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Judgment Sheet

IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

….

Civil Revision No.1499 of 2012.

(Muhammad Hussain, etc. **Versus** Ali Muhammad, etc.)

J U D G M E N T

Date of hearing:	**30.10.2024**
Petitioners by:	M/s Syed Kaleem Ahmad Khurshid and Ch. Sultan Mahmood Kamboh, Advocates.
Respondents by:	Nemo.

AHMAD NADEEM ARSHAD, J. This Civil Revision is directed against the order dated 25.06.2005, whereby, the learned lower appellate Court dismissed petitioners' application under Section 152 of the Code of Civil Procedure, 1908 (C.P.C) for correction of the decree dated 17.12.1995.

2. Facts in brevity are that the petitioners instituted a suit on 25.09.1974 for declaration of their title and recovery of possession of the land measuring 32 *kanals* 10 *marlas* against the respondents; that the respondents resisted the suit through filing written statement in contrast; that the learned trial Court after framing of necessary issues, recording of evidence of the parties pro and contra, oral as well as documentary, dismissed the suit vide judgment and decree dated 22.04.1990; that feeling aggrieved the petitioners preferred an appeal which was allowed by the learned first appellate Court vide judgment and decree dated 17.12.1995 and set-aside the judgment and decree of learned trial Court dated 22.04.1990 and declared that the petitioners are still owners to the extent of one half share in respect of the suit property allegedly gifted away to Muhammad Suleman through mutation No.306 dated 30.09.1962 and dismissed to the extent of the remaining land; that the petitioners on 06.06.2005 moved an application under

Section 152 of C.P.C., with the contention that while preparing the decree, the relief of possession was omitted by the learned appellate Court, therefore, the decree does not agree with the judgment and they could not be refused due to omission while formulating the decree; that the learned appellate Court after providing opportunity of hearing dismissed the said application vide impugned order dated 25.06.2005. Being dissatisfied, the petitioners invoked the revisional jurisdiction of this Court by filing instant revision petition.

3. This Court after proclamation published in the newspaper vide order dated 15.10.2024 proceeded *ex-parte* against the respondents No.1 to 17, 20, 24 to 25-D. Today no one appeared on behalf of the respondents No.19-A to 19-E, 21-A to 21-C, 22-A to 22-G and 23-A to 23-D despite the name of learned counsel for the said respondents is duly reflected in today's cause list, therefore, they are also proceeded against *ex-parte*.

4. I have heard learned counsel for the petitioners at full length and perused the record with his able assistance and also gone through the case laws cited at bar.

5. Learned counsel for the petitioners maintained that section 151 CPC provides inherent jurisdiction to the Courts to make such orders as may be necessary for the ends of justice or to prevent the abuse of process of the Court; that Section 152 C.P.C., provides that clerical or arithmetical mistakes in judgments, decrees, orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Courts either of its own motion or on the application of the any of the parties; that while preparing decree, the relief of possession was omitted by the learned appellate Court; that the decree passed by the learned Additional District Judge, dated 17.12.1995, does not agree with the judgment; that the petitioner cannot be refused due to omission while formulating the decree ; that the said decree has not been drawn in accordance with the form prescribed and while relying upon the judgments "*Ram Singh v. Sant Singh and others"* (**A.I.R. 1930 Lahore 210**),

"*Maharaj Pullu Lal v. Sripal Singh and others"* (**A.R.I. 1937 Oudh 191**), *"FEDERATION OF PAKISTAN and another vs. Haji MUHAMMAD SAIFULLAH KHAN and others"* (**PLD 1989 Supreme Court 166**), "*BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) Ltd vs. Messrs ALI ASMESTOS INDUSTRIES Ltd and 5 others"* (**1990 MLD 130**), "*BCCI s. ALI ASBESTOS LIMITED"* (**NLR 1992 Civil 771**) and "*Mst. AKHTAR SULTANA vs. Major Retd. MUZAFFAR KHAN MALIK through his legal heirs and others"* (**PLD 2021 Supreme Court 715**) prayed for setting-aside of the order dated 25.06.2005 of learned lower appellate Court and prayed for incorporation of the prayer of possession in the decree.

6. No doubt, the Courts have inherent powers under section 151 C.P.C., to make such orders as may be necessary to meet the ends of justice or to prevent the abuse of the process of the Court but the said powers are to be exercised to secure the ends of justice.

7. Admittedly Section 152 C.P.C., gives an authority to the Court to correct the clerical or arithmetical mistakes even of its own motion as none should suffer due to mistake of the Court.

8. In the instant case the most critical point for determination is that whether there is any clerical or arithmetical mistake due to error of the Court which required to be corrected. Perusal of the judgment dated 17.12.1995 it appears that the learned lower appellate Court accepted the petitioners' appeal partially and dismissed rest of the appeal in the following manner: -

> *"13. On the basis of what has been discussed above, the instant appeal stands accepted and the impugned judgment and decree are set-aside to the extent that the appellants/plaintiffs are still owners to the extent of one half share in respect of the suit land allegedly gifted away to Muhammad Suleman, the original donor of the same vide mutation No.306 dated 30.09.1962. Appeal to the extent of remaining land shall stand dismissed. Parties are left to bear their own costs."*

Whereas the decree sheet was prepared in the following terms:-

> *"This appeal coming on 13.12.1995 before me (Ch. Faiz Talib Khan) Addl. District Judge, Sheikhupura for final disposal, in the presence of Mr.Saeed Iqbal Saleemi, Advocate, counsel for the appellants, and Ch. Imtiaz Ali Khan, Advocate, counsel for respondents No.1 to 5 and 7 to 18. It is ordered that appeal is accepted and impugned judgment and decree are set-aside to the extent that the appellants/plaintiffs are still owners to the extent of ½ share in respect of the suit land allegedly gifted away to Muhammad Suleman, the original donor of the same vide mutation No.306, dated 30.09.1962. Appeal to the extent of the remaining land shall stands dismissed. Parties are left to bear their own costs."*

9. Perusal of the judgment dated 17.12.1995 and decree it appears that the said decree is drawn in accordance with the judgment. The decree drawn does agree with the judgment. There is no variance between the judgment and decree. The decree is totally in accordance with the judgment and is not at variance. I have not found any arithmetical or clerical mistake in the judgment and decree. The grievance of the petitioners is that relief of possession was omitted while preparing the decree but from perusal of the judgment it appears that the relief of possession was not given even in the judgment.

10. From perusal of the plaint it appears that the petitioners prayed in the following terms: -

> "اندریں حالات بالا استدعا ہے کہ ڈگری استقرار حق بدیں امر مظہران مدعیان اراضی تعدادی 14 کنال 10 مرلہ بہ تفصیل مندرجہ عنوان نمبران خسرہ نمبر 176 کیلہ نمبر 7-3/2 و کیلہ نمبر 18-6/3 مربعہ نمبر 163 کیلہ نمبر 9-4/17 مندرجہ جمعبندی سال 1970-71 واقعہ رقبہ جاتری کہنہ تحصیل و ضلع شیخوپورہ بحیثت مالکان کامل و قابض و متصرف ہیں۔ اور مدعا علیہم مذکوران کا اراضی تعدادی متدعویہ سے کوئی تعلق نہ ہے۔ بمعہ ڈگری دخلیابی مربعہ نمبر 152 کیلہ نمبر 14-6/10 و مربعہ نمبر 153 کیلہ نمبر 9-4/9 کیلہ نمبر 18-8/10 مربعہ نمبر 176 کیلہ نمبر 10-3/2، کیلہ نمبر 18-8/9 اراضی تعدادی 32 کنال 10 مرلہ بروئے جمعبندی سال 1970-71 واقع جاتری کہنہ تحصیل و ضلع شیخوپورہ بحق مدعیان بر خلاف مدعا علیہم معہ خرچہ صادر فرمائی جاوے دیگر دادرسی قرین انصاف دلوائی جاوے 14.12.1988 "

From perusal of prayer clause as narrated in the plaint it appears that the petitioners sought two reliefs firstly they sought declaration to the effect that they are owners in possession of a piece of land measuring 14 *kanals* 10 *marlas* in square No.163,

killa No.17, 04 *kanals* 09 *marlas*, square No.176, *killa* No.2, 03 *kanals* 03 *marlas*, *killa* No.3, 06 *kanals* 18 *marlas* according to the record of rights for the years 1970-71 by challenging the gift mutation No.306 dated 30.09.1962 and secondly they sought recovery of possession of land measuring 32 *kanals* 10 *marlas* situated at square No.152, *killa* No.10 measuring 06 *kanals* 14 *marlas*, square No.153 *killa* No.9 measuring 04 *kanals* 09 *marlas*, *killa* No.10 measuring 08 *kanals* 18 *marlas*, square No.176 *killa* No.2 measuring 03 *kanals* 11 *marlas*, *killa* No.9 measuring 08 *kanals* 18 *marlas*, according to the record of rights for the years 1970-71, *Jatheri-Khena*, Tehsil & District Sheikhupura.

11. The petitioners/plaintiffs in their suit challenged the veracity of gift mutation No.306 dated 30.09.1962 (Exh.P-8/Exh.D-1), whereby, Din Muhammad son of Ali Sher (defendant No.2), Ghulam Din son of Rehmat Ullah (defendant No.1), Muhammad Hussain son of Allah Bakhsh (plaintiff No.1/petitioner No.1) gifted their land measuring 13 *kanals* 03 *marlas* to Muhammad Suleman, predecessor of the defendants No.3 to 6 namely Ghulam Muhammad, Khan Muhammad, Hassan Muhammad and Ghulam Fatima. The learned trial Court in this regard framed issue No.8 in the following terms:-

"Issue No.8: *Whether the mutation of gift No.306 dated 30.09.1962 is fictitious, based upon fraud and is without consideration? OPP."*

The learned trial Court decided said issue in favour of the petitioners/plaintiffs and against the respondents/defendants and declared that mutation No.306 was fictitious, based on fraud and was without consideration. However, the learned appellate Court held that the impugned mutation of gift stands cancelled to the extent of ½ share owned by the petitioners/appellants.

12. The petitioners in their suit themselves claimed to be owners in possession of the suit property measuring 14 *kanals* 10 *marlas* and the learned Courts below while accepting their claim granted the relief sought by them. Now the question arises when the

petitioners themselves claimed that they are in possession of the property and sought only declaration then how the Court could grant them relief of possession with regard to land measuring 14 *kanals* 10 *marlas*.

13. The petitioners in their suit challenged the veracity of inheritance mutation No.292 dated 30.09.1962 (Exh.P-7) of Atta Muhammad, whereby, the suit property was inherited to Din Muhammad (defendant No.2), Ghulam Din (defendant No.1) and Muhammad Hussain (plaintiff No.1). They claimed that their father namely Allah Bakhsh was entitled to inherit the whole property of Atta Muhammad. The learned trial Court with regard to the said controversy framed issues No.9 & 10 in the following terms: -

> *"Issue No.9. Whether the mutation No.292 dated 30.09.1962 is null and void and whether the plaintiffs' are exclusive heirs of Allah Bakhsh, if so, its effect ? OPP.*
>
> *Issue No.10. Whether the plaintiffs are owners of land in dispute? OPP."*

The learned trial Court decided issue No.9 in favour of the petitioners and issue No.10 against them. The learned appellate Court while deciding issues No.9 & 10 declared that mutation No.292 dated 30.09.1962 in favour of Rehmat Ullah is void *ab-initio* and held that the petitioners being successors-in-interest of Allah Bakhsh deceased are entitled to one half share out of the estate of Atta Muhammad deceased, whereas, the remaining one half share is owned by Din Muhammad (defendant No.2). Consequently, sale by Din Muhammad (defendant No.2) in favour of Bashir Ahmad (defendant No.7) and Din Muhammad (defendant No.8) was held to be lawful and legal.

14. The learned trial Court vide judgment and decree dated 22.04.1990 non-suited the petitioners by declaring their suit barred by time and decided issue No.1 against them. The learned appellate Court reversed the findings of the learned trial Court and decided issue No.1 in their favour by declaring that their suit is within time.

15. With regard to the second relief, whereby, the petitioners sought recovery of possession, the learned trial Court, keeping in view the stance taken by the respondents/defendants framed issue No.7 in the following terms:-

> *"Issue No. 7.Whether the defendants No.1-3 to 6 have become owners through adverse possession? OPD."*

The learned trial Court decided the said issue in favour of the respondents/defendants by declaring that the defendants have matured their title by adverse possession as under:-

> *"Issue No.7. It is an admitted fact that the disputed land was mutated in favour of the defendants in 1962 and since then they are in possession of the suit. The present suit was instituted in 1974 that is exactly after 12 years. The possession of the defendants is proved by documentary as well as oral evidence, I therefore, conclude that the defendants have matured their title by adverse possession. This issue is decided in favour of the defendants."*

16. Section 28 of the Limitation Act, 1908 was enforced when the learned trial Court passed the judgment and decree on 22.04.1990. But later on the Hon'ble Supreme Court of Pakistan in the case titled "*Maqbool Ahmad vs. Government of Pakistan*" (**1991 SCMR 2063**) declared provisions of Section 28 repugnant to injunctions of Islam by declaring that any suit on the basis of adverse possession is not maintainable from 31.08.1991. The Government of Pakistan vide Limitation (amendment Act-II) of 1995 (PLD 1996 Central Statute 1296) omitted Section 28 from the Limitation Act, 1908 on 18.10.1995. In this way Section 28 of the Limitation Act, 1908 has ceased to have any effect from 31.08.1991 and was omitted from the Limitation Act on 18.10.1995.

17. The learned appellate Court while discussing the fate of issues No.1 & 5 declared that findings of the learned Civil Judge on issues No.1 & 7 are set-aside. It appears that the figure "7" was inadvertently written in para 12 instead of figure "5" as the learned appellate Court in para 11 & 12 have discussed issues No.1 & 5 and did not discuss the defendants' claim of adverse possession. The

learned appellate Court failed to give any independent finding with regard to issue No.7.

18. Judgment is verdict or decision of the Court usually recorded after recording the evidence and hearing the contesting parties. It is a conclusive judicial determination of rights of parties in any legal proceedings. Decree, is formal expression of opinion of the Court, it follows the judgment. When conclusion of the Court is translated into executable form, it is reflected in the "decree". Decree must be drawn in consonance and in conformity with decision of the Court. Order XX Rule 6 C.P.C. defines contents of decree which reads as follows:-

> ***Rule 6. Contents of decree****.—(1) The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.*
> *(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.*
> *The Court may direct that the costs payable to one party by the other shall be set off against any sum, which is admitted or found to be due from the former to the latter."*

19. On reading Rule 6 of Order XX of C.P.C., it is but clear that, the decree should be in accordance and in conformity with the judgment. Decree in fact is will of the Court. It is true reflection of the judicial determination of rights of the parties made by the Court. It is the decree that is executed or implemented. It is duty of the Court, while drawing the decree, to specify clearly the relief granted or other determination of rights of the parties in the suit so as to make it conformity with the will of the Court capable of enforcement. For reference *"SHAUKAT ISMAIL CHARANIA versus Mrs. SHAKEELA HAYAT KHAN and others"* (**2006 CLC 1126**).

20. Now the question whether the omission in the decree for delivery of possession could be supplemented in exercise of the authority under Section 152 C.P.C. It would be beneficial to reproduce Section 152 of C.P.C. which reads as follows:-

> ***"Section 152. Amendment of judgment, 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."*

21. The Court has the powers under Section 152 C.P.C., to amend the orders or decrees, to remove, *inter-alia*, errors arising therein, from any accidental slip or omission and this power can, in express terms of the Section be exercised at any time. The plain reading of Section, leaves no doubt whatsoever, that the power conferred on the Court, if the case falls within the purview of the 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. Also it is apparent that the power can be exercised *suo motu*. It has however, been held that the fact that powers of Court under Section 152 C.P.C., are unlimited does not mean that they will be exercised in all cases in which an application for their exercise is made. The exercise of power will depend on the circumstances of each case. The power is, therefore, discretionary with the Court, although normally where the provision of section 152 C.P.C., are attracted it will order amendment, unless it is inequitable to do so. For reference "*Mst. FAROSHA versus FAZAL GUL and others*" (**PLD 1983 Supreme Court 220**).

22. The august Supreme Court of Pakistan while dealing with power of the Court under Section 152 C.P.C., in a case titled "*Syed SAADI JAFRI ZAINABI versus LAND ACQUISITION COLLECTOR and Assistant Commissioner"* (**PLD 1992 Supreme Court 472**) held as under: -

> *"Section 152 enables a Court to correct the mistake, omission or error in the judgment, decree or order which has crept into it inadvertently and unintentionally. Such mistakes are mostly caused due to inadvertent mistake of the Court. The rules of procedure as provided by C.P.C. are intended to foster justice, therefore, no one should be allowed to suffer due to the mistake of the Court.*
>
> *9. 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. Depending on facts, it confers a wide discretion on the Court to correct, (i) clerical or arithmetical mistake, (ii) errors caused due to accidental slip or omission 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 error by exercising power under Section 152."

23 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, it is only where the slip or omission as accidental or unintentionally 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. However, where slip or omission is intentional and deliberate, it could only be remedied or corrected by way of review if permissible or in appeal or revision as the case may be.

24. In the light of above said discussion, when considered the judgment of the learned appellate Court, it appears that the learned appellate Court modified the finding of learned trial Court with regard to issue No.8 and cancelled the gift mutation No.306 dated 30.09.1962 to the extent of one half share owned by the petitioners. The learned appellate Court also modified the findings of the learned trial Court upon issues No.9 & 10 and declared that Atta Muhammad's inheritance mutation No.292 dated 30.09.1962 in favour of Rehmat Ullah is void. The petitioners being successors in interest of Allah Bakhsh deceased are entitled to one half share out of the estate of Atta Muhammad deceased, whereas, the remaining one half is owned by Din Muhammad and validated the sale made by Din Muhammad in favour of Bashir Ahmad (defendant No.7) and Din Muhammad (defendant No.8).

25. The learned trial Court vide its judgment and decree declared the possession of the defendants valid on the basis of adverse possession but the learned appellate Court did not alter or set-aside the findings of the learned trial Court. The said slip or omission is not accidental or unintentional rather it seems to be intentional and deliberate. Therefore, if the petitioners had any grievance from the impugned judgment and decree dated 17.12.1995 of the learned first appellate Court, then they should

have approached the superior Courts for redressal of their grievance but they never challenged said judgment and decree and it attained the status of finality. Admittedly, the judgment attained finality cannot be altered even with the consent of the parties. The decree is totally in accordance with the judgment, hence, does not call for any rectification under Section 151 & 152 C.P.C.

26. Learned counsel for the petitioners failed to point out any illegality, irregularity or jurisdiction defect in the impugned order of the learned appellate Court. The case law referred to by the learned counsel for the petitioners have no relevancy with the facts and circumstances of the case, so not helpful to the petitioners.

27. Epitome of above discussion is that the instant Civil Revision is without any merits, hence, ***dismissed*** with no order as to costs.

(AHMAD NADEEM ARSHAD)
JUDGE

Approved for reporting:

JUDGE.

*A.Razzaq**