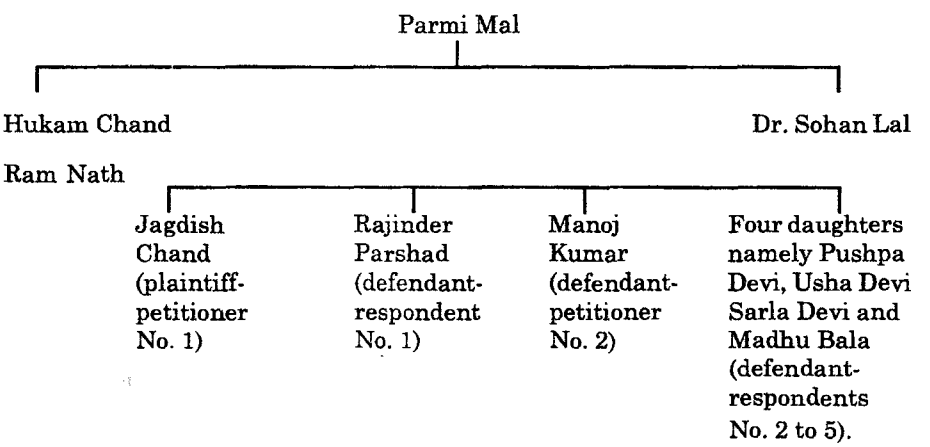
Adarsh Jain, Advocate for respondent No. 1.

JUDGMENT

M.M. KUMAR, J.

(1) This revision petition is directed against the order dated 12th May, 2000 passed by the Additional District Judge, Faridabad allowing the application of defendant-respondent No. 1 filed under Section 151, 152, 153 and 153-A of the Code of Civil Procedure, 1908 (for brevity, 'the Code') correcting the judgment and decree dated 15th May, 1999.

(2) The facts of the case unfolded in this petition are that the plaintiff-petitioners and defendant-respondent No. 1 are real brothers whereas defendant-respondent No. 2 to 5 are their real sisters. They constituted a Joint Hindu Family with their father late Dr. Sohan Lal as Karta. The pedigree table of the family is as follows :—



(3) Plaintiff-petitioner No. 1 Jagdish Chand filed a civil suit No. 6 on 5th January, 1993 for claiming 1/3rd share in the co-parcenary property consisting of a house and a plot situated in Ballabgarh had 1/6th share in the shop situated in main bazar Ballabgarh because the other half of the said shop was owned and possessed jointly by Ram Nath, son of Hukam Chand cousin brother

of plaintiff-petitioners No. 1 and 2 and the defendant-respondents No. 1 to 5. Plaintiff-petitioner No. 1 specifically pleaded in the suit that his sisters, namely, Smt. Pushpa Devi, Smt. Usha Devi, Smt. Sarla Devi and Madhu Bala defendant-respondents No. 2 to 5 had no share in the co-parcenary properties as they had already taken more than their shares at the time of their marriages. Defendant-respondent No. 1 alone contested the suit and defendant-respondents No. 2 to 5 did not appear despite service and, therefore were proceeded against exparte vide order dated 9th November, 1996 passed by the trial Court. Defendant-respondent No. 1 in his written statement took the stand that after the death of his father Dr. Sohan Lal suit property continued to be joint between the plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2 but the same was divided by them in the year 1972 on the basis of an oral partition. Accordingly (i) The house was partitioned between the plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2 in equal shares ; (ii) The plot was divided between the plaintiff-petitioner No. 1 defendant-respondent No. 1 and defendant-petitioner No 2 in equal shares ; and (iii) The whole of entire half share in the shop situated in main bazar Ballabgrh was given to defendant-respondent No. 1 in lieu of expenses incurred by him on the marriages of defendant-respondents No. 2 to 5. It was pleaded by defendant-respondent No. 1 that defendant-respondents No 2 to 5 were not necessary parties as the oral partition have already been effected between the plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2. On that basis, prayer for the dismissal of the suit was made.

(4) On the pleadings of the parties, the trial Court framed the following issues on 10th May, 1995 :

1. Whether the suit property has already been partitioned between the parties as alleged by defendant No. 1 in para No. 1 of the wirtten statement ? OPD

2. If issue No. 1 is not proved then what is the share of the parties in the suit property ? OPP

3. Whether the suit of the plaintiff is not maintainable in its present form ? OPD

4. Whether the suit is bad for non-joinder of necessary parties ? OPD

5. Relief.

(5) Issue No. 1 was decided against defendant-respondent No. 1 because he failed to prove that the suit property was partitioned. On issue No. 2, the findings recorded by the trial Court is that the plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2 were entitled to 1/3rd share each in house and plot and they were also entitled to 1/3rd share each in the half portion of the shop situated at main bazar Ballabgarh as Ram Nath was the owner in possession of remaining 1/2 share of the shop being son of Hukam Chand who was the brother of late Dr. Sohan Lal and the suit was decreed and a preliminary decree of partition in respect of the suit property was passed in favour of the plaintiff-petitioner No. 1 and against the defendant-respondent. Against the judgment and decree dated 30th August, 1997 passed by the Civil Judge (Junior Division), Faridabad an appeal was filed which was also dismissed by the Additional District Judge, Faridabad on 15th May, 1999 and even a regular second appeal filed by Dr. Rajinder Parshad defendant-respondent No. 1 stood dismissed by this Court on 4th November, 1999.

(6) An application was filed by plaintiff-petitioner No. 1 alleging that the defendant-respondents have failed to obey the preliminary decree of partition dated 30th August, 1997 as per the terms of the judgment and decree. On 29th September, 1999, the trial Court appointed a Local Commissioner, namely, L.K. Grover, Advocate directing him to suggest mode of partition in terms of the preliminary decree. The Local Commissioner was directed to submit his report on or before 17th November, 1999. On 28th October, 1999, defendant-respondent No. 1 filed an application seeking review/recall of the order dated 29th September, 1999 on the ground that on 29th September, 1999 the plaintiff-petitioner No. 1 misled the trial Court and failed to disclose that preliminary decree passed on 30th August, 1997 was modified by the Additional District Judge, Faridabad,—vide his judgment dated 15th May, 1999. It was alleged that, vide decree dated 30th August, 1997 passed by the trial Court, plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2 were given 1/3rd share each of the suit property while the learned Additional

Additional District Judge,—vide his judgment and decree dated 15th May, 1999 held that the suit properties were to be divided amongst plaintiff-petitioner and all the defendant-respondents including defendant-petitioner No. 2 in equal share. It was claimed that the terms of decree are mentioned in para No. 17 of the judgment. Therefore, prayer was made that the order dated 29th September, 1999 directing the Local Commissioner to suggest the mode of partition in terms of the decree dated 30th August, 1997 deserved to be reviewed. The application was contested and the executing Court dismissed the application by recording the following order :—

> "After considering the rival contentions of the parties, it is observed that the observations made by learned ADJ, Faridabad in the judgments are only the arguments addressed by the appellant and are not the findings on the merits of the case. However, even if the same are the findings, this court has no jurisdiction to review the said findings and secondly if the same are at variance with the strict letter of law as compared to the decree passed in the appeal, this court being the executing court has to pass final decree in accordance with the preliminary decree drawn in the case. The preliminary decree was passed by treating 1/3rd share each of plaintiff and defendants No. 1 and 2 and the said preliminary decree was maintained by the appellate Court as also by the Hon'ble High Court. The executing court is bound to execute the decree as it is and it has no jurisdiction to modify the decree unless it is shown that the decree is without jurisdiction or is otherwise void. No such ground for reviewal of the order has been made out in the present case and hence I have no hesitation to hold that the application moved by JD No. 1 is without any basis and deserves dismissal. Further more the defendants themselves have admitted in their written statement the shares of the parties in the suit property as 1/3rd each in favour of plaintiff and defendants No. 1 and 2. Now they are estopped from claiming that all the parties have 1/7th share in the suit property.

(7) Another attempt was made by defendant-respondent No. 1 by moving an application under sections 151, 152, 153, 153-A of the code for correction of the judgment and decree dated 15th May, 1999 before the Additional District Judge, Faridabad. The Additional District Judge, Faridabad,—vide his order, impugned in this revision petition allowed the application by recording the following order :—

> "In fact, the plaintiff in the suit has not claimed specific share in the prayer clause and the decree sheet prepared by trial Court no where stipulates that the plaintiff is entitled to 1/3rd share. Although this fact is mentioned in the judgment. Similarly, the appellate court while dismissing the appeal has not specifically mentioned as to what extent the plaintiff is entitled for a share in the property. In other words, the decree drawn by trial court, as well as, appellate court are not correctly drawn. The intention of the judgment of the learned appellate Court is to the effect that all the parties are entitled to 1/7the share from the property left by their father Vaid Sohan Lal. Resultantly, the application deserves to be allowed. The judgment, as such, is ordered to be corrected to the extent that plaintiff is entitled to 1/7 share and all the respondents are also entitled to 1/7th share in the property left by Vaid Sohan Lal. The decree is also required to be amended accordingly."

(8) The effect of the order dated 12th May, 2000 is that all the parties are entitled to 1/7th share from the property left by their father Dr. Sohan Lal and it was directed that the judgment and decree is liable to be corrected accordingly. This order has now been challenged in the present revision petition.

(9) Shri Sanjay Bansal, learned counsel for the plaintiff-petitioners assailing the order dated 12th May, 2000, has raised following three arguments :

(i) The learned Additional District Judge could not have modified the decree dated 15th May, 1999 or issued a direction for correction of judgment and decree dated 30th August, 1997 ;

(ii) Defendant-respondent No. 1 did not have any locus standi to move an application under sections 151, 152, 153-A of the Code. If at all the application was to be filed, it could have been filed only by defendant-petitioner No. 2 or the daughters of Dr. Sohan Lal defendant-respondents No. 2 to 5; and

(iii) The order dated 12th May, 2000 is unsustainable because the executing Court had already passed an order on 19th January, 2000 which creates a bar for filing fresh application under sections 151, 152, 153, 153-A of the Code as the principles of res-judicata would apply.

(10) In support of his contention, the learned counsel has placed reliance on judgment of the Supreme Court in ***Dwarka Das*** versus ***State of MP and another (1),*** and argued that under Section 152 of the Code the jurisdiction of the Court is limited to correct clerical or arithmetical errors in judgments, decrees or orders which arise from any accidental slip or omission. According to the learned counsel, the power contemplated under Section 152 of the Code is confined to correction of mistakes by the court of its ministerial actions and does not postulate of passing effective judicial order after the pronouncement of the judgment, decree or order especially when those judgment, decree or order are upheld by the higher courts. He further submitted that the Court or the Tribunal after passing the judgment, decree or order becomes functus officio and is not competent to vary the terms of judgments, decrees or orders earlier passed. He has also referred to provisions of sub-rule 2(j) of rule 11 of order 21 of the Code and argued that the order dated 19th January, 2000 is consistent with the provisions of sub-rule 2(j) of the Code as the executing Code was competent to grant assistance of the Court to the plaintiff-petitioner (decree holder).

(11) In support of his submission Shri Sanjay Bansal, learned counsel for the plaintiff-petitioners has also drawn my attention to admissions made by both the parties before the Civil Judge in his judgment and decree dated 30th August, 1997 where it is conceded that their sisters all of whom were married, had no share in the suit

(1) 1999 (3) SCC 500

property, with the result that there were only three share-holders, namely, both the plaintiff-petitioner No. 1, defendant-petitioner No. 2 and defendant-respondent No. 1 who were real brothers. He has also referred to the last para of the judgment of the Additional District Judge where the findings recorded by the learned trial Court on various issues were affirmed and the appeal was dismissed. Further substantiating his argument, he has referred to all the grounds taken in the regular second appeal filed by defendant-respondent No. 1 wherein this argument was specifically raised. According to the learned counsel that the argument would be deemed to have been defeated because RSA No. 3807 of 1999 filed by defendant-respondent No. 1 was dismissed in limine on 4th November, 1999 and no appeal to the Supreme Court was preferred.

(12) Shri Adarsh Jain, learned counsel for defendant-respondent No. 1 has referred to the provisions of order XX rule 6 of the Code and submitted that the decree shall always agree with the terms of the judgment. According to the learned counsel, para 17 of the judgment passed by the Additional District Judge dated 15th May, 1999 substantially rejected the claim of the plaintiff-petitioner for 1/3rd share in the suit property and upheld the claim of defendant-respondent No. 1 that the plaintiff-petitioner was entitled to 1/7th share in the suit property and 1/4th share in the shop situated at main bazar, Ballabgarh. Para 17 of the judgment passed by the Additional District Judge reads as under :—

> "No doubt, the appellant is carrying on his medical practice with Ram Nath in the shop in dispute since 1972 and the partries are residing separately, but it does not mean that the partition of the property in dispute has taken place by metes and bounds. Therefore, it is held that the property is still joint and partible. The appellant as well as all the six respondents are having 1/7the share each in the property left by their parents. In the house and plot in dispute, they are having 1/7th share and in the shop in dispute 1/4th share each as the same have not been partitioned till date. If the contesting parties have no dispute regarding the fact that only the appellant and the respondents No. 1 and 2 are owners of the property in dispute, even that the same cannot

be accepted to be correct particularly when it has been established that all the seven persons who are parties to the present litigation are having eual shares in the dispute property. The wrong description on the part of the respondent No. 1 regarding the share of the parties in para No. 3 of the plaint is also not sufficient to dismiss the suit as argued by the learned counsel for the appellant."

(13) I have thoughtfully considered the respective submissions made by the learned counsel for the parties and I am of the view that this petition merits acceptance because under Section 152 of the Code only errors of clerical or arithmetical nature in judgments, decrees or orders arising therein from any accidental slip or omission may at any time be corrected either on its own motion or on the application of any of the parties. The judgment cited by the learned counsel in the case of *Dwarka Das* (supra) substantially support the argument. In that case, a contractor has filed a suit claiming damages for breach of contract besides claiming other amounts payable by the respondent to him. The suit for recovery was decreed with a direction that the contractor would also be entitled to future interest at the rate of Rs. 6% per annum. Thereafter, the application under Section 152 of the Code was filed praying for award of interest from the date of the suit till the date of decree by correcting the judgment and decree alleging that the ground to award interest pendente-lite was an accidental omission. The trial Court allowed that application and on appeal to the Hon'ble Supreme Court the application was dismissed and the claim for award of interest pendente-lite was rejected. Explaining the scope of section 152 of the Code. Their Lordships observed as under :—

"6. *Section 152 CPC provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders of errors arising therein from any accidental slip or omission. The exercise of this 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. The settled position of law is that after the passing of the judgment, decree or order, the court or the tribunal becomes functus officio and thus being not entitled to*

vary the terms of the judgments, decrees and orders earlier passed. The corrections contemplated are of 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 for which the proper remedy for the aggrieved party is to file appeal or review application. It implies that the section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the province of Sections 151 and 152 of the CPC even after passing of effective orders in the lis pending before them. No court can, under the cover of the aforesaid sections, modify, alter or add to the tems of its original judgment, decree for order. In the instant case, the trial court had specifically held the respondent-State liable to pay future interest only despite the prayer of the appellant for grant of interest with effect from the date of alleged breach which impliedly meant that the Court had rejected the claim of the appellant insofar as pendente lite interest was concerned. The omission in not granting the pendente lite interest could not be held to be accidental omission or mistake as was wrongly done by the trial court,—vide order dated 30th November, 1973. The High Court was, therefore, justified in setting aside the aforesaid order by accepting the revision petition filed by the State." (emphasis added)

(14) Similar view has been taken in the case of ***Jayalakshmi Coelho*** versus ***Oswald Joseph Coelho (2).*** In that case, a decree for divorce on the ground of mutual consent was passed and the terms of compromise were not incorporated in the decree. The husband after passing of the decree moved an application asserting that the order did not incorporate other reliefs which were mentioned in the

(2) 2001 (4) SCC 181

compromise. One such omission related to transfer of a flat which was part of the compromise. It was asserted that flat was to be transferred to the husband after making some payment to the wife. The Family Court ordered amendment of the decree and incorporated various clauses of the compromise in the decree which lead to the filing of the writ petition in the Bombay High Court and appeal to the Supreme Court. after examining in detail the whole case law. Their Lordships took the view that substantive error like omission to incorporate the terms of compromise in the decree could not be corrected under Section 152 of the Code. The view of Their Lordships are deducible from paras 13 and 14 which read as under :—

> "So far as the legal position is concerned, there would hardly by any doubt about the proposition that in terms of Section 152 CPC, any error occurred in the decree on account of arithmetical or clerical error or accidental slip may be rectified by the court. The principle behind the provisions is that no party should suffer due to mistake of the Court and whichever is intended by the court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice. A reference to the following cases on the point may be made :
>
> The basis of the provision under Section 152 CPC is found on the maxim *actus curiae neminem gravabit* i.e an act of court shall prejudice no man (Jenk Cent-118) as observed in a case reported in Assam Tea Corpn. Ltd. versus Narayan Singh AIR 1981 Gau. 41. Hence, an unintentional mistake of the Court which may prejudice the cause of any party must be rectified. In another case reported in L. Janakiramma Iyer versus P.M. Niolakanta Iyer AIR 1962 SC 633 it was found that by mistake the words "net profit" were written in the decree in place of "mesne profit". This mistake was found to be clear by looking to the earlier part of the judgment. The mistake was held to be inadvertent. In Bhikhi Lal versus Tribeni AIR 1965 SC 1935 it was held that a decree which was in conformity with the

judgment was not liable to be corrected. In another case reported in Master construction Co. (P) Ltd. versus State of Orissa AIR 1966 SC 1047 it has been observed the arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the court liable to be corrected. To illustrate the point, it has been indicated as an example that in a case where the order may contain something which is not mentioned in the decree would be a case of unintentional in the decree would be a case of unintentional omission or mistake. Such omissions are attributable to the court which may say something which it did not intend to say or omit. No new arguments or rearguments on merits are required for such rectification of mistake. In a case reported in Dwaraka Das versus State of M.P. 1999(3) SCC 500 this Court has held that the correction in the order or decree should be of the mistake or omission which is accidental and is not intentional without going into the merits of the case. It is further observed that the provisions cannot be invoked to modify, alter or add to the terms of the original decree so as to in effect pass an effective judicial order after the judgment in the case. The trial Court had not granted the interest pendente lite though such a prayer was made in the plaint but on an application moved under Section 152 CPC the interest pendente lite was awarded by correcting the judgment and decree on the ground that non-awarding of the interest pendente lite was an accidental omission. It was held that the High Court was right in settling aside the order. Liberal usse of the provisions under Section 152 CPC by the courts beyond its scope has been deprecated. While taking the above view this Court had approved the judgment of the Madras High Court in Thiruanavalli Ammad versus P. Venugopala Pillai AIR 1940 Mad 29 and relied on Maharaj Puttu Lal versus Sripal Singh AIR 1937 Oudh 1991 Similar view is found to have been taken by this

Court in a case reported in State of Bihar versus Nilmani Sahu 1996(11) SCC 528 where the Court in the guise of arithmetical mistake on reconsideration of the matter came to a fresh conclusion as to the number of trees and the valuations thereof in the matter which had already been finally decided. Similarly in the case of Bai Shakriben versus Special Land Acquisition Officer 1996(4) SCC 533 this Court found omission of award of additional amount under Section 23(1-A), enhanced interest under Section 28 and solatium etc. could not be treated as clerical or arithmetical error in the order. The application for amendment of the decree in awarding of the amount as indicated above was held to be bad in law.

As a matter of fact such inherent powers would generally be available to all courts and authorities irrespective of the fact whether the provisions contained under Section 152 CPC may or may not strictly apply to any particular proceeding. In a matter where it is clear that something which the court intended to do but the same was accidentially slipped or any mistake creeps in due to clerical or arithmetical mistake it would only advance the ends of justice to enable the Court to rectify such mistake. But before exercise of such power the court must be legally satisfied and arrive at a valid finding that the order or the decree contains or omits something which was intended to be otherwise, that is to say, while passing the decree the court must have in its mind that the order or the decree should be passed in a particular manner but that intention is not translated into the decree or order due to clerical, arithmetical error or accidental slip. The facts and circumstances may provide clue to the fact as to what was intended by the court but unintentionally the same does not find mention in the order or the judgment or something which was not intended to be there stands added to it. The power of rectification of clerical, arithmetical errors or accidental slip does empower the court to have a second thought over the matter and to find that a

better order or decree could or should be passed. There should not be reconsideration of merits of the matter to come to a conclusion that it would have been better and in the fitness of things to have passed an order as sought to be passed on rectification. On a second thought the court may find that it may have committed a mistake in passing an order in certain terms but every such mistake does not permit its rectification in exercise of the Court's inherent powers as contained under Section 152 CPC. It is to be confined to something initially intended but left out or added against such intention."

(15) The principles of law deducible from the judgment of the Supreme Court referred above if applied to the facts of the present case, no doubt is left that the Additional District Judge has allowed substantive amendment in the judgment and decree dated 15th May, 1999 and declared that the plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2 would be entitled to 1/7th share in the suit property alongwith their sisters who have been impleaded as defendant-respondents No. 2 to 5. As a matter of fact, the Additional District Judge on 15th May, 1999 had dismissed the appeal by affirming the finding on all the issues reached by the trial Court. In the concluding para of his judgment dated 15th May, 1999. The Additional District Judge has recorded his opinion, which reads as under :

"Hence, in view of the discussion above, it is held that there is no aberration in the findings arrived at by the learned lower court on various issues and the same are hereby affirmed. Consequently, upholding the impugned judgment and decree, the present appeal is hereby dismissed leaving the parties to bear their own costs. Decree sheet be prepared accordingly and file be consigned to the record room."

(16) Further it cannot be contended now that the sisters were entitled to their shares because the sisters defendant-respondents No. 2 to 5 never asserted their claim before the Additional District Judge, nor any appeal was filed by them before this Court. Moreover, under Sections 152, 153, 153-A of the Code mistakes in the judgment could

be corrected which are of clerical nature, not which are of substantive character. It is also worthwhile to point out that a specific plea that the defendant-respondent alongwith the plaintiff-petitioners and all other parties were entitled to 1/7th share in the suit property was raised before this Court in RSA No. 3807 of 1999 and the same was dismissed on 4th November, 1999. The ground No. 15 incorporated that plea is reproduced in the succeeding para substantially support that this plea was taken and the same was deemed to be rejected. Therefore, the impugned order passed by the Additional District Judge cannot be sustained.

(17) The other argument raised by the learned counsel for the plaintiff-petitioners that principle of res-judicata would operate because the executing Court had passed an order dated 19th January, 2000 does not deserve to be accepted since in the order passed by the executing Court, the view taken was that the executing Court had no jurisidction to review the finding recorded in the judgment and decree and it also held that the executing Court was duty bound to pass final decree in accordance with the preliminary decree drawn in that case which was to the effect that each of the plaintiff-petitioner, defendant-respondent No.1 and defendant-petitioner No. 2 were entitled to 1/3rd share. Therefore, it was held that the executing Court had no jurisdiction to modify the decree. It is, thus, clear that the principle of res-judicata would not have any application in the afore-mentioned situation.

(18) The argument that defendant-respondent No. 1 had no lucus standi also deserves to be rejected because defendant-respondent No. 1 appears to have spent huge amount of money on the marriages of his sisters and, therefore, he was entitled to raise the argument that 1/7th share only could be given to plaintiff-peitioner No. 1 and defendant-petitioner No. 2.

(19) It is also appropriate to deal with the argument raised by Shri Adarsh Jain while relaying on provisions of order xx rule 6 of the Code that the decree shall always agree with the judgment. It is true that in para No.17, the Additional District Judge, Faridabad has subsantively rejected the argument that only 1/3rd share was available to plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2, yet one cannot lose sight that a specific plea was raised before this Court in regular second appeal No. 3807 of 1999

filed by defendant-respondent No. 1. Para No. 15 of the grounds of appeal filed by defendant-respondent No. 1 reads as under :—

> "That the courts below have erroneously decided issue No. 2 and have wrongly concluded that all the parties have only 1/7th share in the property in dispute. The courts below have failed to consider that according to the averments of the plaintiff-respondents, the plaintiff and defendants No. 1 and 2, have 1/3 share each in the property in dispute and that the same has not been controverted or contested by defendants No. 3—6."

(20) A perusal of the above mentioned ground clearly shows that the ground taken by defendant-respondent No. 1 is deemed to have been rejected as the regular second appeal was dismissed on 4th November 1999,—vide order Annexure P.4. Therefore, in such a situation, the provisions of order XX rule 6 of the Code would not come to the rescue of defendant-respondent No. 1.

(21) For the reasons recorded above, the revision petition is allowed. The order dated 12th May, 2000 passed by the Additional District Judge, Faridabad is set aside and the decree is allowed to stand as it was drawn originally by the trial Court on 30th August, 1997.

R.N.R.

Before M.M. Kumar, J.

STATE OF HARYANA AND ANOTHER,—*Petitioners*

versus

KRISHAN CHAND,—*Respondent*

C.R. No. 3772 of 2001

28th January, 2002

Arbitration Act, 1940—Ss. 3, 38, 1st Schedule Cl. 3—Delay of one month in announcing the award—Parties taking willing part in the proceedings without any protest—Civil Court making the award as rule of the Court—1st Appellate Court though not extending time yet dismissing the appeal—Whether the High Court has jurisdiction to extend the time—Held, yes.

Courts if allowed to stand would occassion a failure of justice or casue an irreparable injury.

(24) Applying the principle stated above to the facts of the present case no doubt is left that the defendant-petitioner would not suffer in any manner by the impugned orders in view of the fact that if the plaintiff-respondents ever file a fresh suit then all objections would remain open to them.

(25) For the reasons recorded above, the order dated 14th October, 1999 are upheld subject to the observations made in the foregoing paras. The revision petitioners fail and the same are dismissed without any order to cost.

R.N.R.

Before M.M. Kumar, J

JAGDISH CHAND GUPTA & ANOTHER—*Petitioners*

versus

DR. RAJINDER PARSHAD & OTHERS—*Respondents*

C.R. No. 2570 OF 2000

20th March, 2002

Code of Civil Procedure, 1908—Ss. 151, 152, 153, & 153-A—Preliminary decree of partition passed by the Trial Court affirmed by the 1st Appellate Court as well as the High Court—Executing Court ordering execution of the decree—Whether 1st Appellate Court can modify the decree by making an amendment in its judgment & decree—Held, no—Court has jurisdiction only to correct mistakes which are clerical in nature and not substantive in character.

Held, that the Addl. District Judge has allowed substantive amendment in the judgment and decree dated 15th May, 1999 and declared that the plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2 would be entitled to 1/7th share in the suit property alongwith their sisters who have been impleaded as defendant-respondents No. 2 to 5. As a matter of fact, the Addl. District Judge on 15th May, 1999 had dismissed the appeal by affirming the finding on all the issues reached by the Trial Court. Under

sections 152, 153, 153-A of the Code mistake in the judgment could be corrected which are of clerical nature, not which are of substantive character. Therefore, the impugned order passed by the Additional District Judge cannot be sustained.

(Paras 15 & 16)

Sanjay Bansal, Advocate for the petitioner

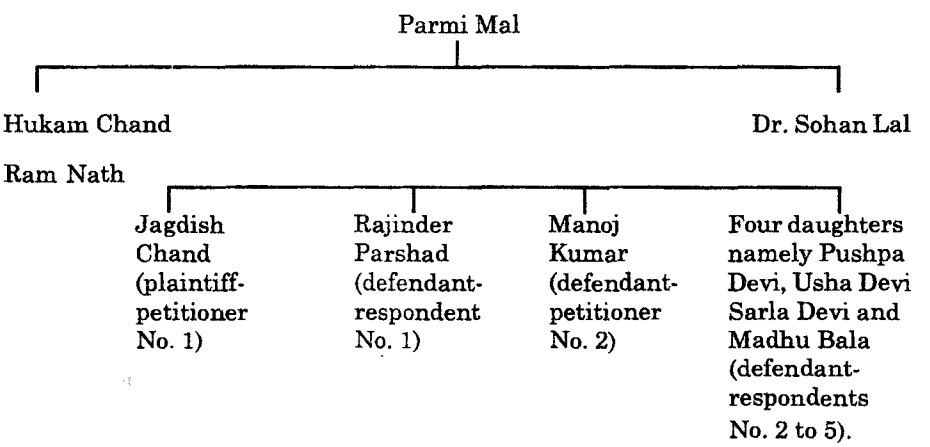
Adarsh Jain, Advocate for respondent No. 1.

JUDGMENT

M.M. KUMAR, J.

(1) This revision petition is directed against the order dated 12th May, 2000 passed by the Additional District Judge, Faridabad allowing the application of defendant-respondent No. 1 filed under Section 151, 152, 153 and 153-A of the Code of Civil Procedure, 1908 (for brevity, 'the Code') correcting the judgment and decree dated 15th May, 1999.

(2) The facts of the case unfolded in this petition are that the plaintiff-petitioners and defendant-respondent No. 1 are real brothers whereas defendant-respondent No. 2 to 5 are their real sisters. They constituted a Joint Hindu Family with their father late Dr. Sohan Lal as Karta. The pedigree table of the family is as follows :—



(3) Plaintiff-petitioner No. 1 Jagdish Chand filed a civil suit No. 6 on 5th January, 1993 for claiming 1/3rd share in the co-parcenary property consisting of a house and a plot situated in Ballabgarh had 1/6th share in the shop situated in main bazar Ballabgarh because the other half of the said shop was owned and possessed jointly by Ram Nath, son of Hukam Chand cousin brother

of plaintiff-petitioners No. 1 and 2 and the defendant-respondents No. 1 to 5. Plaintiff-petitioner No. 1 specifically pleaded in the suit that his sisters, namely, Smt. Pushpa Devi, Smt. Usha Devi, Smt. Sarla Devi and Madhu Bala defendant-respondents No. 2 to 5 had no share in the co-parcenary properties as they had already taken more than their shares at the time of their marriages. Defendant-respondent No. 1 alone contested the suit and defendant-respondents No. 2 to 5 did not appear despite service and, therefore were proceeded against exparte vide order dated 9th November, 1996 passed by the trial Court. Defendant-respondent No. 1 in his written statement took the stand that after the death of his father Dr. Sohan Lal suit property continued to be joint between the plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2 but the same was divided by them in the year 1972 on the basis of an oral partition. Accordingly (i) The house was partitioned between the plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2 in equal shares ; (ii) The plot was divided between the plaintiff-petitioner No. 1 defendant-respondent No. 1 and defendant-petitioner No 2 in equal shares ; and (iii) The whole of entire half share in the shop situated in main bazar Ballabgrh was given to defendant-respondent No. 1 in lieu of expenses incurred by him on the marriages of defendant-respondents No. 2 to 5. It was pleaded by defendant-respondent No. 1 that defendant-respondents No 2 to 5 were not necessary parties as the oral partition have already been effected between the plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2. On that basis, prayer for the dismissal of the suit was made.

(4) On the pleadings of the parties, the trial Court framed the following issues on 10th May, 1995 :

1. Whether the suit property has already been partitioned between the parties as alleged by defendant No. 1 in para No. 1 of the wirtten statement ? OPD

2. If issue No. 1 is not proved then what is the share of the parties in the suit property ? OPP

3. Whether the suit of the plaintiff is not maintainable in its present form ? OPD

4. Whether the suit is bad for non-joinder of necessary parties ? OPD

5. Relief.

(5) Issue No. 1 was decided against defendant-respondent No. 1 because he failed to prove that the suit property was partitioned. On issue No. 2, the findings recorded by the trial Court is that the plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2 were entitled to 1/3rd share each in house and plot and they were also entitled to 1/3rd share each in the half portion of the shop situated at main bazar Ballabgarh as Ram Nath was the owner in possession of remaining 1/2 share of the shop being son of Hukam Chand who was the brother of late Dr. Sohan Lal and the suit was decreed and a preliminary decree of partition in respect of the suit property was passed in favour of the plaintiff-petitioner No. 1 and against the defendant-respondent. Against the judgment and decree dated 30th August, 1997 passed by the Civil Judge (Junior Division), Faridabad an appeal was filed which was also dismissed by the Additional District Judge, Faridabad on 15th May, 1999 and even a regular second appeal filed by Dr. Rajinder Parshad defendant-respondent No. 1 stood dismissed by this Court on 4th November, 1999.

(6) An application was filed by plaintiff-petitioner No. 1 alleging that the defendant-respondents have failed to obey the preliminary decree of partition dated 30th August, 1997 as per the terms of the judgment and decree. On 29th September, 1999, the trial Court appointed a Local Commissioner, namely, L.K. Grover, Advocate directing him to suggest mode of partition in terms of the preliminary decree. The Local Commissioner was directed to submit his report on or before 17th November, 1999. On 28th October, 1999, defendant-respondent No. 1 filed an application seeking review/recall of the order dated 29th September, 1999 on the ground that on 29th September, 1999 the plaintiff-petitioner No. 1 misled the trial Court and failed to disclose that preliminary decree passed on 30th August, 1997 was modified by the Additional District Judge, Faridabad,—vide his judgment dated 15th May, 1999. It was alleged that, vide decree dated 30th August, 1997 passed by the trial Court, plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2 were given 1/3rd share each of the suit property while the learned Additional

Additional District Judge,—vide his judgment and decree dated 15th May, 1999 held that the suit properties were to be divided amongst plaintiff-petitioner and all the defendant-respondents including defendant-petitioner No. 2 in equal share. It was claimed that the terms of decree are mentioned in para No. 17 of the judgment. Therefore, prayer was made that the order dated 29th September, 1999 directing the Local Commissioner to suggest the mode of partition in terms of the decree dated 30th August, 1997 deserved to be reviewed. The application was contested and the executing Court dismissed the application by recording the following order :—

> "After considering the rival contentions of the parties, it is observed that the observations made by learned ADJ, Faridabad in the judgments are only the arguments addressed by the appellant and are not the findings on the merits of the case. However, even if the same are the findings, this court has no jurisdiction to review the said findings and secondly if the same are at variance with the strict letter of law as compared to the decree passed in the appeal, this court being the executing court has to pass final decree in accordance with the preliminary decree drawn in the case. The preliminary decree was passed by treating 1/3rd share each of plaintiff and defendants No. 1 and 2 and the said preliminary decree was maintained by the appellate Court as also by the Hon'ble High Court. The executing court is bound to execute the decree as it is and it has no jurisdiction to modify the decree unless it is shown that the decree is without jurisdiction or is otherwise void. No such ground for reviewal of the order has been made out in the present case and hence I have no hesitation to hold that the application moved by JD No. 1 is without any basis and deserves dismissal. Further more the defendants themselves have admitted in their written statement the shares of the parties in the suit property as 1/3rd each in favour of plaintiff and defendants No. 1 and 2. Now they are estopped from claiming that all the parties have 1/7th share in the suit property.

(7) Another attempt was made by defendant-respondent No. 1 by moving an application under sections 151, 152, 153, 153-A of the code for correction of the judgment and decree dated 15th May, 1999 before the Additional District Judge, Faridabad. The Additional District Judge, Faridabad,—vide his order, impugned in this revision petition allowed the application by recording the following order :—

> "In fact, the plaintiff in the suit has not claimed specific share in the prayer clause and the decree sheet prepared by trial Court no where stipulates that the plaintiff is entitled to 1/3rd share. Although this fact is mentioned in the judgment. Similarly, the appellate court while dismissing the appeal has not specifically mentioned as to what extent the plaintiff is entitled for a share in the property. In other words, the decree drawn by trial court, as well as, appellate court are not correctly drawn. The intention of the judgment of the learned appellate Court is to the effect that all the parties are entitled to 1/7the share from the property left by their father Vaid Sohan Lal. Resultantly, the application deserves to be allowed. The judgment, as such, is ordered to be corrected to the extent that plaintiff is entitled to 1/7 share and all the respondents are also entitled to 1/7th share in the property left by Vaid Sohan Lal. The decree is also required to be amended accordingly."

(8) The effect of the order dated 12th May, 2000 is that all the parties are entitled to 1/7th share from the property left by their father Dr. Sohan Lal and it was directed that the judgment and decree is liable to be corrected accordingly. This order has now been challenged in the present revision petition.

(9) Shri Sanjay Bansal, learned counsel for the plaintiff-petitioners assailing the order dated 12th May, 2000, has raised following three arguments :

(i) The learned Additional District Judge could not have modified the decree dated 15th May, 1999 or issued a direction for correction of judgment and decree dated 30th August, 1997 ;

(ii) Defendant-respondent No. 1 did not have any locus standi to move an application under sections 151, 152, 153-A of the Code. If at all the application was to be filed, it could have been filed only by defendant-petitioner No. 2 or the daughters of Dr. Sohan Lal defendant-respondents No. 2 to 5; and

(iii) The order dated 12th May, 2000 is unsustainable because the executing Court had already passed an order on 19th January, 2000 which creates a bar for filing fresh application under sections 151, 152, 153, 153-A of the Code as the principles of res-judicata would apply.

(10) In support of his contention, the learned counsel has placed reliance on judgment of the Supreme Court in ***Dwarka Das*** versus ***State of MP and another (1),*** and argued that under Section 152 of the Code the jurisdiction of the Court is limited to correct clerical or arithmetical errors in judgments, decrees or orders which arise from any accidental slip or omission. According to the learned counsel, the power contemplated under Section 152 of the Code is confined to correction of mistakes by the court of its ministerial actions and does not postulate of passing effective judicial order after the pronouncement of the judgment, decree or order especially when those judgment, decree or order are upheld by the higher courts. He further submitted that the Court or the Tribunal after passing the judgment, decree or order becomes functus officio and is not competent to vary the terms of judgments, decrees or orders earlier passed. He has also referred to provisions of sub-rule 2(j) of rule 11 of order 21 of the Code and argued that the order dated 19th January, 2000 is consistent with the provisions of sub-rule 2(j) of the Code as the executing Code was competent to grant assistance of the Court to the plaintiff-petitioner (decree holder).

(11) In support of his submission Shri Sanjay Bansal, learned counsel for the plaintiff-petitioners has also drawn my attention to admissions made by both the parties before the Civil Judge in his judgment and decree dated 30th August, 1997 where it is conceded that their sisters all of whom were married, had no share in the suit

(1) 1999 (3) SCC 500

property, with the result that there were only three share-holders, namely, both the plaintiff-petitioner No. 1, defendant-petitioner No. 2 and defendant-respondent No. 1 who were real brothers. He has also referred to the last para of the judgment of the Additional District Judge where the findings recorded by the learned trial Court on various issues were affirmed and the appeal was dismissed. Further substantiating his argument, he has referred to all the grounds taken in the regular second appeal filed by defendant-respondent No. 1 wherein this argument was specifically raised. According to the learned counsel that the argument would be deemed to have been defeated because RSA No. 3807 of 1999 filed by defendant-respondent No. 1 was dismissed in limine on 4th November, 1999 and no appeal to the Supreme Court was preferred.

(12) Shri Adarsh Jain, learned counsel for defendant-respondent No. 1 has referred to the provisions of order XX rule 6 of the Code and submitted that the decree shall always agree with the terms of the judgment. According to the learned counsel, para 17 of the judgment passed by the Additional District Judge dated 15th May, 1999 substantially rejected the claim of the plaintiff-petitioner for 1/3rd share in the suit property and upheld the claim of defendant-respondent No. 1 that the plaintiff-petitioner was entitled to 1/7th share in the suit property and 1/4th share in the shop situated at main bazar, Ballabgarh. Para 17 of the judgment passed by the Additional District Judge reads as under :—

> "No doubt, the appellant is carrying on his medical practice with Ram Nath in the shop in dispute since 1972 and the partries are residing separately, but it does not mean that the partition of the property in dispute has taken place by metes and bounds. Therefore, it is held that the property is still joint and partible. The appellant as well as all the six respondents are having 1/7the share each in the property left by their parents. In the house and plot in dispute, they are having 1/7th share and in the shop in dispute 1/4th share each as the same have not been partitioned till date. If the contesting parties have no dispute regarding the fact that only the appellant and the respondents No. 1 and 2 are owners of the property in dispute, even that the same cannot

be accepted to be correct particularly when it has been established that all the seven persons who are parties to the present litigation are having eual shares in the dispute property. The wrong description on the part of the respondent No. 1 regarding the share of the parties in para No. 3 of the plaint is also not sufficient to dismiss the suit as argued by the learned counsel for the appellant."

(13) I have thoughtfully considered the respective submissions made by the learned counsel for the parties and I am of the view that this petition merits acceptance because under Section 152 of the Code only errors of clerical or arithmetical nature in judgments, decrees or orders arising therein from any accidental slip or omission may at any time be corrected either on its own motion or on the application of any of the parties. The judgment cited by the learned counsel in the case of *Dwarka Das* (supra) substantially support the argument. In that case, a contractor has filed a suit claiming damages for breach of contract besides claiming other amounts payable by the respondent to him. The suit for recovery was decreed with a direction that the contractor would also be entitled to future interest at the rate of Rs. 6% per annum. Thereafter, the application under Section 152 of the Code was filed praying for award of interest from the date of the suit till the date of decree by correcting the judgment and decree alleging that the ground to award interest pendente-lite was an accidental omission. The trial Court allowed that application and on appeal to the Hon'ble Supreme Court the application was dismissed and the claim for award of interest pendente-lite was rejected. Explaining the scope of section 152 of the Code. Their Lordships observed as under :—

"6. *Section 152 CPC provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders of errors arising therein from any accidental slip or omission. The exercise of this 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. The settled position of law is that after the passing of the judgment, decree or order, the court or the tribunal becomes functus officio and thus being not entitled to*

vary the terms of the judgments, decrees and orders earlier passed. The corrections contemplated are of 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 for which the proper remedy for the aggrieved party is to file appeal or review application. It implies that the section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the province of Sections 151 and 152 of the CPC even after passing of effective orders in the lis pending before them. No court can, under the cover of the aforesaid sections, modify, alter or add to the tems of its original judgment, decree for order. In the instant case, the trial court had specifically held the respondent-State liable to pay future interest only despite the prayer of the appellant for grant of interest with effect from the date of alleged breach which impliedly meant that the Court had rejected the claim of the appellant insofar as pendente lite interest was concerned. The omission in not granting the pendente lite interest could not be held to be accidental omission or mistake as was wrongly done by the trial court,—vide order dated 30th November, 1973. The High Court was, therefore, justified in setting aside the aforesaid order by accepting the revision petition filed by the State." (emphasis added)

(14) Similar view has been taken in the case of ***Jayalakshmi Coelho*** versus ***Oswald Joseph Coelho (2).*** In that case, a decree for divorce on the ground of mutual consent was passed and the terms of compromise were not incorporated in the decree. The husband after passing of the decree moved an application asserting that the order did not incorporate other reliefs which were mentioned in the

(2) 2001 (4) SCC 181

compromise. One such omission related to transfer of a flat which was part of the compromise. It was asserted that flat was to be transferred to the husband after making some payment to the wife. The Family Court ordered amendment of the decree and incorporated various clauses of the compromise in the decree which lead to the filing of the writ petition in the Bombay High Court and appeal to the Supreme Court. after examining in detail the whole case law. Their Lordships took the view that substantive error like omission to incorporate the terms of compromise in the decree could not be corrected under Section 152 of the Code. The view of Their Lordships are deducible from paras 13 and 14 which read as under :—

> "So far as the legal position is concerned, there would hardly by any doubt about the proposition that in terms of Section 152 CPC, any error occurred in the decree on account of arithmetical or clerical error or accidental slip may be rectified by the court. The principle behind the provisions is that no party should suffer due to mistake of the Court and whichever is intended by the court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice. A reference to the following cases on the point may be made :
>
> The basis of the provision under Section 152 CPC is found on the maxim *actus curiae neminem gravabit* i.e an act of court shall prejudice no man (Jenk Cent-118) as observed in a case reported in Assam Tea Corpn. Ltd. versus Narayan Singh AIR 1981 Gau. 41. Hence, an unintentional mistake of the Court which may prejudice the cause of any party must be rectified. In another case reported in L. Janakiramma Iyer versus P.M. Niolakanta Iyer AIR 1962 SC 633 it was found that by mistake the words "net profit" were written in the decree in place of "mesne profit". This mistake was found to be clear by looking to the earlier part of the judgment. The mistake was held to be inadvertent. In Bhikhi Lal versus Tribeni AIR 1965 SC 1935 it was held that a decree which was in conformity with the

judgment was not liable to be corrected. In another case reported in Master construction Co. (P) Ltd. versus State of Orissa AIR 1966 SC 1047 it has been observed the arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the court liable to be corrected. To illustrate the point, it has been indicated as an example that in a case where the order may contain something which is not mentioned in the decree would be a case of unintentional in the decree would be a case of unintentional omission or mistake. Such omissions are attributable to the court which may say something which it did not intend to say or omit. No new arguments or rearguments on merits are required for such rectification of mistake. In a case reported in Dwaraka Das versus State of M.P. 1999(3) SCC 500 this Court has held that the correction in the order or decree should be of the mistake or omission which is accidental and is not intentional without going into the merits of the case. It is further observed that the provisions cannot be invoked to modify, alter or add to the terms of the original decree so as to in effect pass an effective judicial order after the judgment in the case. The trial Court had not granted the interest pendente lite though such a prayer was made in the plaint but on an application moved under Section 152 CPC the interest pendente lite was awarded by correcting the judgment and decree on the ground that non-awarding of the interest pendente lite was an accidental omission. It was held that the High Court was right in settling aside the order. Liberal usse of the provisions under Section 152 CPC by the courts beyond its scope has been deprecated. While taking the above view this Court had approved the judgment of the Madras High Court in Thiruanavalli Ammad versus P. Venugopala Pillai AIR 1940 Mad 29 and relied on Maharaj Puttu Lal versus Sripal Singh AIR 1937 Oudh 1991 Similar view is found to have been taken by this

Court in a case reported in State of Bihar versus Nilmani Sahu 1996(11) SCC 528 where the Court in the guise of arithmetical mistake on reconsideration of the matter came to a fresh conclusion as to the number of trees and the valuations thereof in the matter which had already been finally decided. Similarly in the case of Bai Shakriben versus Special Land Acquisition Officer 1996(4) SCC 533 this Court found omission of award of additional amount under Section 23(1-A), enhanced interest under Section 28 and solatium etc. could not be treated as clerical or arithmetical error in the order. The application for amendment of the decree in awarding of the amount as indicated above was held to be bad in law.

As a matter of fact such inherent powers would generally be available to all courts and authorities irrespective of the fact whether the provisions contained under Section 152 CPC may or may not strictly apply to any particular proceeding. In a matter where it is clear that something which the court intended to do but the same was accidentially slipped or any mistake creeps in due to clerical or arithmetical mistake it would only advance the ends of justice to enable the Court to rectify such mistake. But before exercise of such power the court must be legally satisfied and arrive at a valid finding that the order or the decree contains or omits something which was intended to be otherwise, that is to say, while passing the decree the court must have in its mind that the order or the decree should be passed in a particular manner but that intention is not translated into the decree or order due to clerical, arithmetical error or accidental slip. The facts and circumstances may provide clue to the fact as to what was intended by the court but unintentionally the same does not find mention in the order or the judgment or something which was not intended to be there stands added to it. The power of rectification of clerical, arithmetical errors or accidental slip does empower the court to have a second thought over the matter and to find that a

better order or decree could or should be passed. There should not be reconsideration of merits of the matter to come to a conclusion that it would have been better and in the fitness of things to have passed an order as sought to be passed on rectification. On a second thought the court may find that it may have committed a mistake in passing an order in certain terms but every such mistake does not permit its rectification in exercise of the Court's inherent powers as contained under Section 152 CPC. It is to be confined to something initially intended but left out or added against such intention."

(15) The principles of law deducible from the judgment of the Supreme Court referred above if applied to the facts of the present case, no doubt is left that the Additional District Judge has allowed substantive amendment in the judgment and decree dated 15th May, 1999 and declared that the plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2 would be entitled to 1/7th share in the suit property alongwith their sisters who have been impleaded as defendant-respondents No. 2 to 5. As a matter of fact, the Additional District Judge on 15th May, 1999 had dismissed the appeal by affirming the finding on all the issues reached by the trial Court. In the concluding para of his judgment dated 15th May, 1999. The Additional District Judge has recorded his opinion, which reads as under :

"Hence, in view of the discussion above, it is held that there is no aberration in the findings arrived at by the learned lower court on various issues and the same are hereby affirmed. Consequently, upholding the impugned judgment and decree, the present appeal is hereby dismissed leaving the parties to bear their own costs. Decree sheet be prepared accordingly and file be consigned to the record room."

(16) Further it cannot be contended now that the sisters were entitled to their shares because the sisters defendant-respondents No. 2 to 5 never asserted their claim before the Additional District Judge, nor any appeal was filed by them before this Court. Moreover, under Sections 152, 153, 153-A of the Code mistakes in the judgment could

be corrected which are of clerical nature, not which are of substantive character. It is also worthwhile to point out that a specific plea that the defendant-respondent alongwith the plaintiff-petitioners and all other parties were entitled to 1/7th share in the suit property was raised before this Court in RSA No. 3807 of 1999 and the same was dismissed on 4th November, 1999. The ground No. 15 incorporated that plea is reproduced in the succeeding para substantially support that this plea was taken and the same was deemed to be rejected. Therefore, the impugned order passed by the Additional District Judge cannot be sustained.

(17) The other argument raised by the learned counsel for the plaintiff-petitioners that principle of res-judicata would operate because the executing Court had passed an order dated 19th January, 2000 does not deserve to be accepted since in the order passed by the executing Court, the view taken was that the executing Court had no jurisidction to review the finding recorded in the judgment and decree and it also held that the executing Court was duty bound to pass final decree in accordance with the preliminary decree drawn in that case which was to the effect that each of the plaintiff-petitioner, defendant-respondent No.1 and defendant-petitioner No. 2 were entitled to 1/3rd share. Therefore, it was held that the executing Court had no jurisdiction to modify the decree. It is, thus, clear that the principle of res-judicata would not have any application in the afore-mentioned situation.

(18) The argument that defendant-respondent No. 1 had no lucus standi also deserves to be rejected because defendant-respondent No. 1 appears to have spent huge amount of money on the marriages of his sisters and, therefore, he was entitled to raise the argument that 1/7th share only could be given to plaintiff-peitioner No. 1 and defendant-petitioner No. 2.

(19) It is also appropriate to deal with the argument raised by Shri Adarsh Jain while relaying on provisions of order xx rule 6 of the Code that the decree shall always agree with the judgment. It is true that in para No.17, the Additional District Judge, Faridabad has subsantively rejected the argument that only 1/3rd share was available to plaintiff-petitioner No. 1, defendant-respondent No. 1 and defendant-petitioner No. 2, yet one cannot lose sight that a specific plea was raised before this Court in regular second appeal No. 3807 of 1999

filed by defendant-respondent No. 1. Para No. 15 of the grounds of appeal filed by defendant-respondent No. 1 reads as under :—

> "That the courts below have erroneously decided issue No. 2 and have wrongly concluded that all the parties have only 1/7th share in the property in dispute. The courts below have failed to consider that according to the averments of the plaintiff-respondents, the plaintiff and defendants No. 1 and 2, have 1/3 share each in the property in dispute and that the same has not been controverted or contested by defendants No. 3—6."

(20) A perusal of the above mentioned ground clearly shows that the ground taken by defendant-respondent No. 1 is deemed to have been rejected as the regular second appeal was dismissed on 4th November 1999,—vide order Annexure P.4. Therefore, in such a situation, the provisions of order XX rule 6 of the Code would not come to the rescue of defendant-respondent No. 1.

(21) For the reasons recorded above, the revision petition is allowed. The order dated 12th May, 2000 passed by the Additional District Judge, Faridabad is set aside and the decree is allowed to stand as it was drawn originally by the trial Court on 30th August, 1997.

R.N.R.

Before M.M. Kumar, J.

STATE OF HARYANA AND ANOTHER,—*Petitioners*

versus

KRISHAN CHAND,—*Respondent*

C.R. No. 3772 of 2001

28th January, 2002

Arbitration Act, 1940—Ss. 3, 38, 1st Schedule Cl. 3—Delay of one month in announcing the award—Parties taking willing part in the proceedings without any protest—Civil Court making the award as rule of the Court—1st Appellate Court though not extending time yet dismissing the appeal—Whether the High Court has jurisdiction to extend the time—Held, yes.