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TILAK RAJ

V.

BAIKUNTHI DEVI (D) BY LRS.

Civil Appeal No. 1058 of 2009

FEBRUARY 16, 2009

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[S. B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

Code of Civil Procedure, 1908:

s.152 – Clerical mistake can be rectified by court in C *exercise of inherent powers under s.152 provided such mistake is genuine and bona fide – Administration of justice.*

Inheritance: Land acquired by FCI, found to be surplus – Returned to widow of original owner who was one of the heir on payment of certain sum – Claim for share in the land by the D *other heir – Held: It was reversion of land and not purchase by widow in her own right – She received it as representative of original owner, therefore, ownership of reverted land has to be shared by the other heir.*

E **'D' and 'M' were brothers. 'M' was father of appellant. The suit property was owned by 'D' who died in 1968 leaving his wife, respondent 1 and his mother 'R' as natural and legal heirs. 'R' executed a registered Will in favour of her grandson, the appellant. However, the land** F **left by 'D' was mutated in favour of respondent 1 on the basis of Will.**

Appellant filed a suit for possession claiming half share in the property bequeathed by Will in his favour by his grandmother, which was decreed. In the execution G **proceedings, it was found that Khasra number 25R/52 was wrongly mentioned in the decree instead of 26R/52 due to which decree was not executed.**

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Certain other lands owned by 'D' was acquired by FCI during his life time. After his death, a part of that land was re-conveyed in view of the fact that the FCI found that the said acquired land was surplus.

Appellant filed a suit for declaration that he was a co-sharer of the land returned by FCI to respondent 1 and the land which was wrongly described in the earlier suit. The suit was decreed. The appellate court allowed the appeal of respondent 1 holding that in the earlier suit, the description of property was wrong and the remedy available to appellant was to move an appropriate application under section 152 CPC. Regarding other portion of the property, the appellate court was of the view that the same was barred under Order 2 Rule 2 CPC, as claim regarding the said property not having been made in the earlier suit, the appellant was barred from claiming the same in the second suit. High Court dismissed the appeal. Hence these appeals.

Allowing the appeals, the court.

HELD: 1.1. The Patwari had issued a wrong certified copy of Jamabandi incorporating therein Khasra No. 25R/52 against Khewat No. 50 Khatoni No. 60 of Jamabandi for the year 1966-67 of village Mojowal. In fact there was no Khasra No. 25R/52. It was actually 26R/52. On the basis of and on account of such wrong supply of materials in the certified copy of Jamabandi, the appellant had sued by wrongly mentioning identity of land as Khasra No. 25R/52. There was no dispute that the parties in the earlier suit were agitating regarding the Estate of 'D'. In that view of the matter the appellant was not at fault at all for suing the land as mentioned in the plaint filed in the earlier suit. Actually, this was a mistake on the part of the Patwari or some Revenue Officer. It was nowhere disputed that Khasra No. 26R/52 was owned by father of appellant and there was no Khasra Number described as 25R/52.

A Moreover, no rebuttal on behalf of the respondent was made in the written submissions in the earlier suit or otherwise that it was not Khasra No. 25R/52. The aforesaid mistake was of clerical nature which could have been corrected by applying the provisions of Section 152 CPC.
B The remedy that was available to the appellant was to file an application seeking for amendment of the decree by way of correcting the clerical mistake in respect of Khasra Number. Since the mistake was clerical in nature and the appellant being not responsible for the said clerical
C mistake which had occurred due to wrong recording of Khasra Number, there is no reason as to why such a genuine and bona fide mistake cannot be allowed to be corrected by exercising the powers under Section 152 CPC. [Paras 13, 14] [461-H; 462-A, B, C, D, E, F, G]

D *K. Rajamouli v. A.V.K.N. Swamy* (2001) 5 SCC 37 – relied on.

Deva Ram v. Ishwar Chand (1995) 6 SCC 733; Kewal Singh v. Lajwanti (1980) 1 SCC 290 – referred to.

1.2. Since the court exists to dispense justice, any
E mistake which is found to be clerical in nature should be allowed to be rectified by exercising inherent power vested in the court for sub-serving the cause of justice. The principle behind the provision is that no party should suffer due to bona fide mistake. Whatever is intended by
F the court while passing the order or decree must be properly reflected therein otherwise it would only be destructive of the principle of advancing the cause of justice. In such matters, the courts should not bind itself by the shackles of technicalities. [Para 15] [463-B, C]

G *S. Satnam Singh and Ors. v. Surender Kaur and Anr.* 2008(15) SCALE 626 – relied on.

1.3. At this stage, directing appellant to seek remedy under the provisions of Section 152, CPC, would only delay and prolong the litigation between the parties. In
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order to cut short the litigation and to save precious time of the court as also to give quietus to the entire dispute, in exercise of the powers under Section 152 CPC, it is directed that the decree be corrected by giving the correct Khasra No. 26R/52 in place of Khasra Number 25R/52. Having decided so, it is not necessary to adjudicate as to whether Order 2 Rule 2 CPC would be applicable in the facts and circumstances of the present case and whether or not the subsequent suit was barred. [Para 17] [463-G, H; 464-A]

2.1. It is clear from the perusal of the record that mother of the 'D' (since deceased) had executed a valid registered Will in favour of the appellant and as such the appellant had succeeded to her estate. The land mentioned in the plaint in earlier suit was admittedly acquired in the life time of 'D' for the construction of FCI. Later on this land was found to be surplus and not utilized for the FCI under the general scheme and consequently the land was to be returned to the original owner from whom it was acquired. Accordingly, this land was reverted back to 'D' and a sum of Rs. 4047.06 was paid to the FCI. As a matter of fact, this land was not a purchase against purchase money but in fact, it was refund of the amount of FCI from whose account, this amount was received by deceased. Respondent no.1 never purchased it in her own right. In fact 'D' was the real person to whom the benefit of reversion of land was to go. The respondent was only one of the heirs of 'D'. Even if, respondent no.1 had repaid the amount the same was done and must be held to have been done as a representative of 'D' deceased. On reversion of the land acquired by the FCI, the ownership of the reverted land has to be shared by both the co-sharers, the appellant getting half of the land. [Para 19] [464-D, H; 465-A]

2.2. It has been clearly established that it is a retransfer of the land and the words written in the mutation are "Bad Wapsi" meaning clearly that the acquired land has been given back and amounts to retransfer. The price

A of the land Rs. 4047.06 was charged by the FCI from respondent no.1, which is a proportionate prices of the compensation assessed regarding the acquisition of land. The respondent did not acquire full ownership right in the land re-conveyed by the FCI by any of the manner B and mode as mentioned in Section 34 of the Act. Therefore, there could not have been a case of granting mutation in her favour for the entire land. The claim of the respondent regarding re-purchase of the land by her is devoid of any cogent and substantial documentary evidence, and C therefore, the aforesaid claim could not have been accepted. [Paras 20, 21] [465-B, C, D]

2.3. The appellant would also be entitled to half share of the land which was re-conveyed by the FCI. But since the respondent has made payment of the entire amount D which was charged by the FCI for reconveyencing the land, it would be the obligation of the appellant to pay half of the said amount to the respondent. The half of the land which was released and reconveyed after finding the same to be in surplus, therefore, vest on the appellant and E a declaration to that effect is made under this order. The respondent shall be entitled to receive half of the amount paid to the FCI from the appellant. The appellant is directed to pay the above said amount to the respondent within three months from the date of this Order along with F simple interest @ 9% per annum to be calculated for the period from the date of payment of the said amount by the respondent to the FCI till the date of payment of the amount by the appellant. [Para 22] [465-E, F, G]

Case Law Reference

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(2001) 5 SCC 37	relied on	Para 14
(1995) 6 SCC 733	relied on	Para 9
(1980) 1 SCC 290	referred to	Para 9
H 2008(15) SCALE 626	relied on	Para 16

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1058 of 2009

From the Judgement and Order dated 28.02.2007 in RA No. 69/2006 & RSA No. 2351/1983 of the High Court fo Punjab & Haryana at Chandigarh.

WITH

Civil Appeal No. 1059 of 2009

Rakesh K. Khanna, Reetesh Singh, Jahanvi Wuzah, Shailza Sinha, Surya Kant for the Appellant.

M.L. Varma, S.M. Sarin, P.N. Puri, Satya Mitra for the Respondent.

The Judgement of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J.

1. Leave granted.

2. Being aggrieved by the Judgments and Orders passed by the High Court of Punjab & Haryana at Chandigarh in Review Application No. 69-C/2006 dated 28.2.2007 and RSA No. 2315/83 dated 18.8.2006, the present appeals were filed by the appellant. Since both these appeals involve similar questions of law and facts, we propose to dispose of both these appeals by this common judgment and order.

3. The relevant facts for disposal of the controversy are as under:

One Thakru, the common ancestor of the parties, had wife Smt. Radhi and two sons, namely, Mange Ram and Datta Ram. Datta Ram was married to Smt. Baikunthi Devi, the respondent No. 1 (since deceased). Mange Ram was the father of Tilak Raj - the appellant in both the appeals. The property in suit was owned by and was in the possession of Datta Ram, who died on 23.02.1968, leaving his wife Smt. Baikunthi Devi and his mother Smt. Radhi as natural and legal heirs. Smt. Radhi died

A on 13.09.1968 and before her death, she executed a registered Will dated 30.04.1968 in favour of her grandson - Tilak Raj, the appellant herein. However, the land left by Datta Ram was mutated in favour of Smt. Baikunthi on the basis of Will dated 16.01.1968. In order to establish his claim qua half share of the B property bequeathed by Will in his favour by his grandmother Smt. Radhi, the appellant herein filed a civil suit no. 306 of 1969 against Smt. Baikunthi Devi for a decree for possession of land measuring 7 K 12 = Marlas on the ground that the land measuring 15K 5 Marlas situated in Village Maujowal was owned and C possessed by Datta Ram and he died intestate on 23.2.1968 leaving behind Smt. Baikunthi Devi - his widow and Smt. Radhi his mother. In that civil suit, Smt. Baikunthi set up a Will purporting to have been executed by her husband in her favour on 16.01.1968. The plea of the appellant based on registered Will dated 30.04.1968 executed by his grandmother - Smt. Radhi D was upheld and the suit was decreed in his favour vide judgment and decree dated 05.02.1976. The plea raised by Smt. Baikunthi on the basis of the Will dated 16.01.1968 did not find favour and was rejected.

E 4. A petition for execution of the decree was filed by the appellant. During its execution it was found that Khasra No. 25R/52 has been wrongly mentioned in the decree whereas the correct Khasra No. was 26R/52. Due to such a mistake, the decree could not be executed and possession of the decreetal F land could not be delivered to the appellant.

5. Besides certain other land owned by Datta Ram was acquired by the Fertilizer Corporation of India (for short "FCI") during his life time. After his death, a part of that land was re-conveyed in view of the fact that the FCI found that the said G acquired land was surplus.

6. The appellant filed Civil Suit No. 149 of 1979 for a declaration that he is owner in possession as co-sharer of the two parcels of land, i.e. the land of Datta Ram which was returned by the FCI to Smt. Baikunthi Devi and the land which was wrongly H

described in suit no. 306/1969. The Sub Judge, 1st Class, Anandpur Sahib by his judgment and order dated 31.8.1982 allowed the suit of the appellant by holding that he was entitled for decree for possession of the land which had been wrongly described as Khasra No. 25R/52 measuring 5 K 8 Marlas as mentioned in para A of the plaint, in which he has been held to have = share as co-sharer in the entire land against the defendants. By the said judgment and order, possession of land measuring 13 Kanals 10 Marlas was also decreed in favour of appellant as mentioned in para B of the plaint in which the appellant has been held to have = share as co-sharers in the land comprised of Khewat No. 129 Khatoni No. 181. Suit of the plaintiff was further decreed against the defendants through a decree for declaration that the plaintiff is owner in possession as co-sharer of land measuring 9 Kanals 17 Marlas in which plaintiff has = share as co-sharer in the entire land as fully detailed in Part C of the plaint.

7. Smt. Baikunthi Devi challenged the order dt. 31.8.1982 of Sub Judge, 1st Class, Anandpur Sahib before the Court of Additional District Judge by filing a Civil Appeal. The said appeal was allowed by order dated 7.6.1983 and the Judgment and Decree dated 31.8.1982 passed by Sub Judge, 1st Class, Anandpur Sahib was set aside. The appellate court was of the view that property bearing Khasra No. 26R/52 was not mentioned in the earlier suit and the remedy available to the respondent- appellant herein was to move an appropriate application under section 152 of the Civil Procedure Code (for short 'CPC'). Regarding other portion of the property, the appellate court was of the view that the same was barred under Order 2 Rule 2 CPC, as claim regarding the said property not having been made in the earlier suit, the appellant was barred from claiming the same in the second suit.

8. Aggrieved thereby the appellant filed RSA in the High Court of Punjab & Haryana. During the pendency of RSA Smt. Baikunthi Devi died and her legal heirs filed an application for substitution in RSA which was allowed. Appeal was thereafter

taken up for hearing. After completion of hearing, the High Court by Judgment and Order dated 18.8.2006 dismissed the appeal filed by the appellant. Thereupon, the appellant filed review petition before the High Court but the same was also dismissed by the High Court. Hence these appeals by special leave.

9. Mr. Khanna, learned senior counsel appearing for the appellant argued that appellant although had remedy as provided for under Section 152 and Order 6 Rule 17 CPC but not resorting to the same and filing of fresh suit for rectification of error could not have been said to be illegal either. He also submitted that Order 2 Rule 2 of CPC is not a bar for the claim made by the appellant in the facts and circumstances of the present case. To justify his submission that even if cause of action is the same then also bar of Order 2 Rule 2 CPC would not come into play, he drew our attention to the decisions of this Court in Deva Ram v. Ishwar Chand, (1995) 6 SCC 733 and in Kewal Singh v. Lajwanti, (1980) 1 SCC 290.

10. He also pressed that as per Section 34 of the Punjab Land Revenue Act (hereinafter referred to as 'the Act') mutation is necessary upon transfer of land. Section 34 of the Act reads as under:

> **34. Making of that part of the annual record which relates to landowners, assignees of revenue and occupancy tenants.**
>
> - (1) Any person acquiring, by inheritance, purchase, mortgage, gift or otherwise, any right in an estate is a landowner, assignee of land revenue or tenant having a right of occupancy, shall report his acquisition of the right to the patwari of the estate.
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> (2) xxxxxxxxxxxxxxxxx
>
> (3) The patwari shall enter in his register of mutations every report made to him under sub-section (1) or sub-section (2) and shall also make an entry therein respecting the acquisition of any such right as aforesaid which he

has reason to believe to have taken place, and of which a report should have been made to him under one or other of the sub-sections and has not been so made.

(4) & (5) xxxxxxxxxxx

11. Mr. Khanna also submitted that the respondents have failed to produce any conveyance deed indicating any purchase of the land in question in their favour. Since no such conveyance deed could be produced it cannot be said that the provisions Section 34 of the Act became applicable to the facts of the present case and therefore no exclusive title could have passed to the respondents which would deprive the appellant from claiming his half share in the suit property.

12. Mr. M.L. Verma learned senior counsel appearing for the respondents summarized his submissions by submitting that legal remedies which were available to the appellant were not resorted to by him and having not done so at the appropriate stage, the High Court was justified in coming to the findings and the present appeals are required to be dismissed. It was also submitted by him that since the appellant had failed to move an application as required under Section 152 of the CPC for rectification of error regarding Khasra Number and having not filed any application under Order 6 Rule 17 CPC for amendment of pleadings, which options were although available and the same having not been exercised by the appellant, therefore, these appeals are liable to be dismissed. He also submitted that the respondent had re-purchased the said property on 28.5.1969 by paying an amount of Rs. 4047.06 to the FCI and got possession of the land from the said FCI and therefore the said action amounted to re-purchase of the land by the respondent and therefore the respondent could be treated as owner of the entire land.

13. We have perused the submissions made by the counsel appearing for both the parties and scrutinized the whole record. On appreciation of the records, we are of the opinion that the Patwari had issued a wrong certified copy of Jamabandi

A incorporating therein Khasra No. 25R/52 against Khewat No. 50 Khatoni No. 60 of jamabandi for the year 1966-67 of village Mojowal. In fact there was no Khasra No. 25R/52 whereas it was actually 26R/52. On the basis of and on account of such wrong supply of materials in the certified copy of Jamabandi, B the appellant had sued by wrongly mentioning identity of land as Khasra No. 25R/52. There was no dispute that the parties in the earlier suit were agitating regarding the Estate of Datta Ram. In that view of the matter the appellant was not at fault at all for suing the land as mentioned in the para A of the plaint filed in C suit no. 149 of 1979. Actually, this was a mistake on the part of the Patwari or some Revenue Officer, who had issued the aforesaid Khasra Girdawari. It was nowhere disputed that Khasra No. 26R/52 was owned by Datta Ram and there was no Khasra Number described as 25R/52. Moreover, no rebuttal D on behalf of the respondent was made in the written submissions in Civil Suit No. 306 of 1969 or otherwise that it was not Khasra No. 25R/52.

14. The aforesaid mistake was of clerical nature which could have been corrected by applying the provisions of Section E 152 of the CPC. Counsel appearing for the respondents also during his submissions fairly accepted the aforesaid position. The remedy that was available to the appellant was to file an application seeking for amendment of the decree by way of correcting the clerical mistake in respect of Khasra Number. F Since the mistake was clerical in nature and the appellant being not responsible for the said clerical mistake which had occurred due to wrong recording of Khasra Number in Khasra Girdawari, we find no reason as to why such a genuine and bona fide mistake cannot be allowed to be corrected by exercising G the powers under Section 152 of the CPC. **In K. Rajamouli vs. A.V.K.N. Swamy, (2001) 5 SCC 37**, this Court held as follows :

> "Section 152 provides that a clerical or arithmetical mistake in judgments, decrees or orders or errors arising H 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". A

15. Since the court exists to dispense justice, any mistake which is found to be clerical in nature should be allowed to be rectified by exercising inherent power vested in the court for sub-serving the cause of justice. The principle behind the provision is that no party should suffer due to bona fide mistake. Whatever is intended by the court while passing the order or decree must be properly reflected therein otherwise it would only be destructive of the principle of advancing the cause of justice. In such matters, the courts should not bind itself by the shackles of technicalities. B C

16. In ***S. Satnam Singh and Ors. vs. Surender Kaur and Anr.***, reported in **2008(15) SCLAE 626** Court held as follows : D

"21. The court may not have a suo motu power to amend a decree but the same would not mean that the court cannot rectify a mistake. If a property was subject matter of pleadings and the court did not frame an issue which it ought to have done, it can, at a later stage, when pointed out, may amend the decree. E

22. The power of amendment, in a case of this nature, as notice hereinbefore, would not only be dependent upon the power of the court but also the principle that a court shall always be ready and willing to rectify the mistake it has committed." F

17. We feel that if we direct the appellant to seek remedy under the provisions of Section 152 of the CPC, it will only delay and prolong the litigation between the parties. In order to cut short the litigation and to save precious time of the court as also to give quietus to the entire dispute, we direct in exercise of the powers under Section 152 of the CPC that the decree be corrected by giving the correct Khasra No. 26R/52 in place of Khasra Number 25R/52. Having decided so, in the aforesaid G H

A manner, we are not required to go into the arguments advanced before us and adjudicate as to whether Order 2 Rule 2 CPC would be applicable in the facts and circumstances of the present case and whether or not the subsequent suit was barred.

18. Having decided in the aforesaid manner in respect of B one part of the property we now proceed to consider the other limb of arguments of the counsel appearing for the parties pertaining to the land belonging to Datta Ram, which was acquired by the FCI and a part of which was subsequently released from acquisition as surplus land. The said land is C measuring about 13 Kanals and 10 Marlas. The contentions of the counsel for the respondents is that respondent had purchased the said land by making payment of Rs. 4047.06, which was required to be paid to the FCI for releasing the land from their possession, pursuant to which possession of the land D was delivered to her.

19. It is clear from the perusal of the record that Smt. Radhi, mother of the Datta Ram (since deceased) had executed a valid registered Will dated 30.4.1968 in favour of the appellant and as such the appellant had succeeded to the Estate of Smt. E Radhi. The land mentioned in Para B in the heading of the plaint in suit no. 149/1979 was admittedly acquired in the life time of Datta Ram for the construction of FCI, Naya Nangal. Later on this land was found to be surplus and not utilized for the FCI under the general scheme and consequently the land was to be returned to the original owner from whom it was acquired. F Accordingly, this land was reverted back to Datta Ram and a sum of Rs. 4047.06 was paid to the FCI. As a matter of fact, this land was not a purchase against purchase money but in fact, it was refund of the amount of FCI from whose account, this amount was received by Datta Ram deceased. Smt. Baikunthi Devi G never purchased it in her own right. In fact Datta Ram was the real person to whom the benefit of reversion of land was to go. The respondent was only one of the heirs of Datta Ram. Even if Smt. Baikunthi Devi had repaid the amount the same was done and must be held to have been done as a representative of H Datta Ram deceased. On reversion of the land acquired by the

FCI, the ownership of the reverted land has to be shared by both the co-sharers, the appellant getting half of the land. A

20. It has been clearly established that it is a retransfer of the land and the words written in the mutation are "Bad Wapsi" meaning clearly that the acquired land has been given back and amounts to retransfer. The price of the land Rs. 4047.06 was charged by the FCI from Baikunthi Devi, which is a proportionate prices of the compensation assessed regarding the acquisition of land. B

21. The respondent did not acquire full ownership right in the land re-conveyed by the FCI by any of the manner and mode as mentioned in Section 34 of the Act. Therefore, there could not have been a case of granting mutation in her favour for the entire land. The claim of the respondent regarding re-purchase of the land by her is devoid of any cogent and substantial documentary evidence, and therefore, the aforesaid claim could not have been accepted. C D

22. We consequently hold that the appellant will also be entitled to half share of the land which was re-conveyed by the FCI. But since the respondent has made payment of the entire amount which was charged by the FCI for reconveyencing the land, it will be the obligation of the appellant to pay half of the said amount to the respondent. We, therefore, hold that half of the land which was released and reconveyed after finding the same to be in surplus vest on the appellant and a declaration to that effect is made under this order. We also hold that the respondent shall be entitled to receive half of the amount paid to the FCI i.e. Rs. 2023.53 from the appellant. The appellant is directed to pay the above said amount to the respondent within three months from the date of this Order along with simple interest @ 9% per annum to be calculated for the period from the date of payment of the said amount by the respondent to the FCI till the date of payment of the amount by the appellant. E F G

23. We, accordingly in terms of the aforesaid findings and conclusions, hold and allow : H

A a) the prayer of the appellant for rectification of the mistake under Section 152 of the CPC for correction in the name of Khasra No. 26R/52 in place of Khasra was 25R/52; and also declare that

B b) half of the land which was released and reconveyed after finding the same to be in surplus vest on the appellant and a declaration to that effect is made under this order. We also hold that the respondent shall be entitled to receive half of the amount paid to the FCI i.e. Rs. 2023.53 from the appellant. The C appellant is directed to pay the above said amount to the respondent within three months from the date of this Order along with simple interest @ 9% per annum to be calculated for the period from the date of payment of the said amount by the respondent to D the FCI till the date of payment of the amount by the appellant.

24. In terms of the observations made above, appeals are allowed but without any cost.

D.G. Appeals allowed.