

Before Gurnam Singh, J.

MOHINDER SINGH AND OTHERS,—Petitioners

versus

TEJA SINGH AND OTHERS,—Respondents.

Civil Revision No. 660 of 1976

August 29, 1978.

*Civil Procedure Code (V of 1908)—Section 152—Wrong Khasra number mentioned in the heading of a plaint—Judgment and decree passed in terms of the number mentioned therein—Application for correction of the plaint and decree filed before the Executing Court—Such error—Whether can be rectified under section 152.*

*Held*, that section 152 of the Code of Civil Procedure 1908 gives power to rectify any mistake in the judgment, decree or order or errors arising therein from accidental slip or omission and it must include an accidental slip or omission traceable to the conduct of the parties themselves. No doubt the Court cannot go into the disputed questions regarding the principle in dispute, but if the mistake is so palpable that nobody can possibly have any doubt as to what the parties meant or what the Court meant when it passed the judgment, decree or order, such a correction can be made even under section 152 of the Code.

(Para 8)

*Petition under section 115 C.P.C. for the revision of Shri Behari Lal, Sub-Judge, I Class, Dasuya, dated 29th January, 1976, holding that mistake of mentioning wrong khasra number 20 in place of 24 can be corrected in the plaint in this case. After going through the Jamabandi placed in the original case, it is found that correct Khasra Number is 24 and not number 20 while the Khatauni and Khewat are the same and allowing the correct number to be substituted.*

R. N. Aggarwal, Advocate, M. L. Gupta, Advocate, for the Petitioner.

Om Parkash Hoshiarpuri, Advocate, for the Respondents.

#### JUDGMENT

*Gurnam Singh, J.*—Teja Singh, Harbhagat Singh, Firu, Saudagar Singh and Karnail Singh filed a suit for possession of the land measuring 12 kanals comprising of kila Nos. 17 and 20, rectangle No. 15,

khewat No. 95 and khatauni No. 251 as per entries in the *jamabandi* 1966-67, situate in village Galowal, Tehsil Dasuya, in a representative form, alleging that the land belonged to them and the other owners of the village, a list of which was attached with the plaint. The suit was decreed by Sub-Judge 1st Class, Dasuya,—*vide* judgment dated 31st May, 1973.

(2) In the execution proceedings filed by the decree-holders, warrant for possession of the land was issued, but it could not be executed as *khasra* number was not correctly recorded in the decree-sheet. The decree-holders submitted an application in the Executing Court for the correction of the *khasra* number and for the issue of a fresh warrant but it was found that *khasra* No. 20 was correctly given in the decree-sheet in accordance with the plaint. The decree-holders then prayed that in fact the *khasra* number in the revenue record was 24 and it was wrongly recorded as 20, therefore, correction be made in the plaint, judgment and the decree-sheet under S. 152, Civil Procedure Code.

(3) The prayer made by the decree-holders was contested by the judgment-debtor and his counsel urged that under S. 152, Civil Procedure Code, the Court is only empowered to make corrections of clerical mistakes in the judgment and decree-sheet and that the mistakes occurring in the pleadings cannot be corrected.

(4) The Executing Court allowed the application of the decree-holders and directed that the correction of the *khasra* number be made in the plaint, the judgment and the decree. It is against this order that Mohinder Singh and others, the judgment-debtors, have filed this civil revision.

(5) The learned counsel for the petitioners vehemently contended that under S. 152, Civil Procedure Code, clerical or arithmetical mistakes in judgments, decree or orders or errors arising therein from any accidental slip or omission only can be corrected and the corrections sought to be made in the instant case are in the plaint, judgment and decree which is not permissible under law. He relied upon *Hamiduddin Ahmad v. Moyesuddin Mondal and others* (1), and *Tarsem Singh Major and others v. Smt. Jagindro and others* (2). In

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(1) A.I.R. (33) 1946 Calcutta 336.

(2) A.I.R. 1959 Pb. 88.

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case *Tarsem Singh Major and others v. Smt. Jagindro and others* (supra), it was observed that if the decree is not drawn up in harmony with the judgment, the Court has no alternative but to rectify the mistake which has been committed. It was further observed therein that the object of allowing amendment under S. 152, Civil Procedure Code, is to provide a remedy for casual omission or negligence of ministerial officers of the Court in preparing decrees of Courts even though they bear the signatures of the Presiding Officer concerned. It was further observed therein that as the power to amend is exercised for the promotion of justice, it should be exercised liberally so as to make the decree conform to the judgment on which it is founded.

(6) Thus it is apparent that in case *Tarsem Singh Major and others v. Smt. Jagindro and others* (supra), the point as to whether correction can be made in the pleadings or not was not considered. In *Hamiduddin Ahmad v. Moyezuddin Mondal and others* (supra), the property in dispute was described wrongly in the schedule attached with the plaint. The plaintiff, in the said case, had claimed the portion being on the East but the decree was regarding the Western portion and it was held that without amending the plaint and thereby reopening the defence, he could not get any relief at all and the prayer was rejected.

(7) In the instant case the claim for possession of the land was based on the basis of the *jamabandi* for the year 1966-67, the copy of which was attached with the plaint. In the *jamabandi*, the *khasra* numbers are 17 and 24 but instead of *khasra* No. 24, the scribe of the plaint wrongly mentioned it as *khasra* No. 20, while the other description of the property in dispute was correctly given. The defendants statements denied the title of the plaintiffs over the suit land. They did not point out the wrong description of the *khasra* numbers in the plaint. The issues were framed and the parties adduced their evidence and ultimately the suit was decreed. All this shows that there was no controversy as regards the identity of the property in dispute, at the time of the suit. The application filed by the decreeholders is only to amend the description of an item of the property in the plaint and in the decree by substituting the correct number for the wrong number and as such it would not amount to amending

the pleadings and it was simply an accidental mistake. In the course of proceedings the parties were not under any misapprehension as to the real subject matter in controversy and no prejudice has been caused to the judgment-debtors because of the mentioning of the wrong *khasra* number.

(8) Section 152, Civil Procedure Code, gives power to rectify any mistake in the judgment, decree or order or errors arising therein from accidental slip or omission and in my opinion it must include an accidental slip or omission traceable to the conduct of the parties themselves. No doubt the Court cannot go into the disputed questions regarding the principle in dispute, but if a mistake is so palpable that nobody can possibly have any doubt as to what the parties meant or what the Court meant when it passed judgment, decree or order, such correction can be made even under S. 152, Civil Procedure Code. In *Bela Debi v. Bon Behary Roy and others* (3), it has been observed that:

“A mistake made by the parties in a deed upon which the suit is founded, and repeated in the judgment, decree or order, may or may not be an ‘accidental slip or omission.’ Where it is clear, that such is the case, the Court can set it right. In doing so, what is going to be rectified is the judgment, decree or order, and it is not at all necessary to rectify either the pleadings or the deed. In making such corrections, however, the Court can only proceed on the footing that there could be no reasonable doubt as to what it really intended to say in its judgment, decree or order. It cannot go into any disputed questions. If there is a particular description of a property in a deed, and a suit has been instituted on the strength of that description, and a decree passed, it is not permissible in proceedings under S. 152 to go into disputed questions as to what property was intended to be dealt with by the parties in the deed. But if the mistake is so palpable that nobody can possibly have any doubt as to what the parties meant or what the Court meant when it passed its judgment, decree or order, the Court has power to correct the judgment.

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(3) A.I.R. (39) 1952 Calcutta 86.

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decree or order which has repeated the mistake. Apart from this exceptional case the Court cannot correct errors anterior to the proceedings before it. For such a purpose, the proper proceeding is by way of a suit under S. 31, Specific Relief Act."

(9) In *Ghulam Ahmad and another v. Khizar Joo and others* (4), plot of land was correctly described except in regard to survey number and it was held that:

"Wherein the plaint, the plan attached to it and the decree the property was correctly described by metes and bounds in all the particulars, except in one particular, namely that of correct survey number, and the correction of the survey number would not affect the identity of the plot, it is a fit case where the Court should under S. 152, allow amendment of the survey number in the decree."

(10) In *Shahzad Khan v. Pt. Sheo Kumar* (5), V. D. Bhargava, J., observed as under:

"Under S. 152 it is open to the appellate Court to correct mistakes and do justice in the case. The Court can under that section amend a clerical error in a decree although the error may have occurred on account of a mistake of the parties themselves in their pleadings and this mistake in the decree was on account of its being copied from the plaint. In such cases it is not necessary to amend the plaint itself. It is enough to amend the decree."

(11) In *Lakshmi Nath Sarma Thakur v. Ghanakanti Kalitani* (6), it has been held that:

"Where as a result of mutual mistake, a wrong plot number was inserted in the plaint, but the parties knew about the real subject-matter and rights of third parties had not

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(4) A.I.R. 1950 Jammu and Kashmir 37.

(5) A.I.R. 1957 Allahabad 133.

(6) I.L.R. 1951 Calcutta II 407.

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intervened, the Court has power to amend the decree by substituting the correct plot number."

(12) In *Appat Krishna Poduwal v. Lakshmi Nathier and others* (7), also, in similar circumstances, the observation was made as under:

"Where an application is filed for correction of an error as regards the survey numbers of an item of property in the plaint schedule and the decree schedule and there is no dispute as regards the identity of the property or boundaries to it, the amendment may be allowed under S. 152. The fact that the assignment deed of the property also has the same errors cannot disentitle the applicants to have the errors set right if they are entitled to it under the Code. So also, the amendment cannot be refused on the ground that the decree sought to be amended is barred by limitation."

(13) In the instant case, the mistake in the judgment and the decree, occurred due to an accidental slip, by writing *Khasra* No. '20' instead of *Khasra* No. '24' in the plaint and its notice was not taken even by the defendants while contesting the suit. Infact there was no doubt about the identity of the land in dispute, as the same had been kept for establishing a school. The correction of the *Khasra* number, thus will not affect the identity of the field in dispute. Justice, therefore, requires that the necessary correction be made in the plaint, judgment and decree, under S. 152, Civil Procedure Code. Thus I do not see any illegality in the order under revision. The result is that this civil revision petition is dismissed. No order as to costs.

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K.T.S.

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(7) A.I.R. (37) 1950 Madras 751.