Before Hon'ble R. P. Sethi & R. L. Anand, JJ.

GITA RAM KALSY & OTHERS—*Appellants.*

versus

ARJAN SINGH KALSY & OTHERS—*Respondents.*

R.S.A. No. 2031 of 1978

16th February, 1996

Code of Civil Procedure (V of 1908)—S. 152—Scope—Every mistake or omission cannot be rectified—S. 152 only to amend & correct clerical or arithmetical mistakes—Scope of S. 152 is not substitute a remedy for one which is otherwise available, applicant has already availed remedy by approaching the Supreme Court.

Held, that the scope of Section 152, C.P.C. is only to amend and correct the clerical or arithmetical mistake. Admittedly, there was no clerical or arithmetical mistake in the judgment of the learned Single Judge, who was fully conscious of the controvery between the parties. The real controvery was whether the properties denoted by the letters 'ABCDEFG' and letters 'XYZ' were the joint properties subject to partition or not. There was no accidental slip or omission. The learned Single Judge wanted to set aside the judgment and decree of the first appellate Court. He allowed the appeal of the plaintiffs-appellants and restored the judgment and decree of the trial Court. The scope of Section 152 is not to substitute a remedy for the one which is otherwise available to an applicant. The applicant has already availed the remedy by attacking the judgment and decree of the learned Single Judge in the Hon'ble Supreme Court. He could make an application for the review of the judgment, which he has not done, because he knew it that there was no illegality or irregularity in the judgment of the learned Single Judge passed in the R.S.A. nor there was any sufficient cause for the review of the judgment under Order 47 C.P.C.

(Para 12)

Code of Civil Procedure (V of 1908)—S. 115—Scope—No Court has inherent power to invest itself with jurisdiction not conferred on by law.

Held, that reverting to the scope of Section 151, C.P.C. which lays down that 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, it is said that this section does not give right to a litigant to bypass or supersede the other provisions of law.

(Para 14)

Further held, that no Court has any inherent power to invest itself with the jurisdiction which is not conferred on it by law. The allowing of the prayer as contained in the application would mean that we are exercising the powers of appellate or revisional jurisdiction, which is not permissible.

(Para 15)

Sunil Chadda, Advocate, for the Petitioners.

Ashish Handa, Advocate, for the *Respondents.*

JUDGMENT

R. L. Anand, J.

(1) This order disposes of application dated 28th November, 1994 under Sections 152, 153-A, read with Section 151 of the Civil Procedure Code, moved by respondent No. 1 (iii) for making necessary amendment/correction in the judgment and decree dated 19th December, 1990 passed in Regular Second Appeal No. 2031 of 1978 and it has been averred by the applicant that the plaintiffs-appellants filed a suit for partition of joint area marked as 'ABCDEFG' shown red in plan attached with the plaint after leaving appropriate portion for purposes of *ingress* and *egress* in the *Haveli* as passage through Deodi Kalan marked 'X' in the plan by metes and bounds. As per the admitted case of both the parties, residential houses of the family known as Haveli Nandpurian of which aforesaid 'ABCDEFG' is a portion already stood partitioned between five different branches of the family by virtue of two partition deeds dated 30th August, 1892 and 23rd June, 1909. However, as per allegations made in the plaint, the plaintiff alleged that out of the said Haveli portion shown as 'XYZ' were left joint between the parties and for which by way of the present suit, the plaintiffs applied for partition thereof. The area shown as 'X' represents Deodi Kalan, 'Y' represents a bathroom and 'Z' represents a 12' wide strip or land.

(2) The said suit was contested on the ground that the portions 'Y' and 'Z' are in the exclusive possession of the defendants since 1892 as these portions fell to their share on the basis of the registered partition deed dated 30th August, 1892. With regard to portion 'X' representing Deodi Kalan, it was stated by the defendants that the same alone was to be partitioned without including the other joint properties of the parties situated at Ludhiana.

(3) The suit which was instituted on 18th February, 1970 and decided on 17th September, 1975 by the Sub Judge, 1st Class, Ludhiana, it was held that the property shown by the letters 'XYZ' is joint property of the parties. The suit was decreed and a preliminary decree was passed in favour of the plaintiffs granting the declaration that out of the Deodi Kalan marked 'X' a passage of 6' width be kept intact for *ingress* and *egress* of the occupants of the interior portion of the Haveli and the remaining area of Deodi Kalan marked 'X' and the area shown by the letters 'Y' and 'Z' be divided into five equal shares. The plaintiffs Nos. 1 to 7 are entitled to one-fifth share. Plaintiffs Nos. 8 to 16 are entitled to one-fifth share jointly and the plaintiff No. 17 is also entitled to one-fifth share. Similarly, defendants Nos. 1 to 3 are entitled to one-fifth share and defendants Nos. 4 and 5 are also entitled to one-fifth share. It was ordered by the trial Court that preliminary decree be passed in those terms.

(4) Aggrieved by the judgment dated 17th September, 1975 the defendants filed an appeal and the plaintiffs filed cross-objections. *Vide* judgment dated 21st September, 1978 Shri Amar Singh Gill, District Judge, Ludhiana set aside the judgment and decree of the trial Court by accepting the appeal of the defendants and the suit filed by the plaintiffs was dismissed. The plaintiffs also filed cross-objections before the Court of Additional District Judge. Those cross-objections were naturally dismissed on account of the acceptance of the appeal of the defendants.

(5) The unsuccessful plaintiffs then filed a regular second appeal No. 2031 of 1978, which was disposed of.—*vide* judgment dated 19th December, 1990 by the Hon'ble Single Judge of the High Court (Hon'ble Mr. Justice G. R. Majithia). The learned Single Judge for the reasons given in his judgment, referred to above, set aside the judgment and decree of the first appellate Court and the judgment and decree of the trial Court was restored. The learned Single Judge also held that the Deodi Kalan was the joint property of the five branches and there was no limitation on the rights of the co-sharers of the joint property to get it partitioned.

(6) Now it has been averred in the application dated 28th November, 1994 under Sections 152, 153-A read with Section 151, C.P.C. that at the time of advancing the arguments and while delivering the judgment, neither the portions marked 'Y' and 'Z'

was referred nor any discussion or finding on the said portions were given by the learned Single Judge. From this omission, the applicant wants to infer that the protions marked 'Y' and 'Z' were kept intact and it should be inferred that the suit of the plaintiffs *vis-a-vis* the portions marked 'Y' and 'Z' should be deemed to have been dismissed. But there is no specific finding by the learned Single Judge to that effect. According to the applicant, the learned Single Judge ought to have allowed the appeal partially by holding that the property covered under the portion 'X' is the joint property of the parties while the properties denoted by the letters 'Y' and 'Z' were not the joint properties of the parties. The applicant avers that the suit of the plaintiffs with regard to the portions marked 'Y' and 'Z' should be deemed to have been considered as having been dismissed as the findings were given by the learned first appellate Court. According to the applicant, there was inadvertent omission on the part of the learned Single Judge while disposing of the Regular Second Appeal. This omission can be rectified by resorting to the provisions of Section 153-A, 152 and 151, C.P.C., by giving clarifications.

(7) Notice of the application was given to the respondents, i.e., the plaintiffs in the trial Court. A preliminary objection was taken that the applicant has not approached this Court with clean hands. The applicant mentioned in para No. 11 of the application that SLP was filed before the Hon'ble Supreme Court against the judgment and decree of the High Court and the said SLP has been dismissed. Has *mala-fide* concealed the grounds taken in the SLP and for this short ground the present application is liable to be dismissed. Moreover the present application has been filed after four years of the judgment dated 19th December, 1990. So much so that final decree has been passed by the trial Court on 9th February, 1993 after dismissing of similar objections. The present application has been filed merely to harass the decree-holder and to prolong the litigation so that the decree-holder may not reap the fruits of the decree. The present application has been filed with *mala-fide* intention with a view to go behind the trial Court decree dated 17th September, 1975 and to reopen the entire case after 25 years. The application under Section 152 seeks to substitute or repel or review of the judgment and the applicant has already resorted to these provisions of law. According to the respondent there is no clerical or arithmetical mistake or error arising therein in the judgment dated 19th December, 1990 passed by the learned Single Judge nor it suffers from any infirmity. The learned Single Judge was alive to the point in issue and he clearly mentioned about the properties denoted by the letters

'Y' and 'Z'. By the present application the applicant wants to review the judgment under the garb of Sections 152, 153-A and 151 of the Civil Procedure Code and he is not permitted to do so. The respondent also admitted in the reply that arguments were also addressed with regard to bathroom marked 'Y' and with regard to portion of the property shown by letter 'Z'. The findings *vis-a-vis* properties covered and denoted by the letters 'Y' and 'Z' were also given. The application for preparing final decree was moved on 14th December, 1975. Local Commissioner was appointed. The report given by the Local Commissioner was affirmed by the trial Court on 30th October, 1976. Final decree was also passed on 9th February, 1993 after dismissing the objections. According to the respondent, the entire area marked 'ABCDEFG' comprising areas marked 'XYZ' were partitioned between the parties. There is no arithmetical or clerical mistake in the judgment of the learned Single Judge and the provisions of Sections 152, 153-A and 151, C.P.C., are not applicable.

(8) We have heard the learned counsel for the parties and with their assistance have gone through the record of the R.S.A., which fortunately contains the judgments of the trial Court as well as of the first appellate Court. We have already given above the brief facts of the case and there is no ambiguity at all left and we are of the opinion that the controversy before the trial Court was with regard to the properties denoted by letters 'ABCDEFG' and also that all the portions of the property denoted by letters 'XYZ'. All these properties were held to be joint and thereafter by a well reasoned judgment the trial Court by holding that the property was joint, passed a preliminary decree declaring that out of the Deodi Kalan marked 'X', the passage 6' in width be kept intact for ingress and egress of the occupants of the interior portion of the Haveli and the remaining area of the Deodi Kalan marked 'X', 'Y' and 'Z' be divided into five equal shares. This very judgment was restored.—*vide* judgment dated 19th December, 1990 passed by the learned Single Judge in R.S.A. No. 2031 of 1978. Meaning thereby that the declaration which was granted by the trial Court on 17th September, 1975 was to be respected by the parties and there was no manner of doubt that the properties covered by the letters 'Y' and 'Z' were also treated to be joint property which had to be divided between five branches of the common ancestral. If there was no serious contest *vis-a-vis* the properties marked by the letters 'Y' and 'Z', it was not necessary on the part of the learned Single Judge to make a specific mention in the concluding portion of the judgment. If a serious contest was given with regard to the property covered by the letter

'X', i.e., the Deodi Kalan, a specific finding was given by the learned Single Judge that treating to be the joint properties of the parties, it does not mean that *vis-a-vis* the properties dented by letters 'Y' and 'Z' were exclusive properties of the defendants. A final seal was also put on the judgment dated 19th December, 1990 by the Hon'ble Supreme Court in the S.L.P.

(9) During the pendency of the application, Shri Sunil Chadha, Advocate, appearing on behalf of the applicant, prayed to this Court for the production of the copy of the special leave petition filed by his client before the Hon'ble Supreme Court, but the same has not been filed before us for the reasons best known to his client. It is the specific case of the respondents that all the pleas which have been taken in the present application were taken in the S.L.P. before the Hon'ble Supreme Court and those pleas were considered and rejected. It is the settled law of the land that the parties is supposed to produce the best evidence in support of its plea, and if not produced, an adverse inference can be drawn against such a party under Section 114 of the Indian Evidence Act. The non-production of the copy of the special leave petition strengthens the doubt of this Court and lends support to the contention of the respondent that the pleas now being raised before us were taken in the S.L.P. and those were considered and rejected.

(10) The counsel Shri Chadha submitted that his client has made efforts to procure the copy of the grounds of appeal of the special leave petition, but the record has been destroyed by the Hon'ble Supreme Court after three years and for that reason his client is not in a position to produce the grounds of the Special Leave Petition. We are not in a position to accept this contention of Mr. Chadha being afterthought. Copy of the Special Leave Petition must be in the brief of the lawyer, who appeared before the Hon'ble Supreme Court, which has been withheld intentionally so that the truth may not come out that the applicant has already availed of the pleas now agitated in the present application under Sections 152, 153-A and 151 of the Civil Procedure Code.

(11) Now we want to study the scope of the provisions of Sections 152, 153-A and 151 of the Civil Procedure Code, as to whether under the given set of circumstances the applicant can file the present type of application by circumventing the other relevant provisions of law. If the applicant was not satisfied with the judgment of the learned Single Judge, his remedy was by way of an appeal which was already filed and rejected. He could file an application for review which he has not filed. The present application

has been moved after four years of the judgment of the learned Single Judge with the underlying idea to reopen the entire case when the applicant has unsuccessfully made an attempt before the Hon'ble Supreme Court.

(12) Section 152 lays down that clerical or arithmetical mistakes in the 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. The above provision of the law would show that only those mistakes which are clerical or arithmetical in the judgments, decrees or orders or those errors which took place on account of accidental slip or omission can be corrected by the Court concerned. The learned counsel tried to show that when the learned Single Judge has not given any finding vis-a-vis the properties denoted by the letters 'Y' and 'Z', there was accidental slip or omission and the learned Single Judge wanted to hold that the property covered by the letters 'Y' and 'Z' was not the joint property of the parties as held by the first appellate Court. We are not in a position to agree with the argument of the learned counsel for the applicant. The judgment of the learned Single Judge has to be read as a whole and not in isolation. In the earlier part of the judgment, the properties denoted by the letters 'Y' and 'Z' were also in consideration with the property denoted by the letter 'X'. The learned Single Judge did not agree with the findings of the first appellate Court and restored the judgment and decree of the trial Court leaving no manner of doubt that the properties claimed jointly were, in fact, held to be so by the learned Single Judge. Every mistake or omission cannot be rectified under Section 152 C.P.C. The scope of Section 152, C.P.C., is only to amend and correct the clerical or arithmetical mistake. Admittedly, there was no clerical or arithmetical mistake in the judgment of the learned Single Judge, who was fully conscious of the controversy between the parties. The real controversy was whether the properties denoted by the letters 'ABCDEFG' and letters 'XYZ' were the joint properties subject to partition or not. There was no accidental slip or omission. The learned Single Judge wanted to set aside the judgment and decree of the first appellate Court. He allowed the appeal of the plaintiffs-applicants and restored and judgment and decree of the trial Court. The scope of Section 152 is not to substitute a remedy for the one which is otherwise available to an applicant. The applicant has already availed the remedy was attacking the judgment and decree of the learned Single Judge in the Hon'ble

Supreme Court. He could make an application for the review of the judgment, which he has not done, because he knew it that there was no illegality or irregularity in the judgment of the learned Single Judge passed in the R.S.A. nor there was any sufficient cause for the review of the judgment under Order 47, C.P.C. He has adopted a clandestine mode by resorting to the provisions of Section 152, C.P.C., which are not applicable at all to the facts in hand.

(13) The learned counsel then drew our attention to Section 153-A, C.P.C., and urged that the relief claimed in the application can be given by this Court under this Section. Again to our advantage we are quoting Section 153-A. C.P.C., which lays down that where an appellate court dismisses an appeal, under Rule 11 of Order XLI, the power of the Court to amend, under Section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the Court of first instance. This Section has to be read in consonance with Section 152. We have already held above that there was no arithmetical or clerical mistake nor there was any accidental slip or omission on the part of the learned Single Judge. He has discussed in his judgment whether the properties denoted by letters 'XYZ' were joint properties of the parties or not, by making the observations : "Thus, it is proved on the record that Deori Kalan was the joint property of five branches and there was no limitation on the rights of the cosharers of the joint property to get it partitioned." His Lordships never meant that the properties denoted by the letters 'X' and 'Y' were the exclusive properties of the defendants. The observations "the judgment and decree of the first appellate Court are set aside and those of the trial Court are restored" have to be read also with the above observations of the learned Single Judge.

(14) Reverting to the scope of Section 151, C.P.C., which lays down that 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, it is said that this section does not give right to a litigant to bypass or supersede the other provisions of law. The remedy of the applicant, if there is any doubt in his mind, was to file an appeal. This remedy was availed of. He remained unsuccessful before the Hon'ble Supreme Court and thereafter he has resorted to this method by invoking the provisions of Sections

151, 152 and 153-A of the Civil Procedure Code, which are totally not applicable to the facts in hand.

(15) No Court has any inherent power to invest itself with the jurisdiction which is not conferred on it by law. The allowing of the prayer as contained in the application would mean that we are exercising the powers of appellate or revisional jurisdiction, which is not permissible.

(16) The learned counsel for the applicant placed reliance on (*Rai*) *Jatindra Nath Chowdhury* v. *Uday Kumar Das and others* (1), wherein it was held as follows :—

> "The jurisdiction of the Board to recommend the alternation of a former order in Council on the ground that by inadvertence it does not give effect to the intention of the Board as expressed in their judgment is undoubted. Such a jurisdiction was exercised in the present case in order not to defeat the manifest rights of the defendant which were intended to be effectuated by the former decision of the Board."

This authority is not applicable to the facts in hand. Any interpretation to the observations of the learned Single Judge contained in the judgment referred to above would tantamount to substituting our own opinion while dealing with an application under the above provisions. In the cited case on account of some inadvertence the intention of the Board was not properly expressed in the order and a clarification was given for clearance of the doubts, but it was specifically held by their Lordships that no observations can be made to defeat the manifest rights of the parties, which were intended to be effectuated by the decision. In the case in hand the rights of the parties had been adjudicated not by the learned Single Judge but also by the trial Court and the findings of the trial Court have been restored. Whether the decree has been executed in terms of the declaration or not it is the concern of the executing Court, which has the power to adjudicate under Section 47 C.P.C., which lays down that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall

(1) A.I.R. 1931 P.C. 104.

be determined by the Court executing the decree and not by a separate suit. In this case the final decree has also been prepared though under challenge. This Court cannot go behind a decree and make out a new case for the applicant.

(17) Reliance was also placed by the learned counsel for the applicant on *Samarendra Nath Sinha and another* v. *Krishna Kumar Nag* (2), and *Kale Gowda* v. *Akkayyamma and others* (3). Both these authorities are not applicable to the case in hand. We have already held above that there was no error arising from accidental slip, which can be corrected on our part. If in the concluding portion a particular reference with regard to the properties denoted by the letters 'Y' and 'Z' has not come the omission was intentional. It appears that the Hon'ble Single Judge was clear in his mind that the properties subject matter of the suit, including covered by the letters 'X', 'Y' and 'Z' were the joint properties of the parties and liable to partition. The authority in *Samarendra Nath Sinha* v. *Krishna Kumar Nag* (supra) was again discussed and relied upon in the case *Kale Gowda* v. *Akkayyamma* (supra). The relief was earlier granted by the trial Court. The suit for partition was decreed in favour of the plaintiffs-respondents. The judgment and decree of the trial Court were restored. The properties denoted by the letters 'X', 'Y' and 'Z' were taken into consideration as to whether those properties were the joint properties of the parties or not. We may be transgressing our powers under Sections 151, 152 and 153-A of the Civil Procedure Code, if we now modify the findings of the learned Single Judge and those of the trial Court.

(18) We are also of the opinion that by this application, the applicant wants to reagitate an issue which has been settled upto the highest court of the land. We hold that the scope of Sections 151, 152 and 153-A, C.P.C. plays in its own sphere and cannot override the express and specific provisions of the Code by which the decree of a Court can be challenged. We are of the considered view that this application is devoid of any merit and the same is liable to be dismissed with costs and we order accordingly. The Counsel's fee is assessed at Rs. 1,000.

J.S.T

(2) A.I.R. 1967 S.C. 1440.
(3) A.I.R. 1975 Karnataka 107.