

Stereo.HCJDA 38.
Judgment Sheet
IN THE LAHORE HIGH COURT,
MULTAN BENCH,
MULTAN.

JUDICIAL DEPARTMENT

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Writ Petition No.3227 of 2022.

Shabbir Ahmad.

Versus

Additional District Judge, Multan, etc.

J U D G M E N T.

Date of hearing: **19.01.2023.**

Petitioner by: Mr. Muhammad Asghar Bhutta,
Advocate.

Respondent #4 by: Mr. Muhammad Jawad Asghar
Bhutta, Advocate with respondent
No.4

Respondents#5(i)-(iv) &(vi) Muhammad Mehmood Ashraf Khan,
Advocate.

AHMAD NADEEM ARSHAD, J. Through this Constitutional Petition filed under Article 199 of the *Constitution of the Islamic Republic of Pakistan, 1973*, the petitioner assailed the vires of orders/judgments dated 09.07.2021 and 11.02.2022, whereby the learned Courts below dismissed his application for correction of order and decree dated 29.03.2019 concurrently.

2. Facts in brevity are that petitioner instituted a suit for declaration along with perpetual injunction and specific performance titled “Shabbir Ahmad vs., Public at Large, etc.”, with the contention that suit property consisting upon a shop measuring 42 ½ square yards bearing property No.189 and 189-A situated at Ward No.3, Circular Road, Hussain Agahi, Multan was belonged to Muhammad Shafi deceased predecessor of petitioner and

respondents No.2 to 8 and after his demise they became owner of the said shop according to their legal shares; that respondents No.2 to 8 through written agreements to sell as well as oral agreement to sell transferred their shares in his name and prayed as under:-

- i) *A declaration may kindly be granted to the effect that the plaintiff and defendants No.2 to 8 are legal heirs of deceased Muhammad Shafi son of Abdullah and except them there is no other legal heirs and being legal heirs they are owners of the movable and immovable properties of the deceased*
- ii) *that the defendants No.2 to 8 have transferred their shares through agreements to sell in his favour and decree for specific performance of said oral as well as written agreements to sell be granted; &*
- iii). *that defendant No.1-A has been asked time and again to accept the plaintiff and defendants No.2 to 8 as legal heirs of deceased and enter their names in the record as legal heirs of deceased but he refused to do so, therefore, perpetual injunction may be issued to the effect that he entered the name of plaintiff as owner in the record.*

No one appeared on behalf of defendant No.1 and 1-A despite proclamation in the newspaper therefore they were proceeded against ex-parte vide order 28.11.2018 whereas, defendants No.2 to 8 entered appearance on 31.07.2018 and submitted their conceding written statement. The learned trial Court after recording ex-parte evidence of the petitioner decreed the suit on 29.03.2019 in the following terms: -

“Keeping in view the scenario portrayed above, suit of the plaintiff for declaration is hereby ex-parte decree. Plaintiff No.1 and 2 to 8 are declared as legal heirs of deceased Muhammad Shafi. Decree sheet be prepared accordingly. There is no order as to costs. File be consigned to the record room after its due completion and compilation.”

Thereafter petitioner moved an application on 03.09.2020 for correction of order and decree dated 29.03.2019. The learned trial Court vide order dated 09.07.2021 dismissed the same by holding that the scope of review is very limited as only some patent errors could be rectified in review and the petitioner should have filed an appeal against refusal of the reliefs before the learned appellate

Court but he failed to do so. Feeling aggrieved, petitioner preferred a revision petition which also met the same fate and dismissed by the learned revisional Court vide order dated 11.02.2022. Being dissatisfied he approached this Court through instant constitutional petition.

3. Learned counsel appearing on behalf of the petitioner maintains that the petitioner specifically pleaded in his plaint that the other legal heirs of deceased Muhammad Shafi transferred their share in his favour through written agreements to sell as well as oral agreements to sell, also executed registered general power of attorney in his favour; that the said defendants filed conceding written statement in his favour but the learned trial Court while deciding the suit failed to consider said aspect of the case and omitted to grant relief of specific performance and perpetual injunction; that petitioner sought correction of the order and the decree but the learned Courts below dismissed his application considering it a review application and prayed for acceptance of the writ petition as well as his application and setting aside of impugned orders. To augment his arguments, he placed reliance upon “Syed SAADI JAFRI ZAINABI vs. LAND ACQUISITION COLLECTOR AND ASSISTANT COMMISSIONER” (PLD 1992 Supreme Court 472) “MUHAMMAD AKRAM v. DDCO, RAHIM YAR KHAN and others” (2017 SCMR 56) “BANK OF CREDIT AND CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) Ltd vs. Messrs ALI ASBESTOS INDUSTRIES Ltd and 5 others” (1990 MLD 130), “Mst. FOROSHA V. FAZAL GUL and others” (PLD 1983 Supreme Court 220) and “AMJAD BUTT vs. AMJAD ALI” (2017 CLC Note 45).

4. Conversely, learned counsel appearing on behalf of the respondents maintained that petitioner did not implead Mehfooz-ur-Rehman as party in the revision petition who is a proper and necessary party; that the petitioner did not implead defendants in his application as a party; that the Courts below without giving

notice passed the said orders; that the application of the petitioner did not come within the ambit of Section 152 CPC and while relying upon "BAQAR versus MUHAMMAD RAFIQUE and others" (2003 SCMR 1401), "MUHAMMAD ASLAM LONE vs. ADDITIONAL DISTRICT JUDGE GUJRANWALA and 10 others" (PLD 2008 Lahore 373), "HABIB BANK LIMITED versus IST ADDITIONAL DISTRICT JUDGE and others" (2005 MLD 1525), "ANSAR MAHMOOD versus JAMSHED AHMED MUSTAFA ZUBERI and 6 others" (PLD 2015 Islamabad-1), "IFTIKHAR AHMAD and 7 others vs. HABIB BANK LIMITED, KARACHI and another" (1993 CLC 101) and "MUHAMMAD YAQOOB vs. BAWAR and 2 others" (1998 CLC 456) prayed for dismissal of the writ petition.

5. I have heard learned counsel for the parties at length and perused the record with their able assistance.

6. Perusal of record it appears that in para No.3 of the plaint petitioner specifically pleaded that through agreement deed No.152 dated 10.10.2014, agreement deed No. 54 dated 04.09.2014, agreement deed No.667 dated 14.03.2015 and power of attorney No.1013 dated 23.04.2015 defendants received consideration of their shares in cash and if any defendants did not execute any writing, he received his share orally. Therefore, the said defendants have no concern with the suit property and they are bound through their oral as well as written agreements to execute registered deed in his favour. The exact wording is as under:

"یہ کہ بروئے اقرار نامہ نمبری 152 مورخہ 10-10-2014 و بروئے اقرار نامہ نمبری 54 مورخہ 04-09-14 و اقرار نامہ نمبری 667 مورخہ 14-03-15 و مختار نامہ نمبری 1013 مورخہ 23-04-15 کی رو سے مدعی سے مدعا علیہم نے اپنا حصہ زر نقد کی صورت میں وصول کر چکے ہیں۔ اور اگر کسی مدعا علیہم نے کوئی تحریر لکھ کر نہ دی ہے تو اعتماد کی بنیاد پر اپنا حصہ وصول کر چکے ہیں۔ اسی طرح اُن کا اس حوالہ مستدعوئیہ سے کسی قسم کا تعلق یا واسطہ نہ ہے بروئے معاہدہ پابند ہیں جو کہ زبانی و تحریری ہے۔ اُسی کی رُو سے رجسٹری بحق مدعی کرا کر دینے کے پابند ہیں۔"

Defendants No.2 to 8 in their conceding written statement admitted the said para as “correct” and also admitted the execution of agreements as well as power of attorney. The exact wording is as under:

"یہ کہ مدعی و مدعا علیہم نمبران 2 تا 8 ہی متوفی کے قانونی و شرعی وارثان ہیں کوئی دیگر وارث نہ ہے۔ اور فترہ نمبر 3 درست تسلیم ہے۔ اقرار نامہ مستدعویہ نمبران 152، 54، 667 و مختار نامہ عام نمبری 1013 محررہ 15-4-23 درست تسلیم ہیں۔ کسی قسم کا عذر و اعتراض نہ ہے۔"

Plaint further reveals that petitioner prayed for specific performance of said oral as well as written agreements and grant of perpetual injunction.

In support of his version, petitioner appeared as PW-1 and got examined Khizar Hayat as PW-2. He produced sale deed No.2035 dated 13.06.1967 as Exh.P-1, whereby, his father and Muhammad Usman jointly purchased the suit property measuring 42 ¼ squares yards from Makhdoom Shahab-ud-Deen, copy of registered power of attorney No.1013 dated 23.04.2015 as Exh.P-2, copy of PT-1 as Exh.P-3, copy of death certificate of Muhammad Shafi as Exh.P-4, copy of death certificate of Muhammad Bashir son of Muhammad Shafi as Exh.P-5, original agreement No.54 dated 04.09.2014 as Exh.P-6, original agreement No.667 dated 14.03.2015 as Exh.P-7 and original agreement No.152 dated 10.10.2014 as Exh.P-8.

In this way he proved through evidence that suit property was belonged to their predecessor namely Muhammad Shafi and after his demise inherited to his legal heirs and defendants No.2 to 8 through different agreements to sell agreed to transfer their share in his favour and also executed a registered general power of attorney in this behalf. Petitioner's evidence remained un rebutted. The learned trial Court only granted relief for declaration by declaring that plaintiff and defendants No.2 to 8 are legal heirs of deceased Muhammad Shafi but failed to give any findings with regard to the other reliefs of perpetual injunction and specific performance of the

agreements to sell. In this scenario petitioner moved the application for correction of the order/decree.

7. Now the question whether the omission in the decree to expressly contains reliefs of perpetual injunction and specific performance of the agreements to sell could be supplemented in exercise of the authority under section 152, C.P.C., it would be beneficial to reproduce the section which empowers the Courts for correction of judgment and decree which is reproduced as under: -

“152.Amendment of judgments, decrees or orders.- Clerical or arithmetical mistakes in 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.”

8. Learned counsel for the respondents raised objection that, only the clerical or arithmetical mistakes in judgment and decree or order could be corrected in the context of Section 152, C.P.C.

9. Plain reading of said Section it appears that the Court under section 152, C.P.C. is not only competent to correct clerical or arithmetical mistake in the judgment, decree or order but may correct accidental slip or omission as well. Section 152, C.P.C. can be conveniently divided into two parts. First half of the section provides authority to correct “*clerical or arithmetical mistake in the judgment, decree or order*”, other half after or provides authority to correct error arising thereon from any accidental slip or omission. Use of word “*or*” indicates that, such powers to correct are not conjunctive but disjunctive and qualified. To correct clerical or arithmetical mistake, it means when some mistake either in calculation or numerical figures creeps in, which figures could be verified from the record, or where any party, property or fact has been incorrectly described or where some typographical error has crept in. Second half of the Section 152 (*ibid*) contemplates “*error arising thereon from any accidental slip or omission*”. Catchword

in phrase “*accidental slip or omission*” as used in section 152, C.P.C. is “*accidental*”, it qualifies ‘*slip*’ and ‘*omissions*’. Thus it could be said that “*accidental slip or omission*” as used in section 152 C.P.C. means ‘to leave out or failure to mention something unintentionally’. Thus, it could be safely said that it is only where the slip or omission is accidental or unintentional it could be supplemented or added in exercise of jurisdiction conferred under section 152 C.P.C. Such course is provided to foster cause of justice, to suppress mischief and to avoid multiplicity of proceedings.

10. In the light of above discussion, it can be concluded that the Court has jurisdiction to correct the clerical or arithmetical mistakes or errors caused due to accidental slip or omission in a judgment, decree or order. Such power can be exercised at any time. The aim of the procedural provisions is to safeguard the interest of justice instead of defeating the same. It is the basic principle of administration of justice that the Courts are sanctuaries of justice and in exercise of authority to do *ex debito justitiae*, i.e. to say wrong and to suppress a mischief to which a litigant is entitled.

11. In “Ram Singh v. Sant Singh and others” (AIR 1930 Lahore 210), where the trial Court had decreed the suit but inadvertently omitted to mention in the judgment that possession of the property be also given to the petitioner. When he applied for possession it was objected that as in the decree possession has not been awarded it cannot be granted. The petitioner filed an application under section 152, C.P.C. for amendment of the judgment and it was observed as under:-

“The learned counsel says that if a relief is claimed in the plaint but has not been granted by the Court then it must be assumed that it has been refused. I do not think this argument applies to a case like the present where there is no express refusal but only an omission to grant the prayer and the omission not a deliberate one. I hold, therefore, that the application of the petitioner was competent under section 152, Civil Procedure Code and should have been

granted by the Court below. In any case if it had been necessary for me to do so, I would have revised the order passed on the application of the petitioner to be granted possession of the property which was adjudged to be his by the declaratory decree granted to him by the Court below in spite of the fact that an appeal was open to the petitioner against the order refusing possession, but he did not file one.”

In re: “Raj Raj Bahadur Singh v. Shatranjai” (AIR 1942 Oudh 226) application under section 152, C.P.C. was made for amendment of the judgment and decree and it was observed as follow:-

“We are of opinion that it was only by an oversight that the latter portion of the order was not ordered to be deleted. It was held in (10) 13 O.C.114:61 C.979, Ashik Husain v. Mahdi Hasan that the test is whether the order as it stands represents the intention of the Judge at the time he made it and if it does then a mistake in it cannot be treated as an accidental slip or omission which may be corrected under section 152. In this case we are of opinion that the intention of the learned Judges was not to make any decision as regards the plaintiff’s right to ten villages and it was only by an accidental slip that they omitted to order the deleting of the second portion of the order. Section 152 corresponds to O.28, R.11 of the Rules of the Supreme Court of Ireland. It was held in 1892 A.C. 547: 62 L.J.P.C.24: IR 1.67 L.T. 722, Henry William Hatton v. Huga Harris on an interpretation of those rules that the Court has jurisdiction to correct the errors arising out of an accidental slip or omission. It was held in AIR 1924 Cal.895: 80 I.C. 55:28 C.W.No.873, Chandra Kumar v. Sundhansu Badani Debi that the word ‘may’ in section 152 does not make it discretionary with the Court to order the correction but merely enlarges the power of the Court by providing that such correction can be done at any time or in other words the section simply emphasizes that no lapse of time would disentitle the Court to make the correction. It is also observed in this case that the intention of the law is to make it obligatory on the Court whenever such a mistake is discovered to correct it and section 152 merely emphasizes the duty of the Court by saying that it may be done at any time without limitation.”

In a case titled as BANK OF CREDIT AND CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) Ltd vs. Messrs ALI ASBESTOS INDUSTRIES Ltd and 5 others” (1990 MLD 130), the Court while granting preliminary decree inadvertently did not grant relief against the mortgaged property although prayer for decree

against it had been made. Subsequently on plaintiff's application under Section 152, C.P.C., said relief was granted, while interpreting Section 152 C.P.C., as under: -

“These observations clearly lay down the principles involved in section 152 C.P.C. Where the Court has not passed any order unintentionally but due to oversight or omission, although in the facts and circumstances of the case the party was entitled to such relief, the Court is empowered to correct that mistake so that no party should suffer due to unintentional omission of the Court. In this suit plaintiff was entitled to a decree under Order 34 C.P.C. in the normal course. The omission to grant this relief was not intentional. The contention of Mr. S.A, Samad Khan that the plaintiff should file a separate suit for the sale of the mortgaged properties clearly demonstrates the inconvenience and hardships which shall be caused to a party in such circumstances. I, therefore, allow the application, amend the judgment that the plaintiff would be entitled to preliminary decree under Order 34, C.P.C. in respect of the mortgaged properties. The decree should also accordingly be amended.”

Such powers can be exercised at any stage. The Hon'ble Supreme Court of Pakistan in its full bench judgment reported as “Mst. FOROSHA V. FAZAL GUL AND OTHERS” (PLD 1983 Supreme Court 220) held as under: -

“The plane reading of the section, leaves no doubt whatsoever that the powers confer on the courts if the case falls within the purview of its provisions, can be exercised at any time and it has accordingly been held that there is no time limit for entertaining an application in that behalf”.

The august Supreme Court of Pakistan in its full bench judgment reported as “Syed SAADI JAFRI ZAINABI versus LAND ACQUISITION COLLECTOR AND ASSISTANT COMMISSIONER” (PLD 1992 SC 472) held as under:-

“Section 152 enables a court to correct the mistakes, omissions, or error in the judgments, decree or order which has crept into it inadvertently and un-intentionally. Such mistakes are mostly caused due to inadvertent mistakes of the Court. The rules of procedure as provided by C.P.C. or intended to foster justice, therefore, no one should be allowed to suffer due to the mistake of the court.

The court has jurisdiction to correct the clerical or arithmetical mistakes or errors caused due to accidental

slip or omissions in a judgment, decree, or order. Depending on facts, it confers a wide discretion on the court to correct, (I) clerical, or arithmetical mistake, (II) errors caused due to accidental slips or omissions in the judgment, decree or order. Such power can be exercised at any time. Where the court is bound to grant a relief which the party seeks, or where the court is bound to grant relief even without it being sought by a party and if unintentionally or inadvertently the court does not grant such relief, it would be justified at any time to correct such accidental omission or errors by exercising power under section 152 C.P.C.”

12. The law favours adjudication on merits. Technicalities should not be allowed to defeat justice. An act of the Court should not prejudice any party. Technical objection should not come in the way of dispensation of complete and substantial justice. In this regard, reference can be sought from case titled “Muhammad Shafi and others V. Muhammad Boota and others” (2004 SCMR 1611).

13. Learned counsel for the respondents maintained that if a relief claimed in the plaint but has not been granted by the Court then it must be assumed that it has been refused. While relying upon “Baqar versus Muhammad Rafique and others” (2003 SCMR 1401) argued that omission made by Court by positive application of mind could never be dubbed as accidental or a mistake apparent on the face of record.

14. Petitioner specifically pleaded in his plaint that respondents No.2 to 8 agreed to sell their shares to him and after receipt of consideration amount executed agreements to sell in his favour. Petitioner produced said agreements in his documentary evidence. Respondents No.2 to 8 conceded his stance in their written statement. In this scenario reliefs of specific performance and perpetual injunction were the basic reliefs, which required determination from the Court. Failure on the part of the Court to give any findings on said reliefs and to decide in either way did not suggest that said omissions were made by the Court through positive application of mind intentionally. The learned trial Court did not expressly refuse to grant said reliefs. Said omission is not a

deliberate one and seems to be an inadvertent accidental slip, which squarely falls within the ambit of Section 152, C.P.C.

15. The case law referred to by the learned counsel for the respondents are not relevant to the facts and circumstance of the case, hence, not applicable.

16. For what has been discussed above, the instant constitutional petition is allowed. Impugned orders/judgments dated 09.07.2021 and 11.02.2022 are set-aside. Resultantly, the application filed by the petitioner for correction of order and decree dated 29.03.2019 is allowed and learned trial Court is directed to make necessary correction in the order and decree dated 29.03.2019, keeping in view plaint and evidence of the petitioner by incorporating reliefs of specific performance and perpetual injunction. No order as to costs.

(AHMAD NADEEM ARSHAD)
JUDGE.

Approved for Reporting:

JUDGE.

A.Razzaq*