**SUPREME COURT OF INDIA**

Niyamat Ali Molla

Vs.

Sonargon Housing Co-Operative Society Ltd.

SLP (C) No.10373 of 2006

(S.B. Sinha and Harjit Singh Bedi JJ.)

12.10.2007

**S.B. SINHA, J.**

1. Leave granted.

2. Respondent No.1 filed a suit for declaration and possession as also for damages in the Court of Civil Judge (Senior Division) at Baruipur, 24- Parganas (South) in the State of West Bengal. An ex-parte decree was passed against the appellant herein who was arrayed as defendant No.6 in the suit. In the plaint, the suit property was described as under :

That within the township area 2.09 acres comprising of R.S. Dag Nos.340, 341, 342, 343 and 344 of Mouza Tegharia morefully described in the Schedule A hereunder written and hereinafter referred to as the suit property, is situated.

3. Plaintiff claimed title over the suit property on the basis of purchases made under two registered deeds of conveyances dated 27.1.1968 comprising of 12 shares of Plot No.340, 341, 342 and 343 of Mouza Tegharia admeasuring 1.39 acres from defendant No.1 and his three sisters.

However, in the Schedule of Property, described in the schedule to the plaint, it was stated :

All that acres of land now developed for Housing Township appertaining to Rs.Dag No.

under Khatian Nos. of Mouza Tegharia, J.L.

No.6, lying and situate within Sonargaon Park, P.S. Sonarpore, District South 24 Parganas (South).

4. A decree was passed wherein again the same Schedule of Property was described as the property involved in the suit. It was directed:

The plaintiff do get a decree for declaration of title and permanent injunction against the defendants in respect of the suit property.

It is declared that the plaintiff has right, title and interest in the suit property.

Defendants are restrained by an order of permanent injunction from disturbing or interfering with the peaceful possession of the plaintiff over the suit property in any way or in any manner whatsoever. The other prayer of the plaintiff is refused in view of my discussion made in the body

of judgment. 5. Appellant herein did not file any written statement in the said suit.

He, however, examined himself as a witness. He did not prefer any appeal against the said judgment and decree. The said decree indisputably has been affirmed upto this Court.

6. An application for amendment of the plaint as also of the decree containing the Schedule describing the said property was, however, filed on 27.6.2000, inter alia, stating :

That both parties went on trial and adduced both oral and documentary evidence in respect of the suit property and there was never any dispute as to the identity of the suit of the suit property.

That at the time of drafting of the plaint through inadvertence the total area of the Land, R.S. Plot Number and Khatian Number have not been mentioned in the Schedule of the Plaint through inadvertence.

That it is an accidental error.

That it is a clear case of misdescription of the suit property and no prejudice will be caused to the defendant if the plaint and the decree are amended at this stage.

7. On the said averments, the proposal for amendment which was made is as under :

In the Schedule of the Suit Property described in the plaint in the 1st line after the word All that the figure 2.09 shall be inserted.

In the schedule of the suit property described in the plaint in the 2nd line after the word R.S. Dag Number the following plot number 340, 341, 342, 343 and 344 shall be inserted.

In the schedule of the suit property described in the plaint in the 3rd line after the word Khatian Numbers following Khatian Number shall be inserted 80, 310, 83.

8. An objection was filed to the said application for amendment by the appellant, inter alia, contending :

Whereas after decree in the suit, plaintiff filed an application under Section 151 of CPC stating that the plaintiff claimed title on the basis of two deeds of conveyances by purchase from heir of Dilbahar Molla and Malekjan Bibi wife of Dolbahar Molla with the prayer to add different Schedule of property with a new case, which is not permissible in law. As such plaintiffs application is liable to be dismissed summarily.

9. It was urged that the application for amendment, if allowed, would give rise to substitution of one property in place of another, particularly, having regard to the change in the J.L. number.

10. The said objection of the appellant was, however, rejected by the learned Executing Court. The said order has been upheld by the High Court.

11. Mr. Chinmoy Khaladkar, learned counsel appearing for the appellant, would submit that having regard to the fact that the sisters of the defendant No.1 who were owners of the property had not been impleaded as parties in the suit and an ex parte decree was obtained by the respondent against the appellant herein, an irreparable injury would be caused to him if the application for amendment

is allowed.

12. Mr. Jaideep Gupta, learned senior counsel appearing on behalf of the respondents, on the other hand, submitted that the courts power to amend a decree is not only confined to a clerical or arithmetical error but also the pleadings of the parties, if a mistake had occurred in the pleadings and the same is continued. Reliance in this behalf has been placed on Bela Debi v.

Bon Behary Roy & Ors. [AIR 1952 Cal. 86]. It was furthermore urged that the suit being for enforcing a sale deed, the Dag and Khatian number stated in the plaint was determinative as regards identification of the property. J.L.

number, it was urged, has nothing to do with the identification of the property or the village in which it is situated. It was pointed out that the plots in question had also been ordered to be mutated in favour of the respondent. Even an Advocate-Commissioner had also been appointed who has also submitted a report.

13. In this appeal an application for impleadment has been filed by one Niyamat Ali Molla. It has been contended therein that the said applicant was not impleaded as a party in the proceedings although he had been in possession of the property in question. It was submitted that the applicant has been seriously prejudiced by reason of the impugned order as he had acquired lawful interest in J.L. No.52 appertaining to R.S. Khatian No.80, R.S. Dag No.340, 341 and 342 which had been recorded in his name in the finally published revisional survey settlement record of rights. In the said application, it has also been claimed that the applicants had been in possession of the said property.

14. Respondent is said to have purchased the property by reason of two sale deeds of sale dated 27.1.1968. Properties described in the first deed of sale are as under :

ka schedule particulars of the property

1. In the District of 24 Pargana is under Police Station and sub-registry office Sonarpur, Pargana Medanmalla at Mouza Teghari, village, included in Touzi No.294 having Ryoti Mukarari right, under Khatian No.80, out of 1.36 decimals of land in one jama bearing annual rent of Rs.5-10-10 pics 1.02 decimals of land bearing proportionate rent of Re.0.26 paise J.L. No.52 Re.Sur No.126 Khatian No.8 owner West Bengal Govt. There is no other cosharer. In dag No.340 three hundred forty .79 decimals N other Mouza In dag No.342 three hundred forty two .24 decimals N Farez Khatian No. 81 In dag no.341 three hundred forty one .33 decimals N Alta Bibi Total 1.36 one acre thirty six decimals.

Out of that in 12 annas share 1.02 one Acre two decimals of land

2. In the said Police Station at the said Mouza included in the said Touzi, under the said owner, having Ryot Stitiban right, under part Khatian 310 from Khatian No.200 out of 19 decimals in one plot . 37 decimal being proportionate annual rent .75 paise. There is no other cosharer.

In dag No.343 three hundred forty three out of 49 decimals Danga land 37 decimals of land. There is no other cosharer.

15. In the second deed of sale, the property of transferor has been described as :

ka schedule particulars of the property

1. In the District of 24 Parganas under Police Station and sub registry office Sonarpur, Pargana Medanmalla, at Mouza Teghari, village, included in Touzi No.294 Re.Sur No.126, J.L. No. 52 having Ryoti Mokarari right under Khatian No.80, out of 1.36 decimals of land in our jama bearing annual rent of Rs.5- 10-10 pies 34 decimals of land bearing proportionate rent of Re.1.42 paise owner West Bengal Govt. There is no other cosharer.

In dag no.340 three hundred forty .79 decimals N other Mouza In dag No.342 three hundred forty two .24 decimals N Farez.

Khatian No. 81 In dag no.341 three hundred forty one .33 decimals N Alta Bibi Total 1.36 one Acre thirty six decimals Out of that in 4 annas share .34 thirty four decimals of land.

2. In the said Police Station, at the said Mouza, included in the said Touzi under the said owner, having Ryot Stitiban Right, under part Khatian 310 from Khatian No.200 twelve decimals of land bearing annual rent of .25 paise. There is no other cosharer.

In dag No.343 three hundred forty three .49 decimals Danga land out of that in 4 annas share 12 decimals of land under two khatians total 46 decimals forty six decimals Particulars of property mentioned in Schedule kha In the District of 24 Parganas, under Police Station and sub-registry Sonarpur, Pargana Medan Malla, at Mouza Teghari village included in Touzi No. 294, J.L. No. 52 Re. Sur No.126, having Korfa possessory Right, in one jama under Khatian No. 83, .24 twenty four decimals of land bearing annual jama of Rs.14.00 owner West Bengal Government. There is no other cosharer.

In dag No.344 three hundred forty four Danga 24 twnty four decimals N. Sudhir and others.

In two schedules total land .70 seventy decimals.

The Society will bear the cost of Registration of this Deed of Sale.

16. Respondent herein had filed an application in the said suit for injunction. An affidavit in opposition thereto was filed therein by the defendant No.4 stating it was stated :

That before dealing with the plaintiffs allegation paragraphwise, these defendants state the facts of this case as follows :

a) That .79 dec. in dag No.340, .33 dec, in Dag No.341, .24 dec, in Dag No.342 .49 dec in Dag No.343 originally belonged to Alta Bibi and the same has been correctly recorded in C.S. R.O.R. from her the same was inherited by Bibijan Bibi wife of Dilbahar Molla, During his life time said Bibijan Bibi transferred .79 dec in Dag No.340, .24 in Dag No.342 and .33 in Dag No.341 by an oral Heba in favour of Dilbahar Molla and in terms with the said oral Heba, the possession of the said properties were delivered in favour of said Dilbahar Molla, remain in possession of the said properties as the absolute owner thereof denying everybody elses right, title and interest thereon. In the R.S.

R.O.R., the said Dilbahar Molla has been recorded as Rayat Mokrari Sattiban. In respect of .49 dec in Dag No.343, said Dilbahar inherited from said Bibijan Bibi his wife on her demise 1/4th share under the Mohammedan law and thus said Dilbahar became owner in respect of .12 dec. The same

is also correctly recorded in R.S. R.O.R.

b) That in Dag No.344 said Dilbahar Molla had .24 dec, land and the same is also correctly recorded in R.S.R.O.R.

c) That after the demise of Bibijan Bibi, the first wife of Dilbahar, said Dilbahar married Malekjan Bibi and by a registered deed of conveyance said Dilbahar Molla transferred .70 dec. in favour of his wife Malekjan Bibi out of his total property, i.e.

.79 dec in Dag No.340, .33 dec in Dag No.341, .24 dec in Dag No.342, .12 dec in Dag No.343 and .24 dec in Dag No.344 total being 1.72.

d) Subsequently, said Dilbahar Molla died leaving behind one son and two daughters through the first wife, Second wife and three sons and two daughters through the second wife. Thus out of remain 1.02 dec of Dilbahar, the second wife Malekjan Bibi had 8th each son had 7/48th and each daughter had 7/96. The cosharers of the said property have never partitioned the same and they are in joint possession thereof.

17. What was, therefore, denied and disputed was the claim of the plaintiffs-respondents in respect of purchase of the property from Niyamat Ali and others. Similar statements were also made in the written statement.

From a perusal of the judgment passed by the Assistant District Judge, 24 Parganas, Baruipur in Title Suit No. 144 of 1993, it appears that the possession and title of defendant No.4 had been taken into consideration therein. No issue was framed in regard to identification of the said property.

The learned Judge held :

On perusal of the same, I am of the view that the plaintiff has title as well as possession in the suit property and the defendants have failed to prove their possession and title in the suit property. In view of the documentary evidence adduced by the plaintiff, the R.S.R.O.R. appears to be erroneous and baseless. The defendants have no right to interfere with the peaceful possession of the plaintiff over the suit property. To my mind, it is a fit and proper case where the plaintiff can get decree for declaration of title and permanent injunction and nothing more.

18. Section 152 of the Code of Civil Procedure empowers the Court to correct its own error in a judgment, decree or order from any accidental slip or omission. The principle behind the said provision is actus curiae nemenim gravabit, i.e., nobody shall be prejudiced by an act of court.

19. Code of Civil Procedure recognises the inherent power of the court. It is not only confined to the amendment of the judgment or decree as envisaged under Section 152 of the code but also inherent power in general.

The courts also have duty to see that the records are true and present the correct state of affair. There cannot, however, be any doubt whatsoever that the court cannot exercise the said jurisdiction so as to review its judgment.

It cannot also exercise its jurisdiction when no mistake or slip occurred in the decree or order. This provision, in our opinion, should, however, not be construed in a pedantic manner. A decree may, therefore, be corrected by the Court both in exercise of its power under Section 152 as also under

Section 151 of the Code of Civil Procedure. Such a power of the court is well recognized.

20. In Samarendra Nath Sinha & Anr. v. Krishna Kumar Nag [(1967) 2 SCR 18, this Court held :

Now it is well settled that there is an inherent power in the court which passed the judgment to correct a clerical mistake or an error arising from an accidental slip or omission and to vary its judgment so as to give effect to its meaning and intention. Every court, said Bowen L.J. in Mellor v. Swira [30 Ch. 239] has inherent power over its own records so long as those records are within its power and that it can set right any mistake in them. An order even when passed and entered may be amended by the court so as to carry out its intention and express the meaning of the court when the order was made. In Jankirama Iyer v. Nilakanta Iyer [AIR 1962 SC 633] the decree as drawn up in the High Court had used the words mesne profits instead of net profits. In fact the use of the words mesne profits came to be made probably because while narranting the facts, those words were inadvertently used in the judgment.

21. The question came up for consideration before the Calcutta High Court in Bela Debi (supra), wherein it was held It will thus be seen that there is a diversity of judicial opinion as to how far a Court can go in rectifying its own decree. Where, of course, the amendment is in order to carry out its own meaning, there is no doubt about the power of the Court in effecting such corrections (see In re St. Nazaire Co., (1879) 12 ch. D. 88; Preston Banking Go. v. Allsop, (1895) 1 Ch. 141). Nor can it be disputed that it has power to rectify mistakes which are of a ministerial kind (see Mellor v. Swire, (1885) 30 Ch. D 239). But the difficulty arises when it is found that the mistake is not one of the Court but is a mistake of the parties themselves. Mistakes in the description of properties in deeds, is illustrative of this kind of mistake. It is the parties who have made the mistake, and the mistake is continued in the pleadings and the decree.

According to one view, section 152 is confined to acts of the Court and, therefore, mistakes of parties made in the pleadings or deeds and documents evidencing the transaction cannot be corrected {Ramchander Sarup v. Mazhar Hussain, A. I. R. (6) 1919 ALL 264). The second view is that under this section and section 151, plaint, judgment and decree all can be amended (see Shiam Lal v. Mt. Moona Kuar, A.I.R. (21) 1934 Oudh 352 at p. 354;

Ram Chandra v. Jamna Prosad, A. I. R. (22) 1935 oudh 92). A third view is that it is permissible under such circumstances to amend the decree and it is unnecessary to amend the plaint (Badri Pande v. Chhangur Pandey/ A. I.

R. (20) 1933 all 102; Jamini Bala Biswas v.

Bank of Chettinad Ltd., A. I. R. (22) 1935 Rang. 522 at p. 523). Lastly, there is the view, which I have already noted, which goes to the extent of holding that the Court cannot only rectify pleadings and decrees but rectify documents evidencing the transactions themselves, upon which the suit was founded.

I shall now state, what in my opinion, is the true meaning of section 152, Civil P. C. I am not in favour of giving a narrow construction to section 152. I do not agree that section 152 must necessarily refer to an 'accidental slip or omission' of the Court itself, or its ministerial officers. It does not say so in the section itself, and should not be interpreted as such. Where it is the Court's own accidental slip or omission, or that of its ministerial officers, there can be no doubt that the section applies. But it gives power to rectify any accidental slip or omission in a judgment, decree or

order, and might include an accidental slip or omission traceable to the conduct of the parties themselves. But it must be an 'accidental slip or omission'. 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, then I do not see why the Court cannot 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 section 152 to go into disputed questions as to what property was intended to be dealt with, by the parties in the deed. I agree with Gentle C. J. that such a question can only be dealt with, in appropriate proceedings under the Specific Relief Act (see T. M. Ramakrishnan Chettiar v. G. Ramakrishnan Chettiar, A. I. R.

(35) 1948 Mad. 13). But it may so happen that 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. For example, suppose in a conveyance a property is described as '24 Chowringhee Road, Bhawanipur'. It would be clear to everybody what property was meant, and it cannot be seriously doubted that in abating that the property was in 'Bhawanipur', the parties had committed an 'accidental slip or omission'. In such a case, I would not go to the extent of holding that the Court has no power to correct the judgment, decree or order which has repeated the.

mistake. In doing so, the Court need not correct the pleadings or the document but its own decision. In my opinion, it is not necessary in such a case to amend the pleadings or to rectify the deed, therefore, no question arises as to whether the Court has power to do so. It is, however, quite clear that such cases must be of rare occurrence, and the scope thereof is severely limited. The power cannot be extended to the resolving of controvertial points, and a decision as to what the parties intended or did not intent to do. Apart from this exceptional case, I hold that 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 section 31, Specific Relief Act. To this extent, I agree respectfully with the view enunciated by Gentle C. J. in T. M.

Ramakrishnan Chettiar v. G. Radhakrishnan Chettiar, A. I. R. (35) 1948 Mad. 13 and the view expressed by Young J. in Shujaatmand Khan v. Gobind Behari, A. I. R. (21) 1934 ALL. 100 (2). Applying these principles to the facts of this case, I think that the rectification asked for is impossible. If there has been a mistake in the original agreement it is a mistake which is fundamental, and it is impossible without going into evidence, to decide as to what the parties meant. There are facts in favour of the contention put forward by either party and I cannot describe it as an error (if there is at all any error) as can be called "an accidental slip or omission" as contemplated in section 152. In any event, such slips or omissions cannot be rectified in proceedings under section 152 or even under S. 151 of the Code. 22. We, with respect, agree with the aforenoticed view.

23. In Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan & Ors. [AIR 2003 SC 371, this Court opined that when a decree had been drawn up by the High Court, the Court can take recourse to Section 152 of the Code stating :

In our opinion, the successful party has no other option but to have recourse of Section 152 of CPC which provides for clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission being corrected at any time by the Court either on its own motion or on the application of any of the parties. A reading of the judgment of the High Court shows that in its opinion the plaintiffs were found entitled to succeed in the suit. There is an accidental slip or omission in manifesting the intention of the Court by couching the reliefs to which the plaintiffs were entitled in the event of their succeeding in the suit. Section 152 enables the Court to vary its judgment so as to give effect to its meaning and intention. Power of the Court to amend its orders so as to carry out the intention and express the meaning of the Court at the time when the order was made was upheld by Bowen L.J. in re Swire; Mellor V. Swire, (1885) 30 Ch.

D. 239, subject to the only limitation that the amendment can be made without in justice or on terms which preclude injustice. Lindley L.J.

observed that if the order of the Court, though drawn up, did not express the order as intended to be made then "there is no such magic in passing and entering an order as to deprive the Court of jurisdiction to make its own records true, and if an order as passed and entered does not express the real order of the Court, it would, as it appears to me, be shocking to say that the party aggrieved cannot come here to have the record set right, but must go to House of Lords by way of appeal.

24. The same Bench again in Pratibha Singh & Ors. v. Shanti Devi Prasad & Anr. [AIR 2003 SC 643] held :

When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree.

Resort can be had to Section 152 or Section 47 of the CPC depending on the facts and circumstances of each case -- which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the CPC by the Court which passed the decree by supplying the omission.

Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke Section 47 of the CPC.

25. In State of Punjab v. Darshan Singh [AIR 2003 SC 4179], however, it was held :

Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or 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 same becomes final subject to any further avenues of remedies provided in respect of the same and the very Court or the tribunal cannot, on mere change of view, is not entitled to vary the terms of the judgments, decrees

and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. 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 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party if at all is to file appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. 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 provisions of Sections 151 and 152 of Code 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 terms of its original judgment, decree or order. Similar view was expressed by this Court in Dwaraka Das v.

State of Madhya Pradesh and Anr. and Jayalakshmi Coelho v. Oswald Joseph Coelho (2001 (4) SCC 181).

26. It is not a case where the defendants could be said to have been misled. It is now well settled that the pleadings of the parties are to be read in their entirety. They are to be construed liberally and not in a pedantic manner. It is also not a case where by reason of an amendment, one property is being substituted by the other. If the Court has the requisite power to make an amendment of the decree, the same would not mean that it had gone beyond the decree or passing any decree. The statements contained in the body of the plaint have sufficiently described the suit lands.

Only because some blanks in the schedule of the property have been left, the same, by itself, may not be a ground to deprive the respondents from the fruit of the decree. If the appellant herein did not file any written statement, he did so at its own peril. Admittedly, he examined himself as a witness in the case. He, therefore, was aware of the issues raised in the suit. It is stated that an Advocate-Commissioner has also been appointed. We, therefore, are of the opinion that only because the JL numbers in the schedule was missing, the same by itself would not be a ground to interfere with the impugned order.

27. So far as the application for impleadment of the applicants are concerned, they being not parties to the suit are not bound by the decree.

They would, thus, be entitled to take recourse to such remedies which are available to them in law including filing of an application under Order 21 Rules 97 and 99 of the Code of Civil Procedure, if any occasion arises therefor. As and when the said applicants take recourse to law, the same has to be determined in accordance with law.

28. This appeal and the application for impleadment are dismissed accordingly. It would, however, for the Executing Court to consider at the time of execution of the decree to ascertain whether there exists any difficulty in executing the decree or not. In the facts and circumstances of the case, however, there shall be no order as to costs.