

Smt. Sooraj Devi vs Pyare Lal And Anr on 8 January, 1981

Equivalent citations: 1981 AIR 736, 1981 SCR (2) 485, 1981 (2) SCR 485, AIR 1981 SUPREME COURT 736, 1981 (1) SCC 500, 1981 SCC (SUPP) 43, 1981 CRIAPPR(SC) 59, 1981 SCC(CRI) 188, 1981 UJ (SC) 262, (1982) 1 MAD LJ 7, (1981) SC CR R 362, (1981) MAD LJ(CRI) 392, (1981) 2 SCJ 48, (1981) ALLCRIC 108, 1981 CRI. L. J. 296, (1981) 2 SCR 485 (SC) 1981 CRILR(SC MAH GUJ) 174, 1981 CRILR(SC MAH GUJ) 174

Author: R.S. Pathak

Bench: R.S. Pathak, Ranjit Singh Sarkaria

PETITIONER:

SMT. SOORAJ DEVI

Vs.

RESPONDENT:

PYARE LAL AND ANR.

DATE OF JUDGMENT 08/01/1981

BENCH:

PATHAK, R.S.

BENCH:

PATHAK, R.S.

SARKARIA, RANJIT SINGH

CITATION:

1981 AIR 736 1981 SCR (2) 485

1981 SCC (1) 500 1981 SCALE (1) 46

CITATOR INFO :

R 1990 SC1605 (6)

ACT:

Code of Criminal Procedure, 1973, S. 362-Scope of.

Whether the High Court can alter or review its own judgment in exercise of inherent powers under s. 482.

Words and Phrases-'otherwise provided by this Code or by any other law for the time being in force'-'Clerical or arithmetical error'-Meaning of.

HEADNOTE:

Section 362 of the Code of Criminal Procedure, 1973,

mandates a court not to alter its judgment. It declares that: "save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

The house property owned by the husband of the appellant was sold in a court auction sale and the first respondent purchased the property and obtained possession through the Civil Court Amin. In his absence, it was alleged, that the second respondent (son of the appellant) had removed the lock and entered into possession. The first respondent, instituted a criminal proceeding against the second respondent, and he was ultimately convicted and sentenced by the High Court under section 448 of the Indian Penal Code, with the further direction that 'the house property be restored to the possession of the first respondent'. Pursuant to that order the first respondent applied for possession, but the appellant objected asserting her right to the property. The Magistrate overruled the objection and observed that it was open to the appellant to establish her right by way of a civil suit. This order was upheld by the High Court.

The appellant thereafter filed a Criminal Miscellaneous Application before the High Court under section 482 of the Code of Criminal Procedure, 1973 alleging that she was not a party to the criminal proceedings against the first respondent and that she was in possession in her own right and that the earlier order of the High Court in the criminal proceedings directing restoration of possession to the first respondent be clarified by a declaration that it was not binding on her and did not affect her possession. The High Court dismissed this application.

Dismissing the appellant's appeal

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HELD : 1. The High Court was right in declining to entertain the application. [489 C]

2. "A clerical or arithmetical error" is an error occasioned by an accidental slip or omission of the Court. It represents that which the court never
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intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing. [488 G]

Master Construction Co. (P) Ltd. v. State of Orissa and Another, [1966] 3 S.C.R. 99 referred to.

In the instant case what the appellant sought by the application, was not the correction of a clerical or arithmetical error, but a declaration that the High Court order in the criminal proceedings did not affect her right in the house property and that the direction to restore

possession to the first respondent was confined to that portion only of the house property respecting which the offence of trespass was committed so that she was not evicted from the portion in her possession. This controversy cannot be brought within the description "clerical or arithmetical error". [488 D-F]

3. The inherent power of the Court under section 482 of the Code is not contemplated by the saving provision contained in section 362 and, therefore, the attempt to invoke that power by the appellant can be of no avail.

[488H-489A]

4. The inherent power of the Court cannot be exercised for doing that which is specifically prohibited by the Code. [489-B]

Sankatha Singh v. State of U.P. A.I.R. 1962 SC 1208 referred to.

5. The prohibition in section 362 against the Court altering or reviewing its judgment is subject to what is "otherwise provided by this Code or by any other law for the time being in force." These words refer only to those provisions where the Court has been expressly authorised by the Code or other law to alter or review its judgment. [489-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 471 of 1979.

From the Judgment and Order dated 5-1-1979 of the Allahabad High Court in Criminal Case No. 5127 of 1978.

Kameshwar Prasad and Pramod Swarup for the Appellant. S. K. Jain for the Respondent.

The Judgment of the Court was delivered by PATHAK, J : This appeal by special leave is directed against an order of the Allahabad High Court dismissing an application for "clarification" of an earlier order made by the court in a criminal proceeding.

The dispute in this appeal relates to a property described as house No. 24/47, Birhana Road, Kanpur. A suit filed by the South India Trading Company against Jethmal Laxmichand was decreed and execution proceedings were taken for the attachment and sale of the aforesaid house property. The house was owned by one Khem Raj, who died leaving a widow, Smt. Sooraj Devi (the appellant) and a son, Kailash Chandra Jain (the second respondent). The property was purchased by Pyare Lal (the first respondent). Pyare Lal obtained possession through the Civil Court Amin on 8th October, 1965, but in his absence Kailash Chandra Jain is said to have removed the lock and entered into possession. In a criminal proceeding against him on a complaint by Pyare Lal, he was ultimately convicted and sentenced by the High Court under s. 448, Indian Penal Code by an order dated 1st September 1970, under which the High Court also directed "that house No. 24/47, Birhana Road,

Kanpur be restored to the possession of the complainant". Pursuant to that order, Pyare Lal applied for possession. The appellant filed an objection, asserting a right to the property. The Magistrate overruled her objection, observing that it was open to her to establish her right by way of suit. The rejection of her objection was upheld by the High Court by its order dated 21st July, 1978. The appellant then filed Criminal Miscellaneous Application No. 5127 of 1978 before the High Court under s. 482 of the Code of Criminal Procedure alleging that she was not a party to the criminal proceeding against Kailash Chandra Jain, that she was in possession in her own right, and that the earlier order of the High Court dated 1st September, 1970 directing restoration of possession to Pyare Lal be clarified by a declaration that it was not binding on her and did not affect her possession. On 5th January, 1979, the High Court dismissed the application in view of the decision of this Court in *State of Orissa v. Ram Chander Agarwala etc.* The order has led to this appeal.

Before passing on the merits of this appeal, we may observe that the house property has been, and still is, the subject of civil litigation. Civil Suit No. 73 of 1963 was filed by Kailash Chandra Jain and his minor sons alleging that they were entitled to the house property and the decree obtained by the South India Trading Company was not binding on them and could not be executed against them. As the property was meanwhile sold and the sale confirmed the suit was regarded as infructuous and the plaint was allowed to be rejected for want of court fee. Instead, Civil Suit No. 53 of 1964 was filed by the minor sons of Kailash Chandra Jain claiming that they were joint owners of the property, that the sale conferred no right, title or interest in Pyare Lal and that they were entitled to an injunction. The appellant, who had originally been impleaded as a defendant in the suit, was transposed to the array of plaintiffs. The suit was dismissed in default, but subsequently restoration was allowed by the Trial Court on payment of costs, and the time for payment of costs was extended by the High Court. A third suit, Civil Suit No. 18 of 1977, was filed by the appellant for partition. An application for interim injunction for preserving the appellant's possession in the house property has been dismissed by the trial court.

The sole question before us is whether the High Court was right in refusing to entertain Criminal Miscellaneous Application No. 5127 of 1978 on the ground that it had no power to review its order dated 1st September, 1970. Section 362 of the Code of Criminal Procedure declares :

"Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error".

It is apparent that what the appellant seeks by the application is not the correction of a clerical or arithmetical error. What she desires is a declaration that the High Court order dated 1st September, 1970 does not affect her rights in the house property and that the direction to restore possession to Pyare Lal is confined to that portion only of the house property respecting which the offence of trespass was committed so that she is not evicted from the portion in her possession. The appellant, in fact, asks for an adjudication that the right to possession alleged by her remains unaffected by the order dated 1st September, 1970. Pyare Lal disputes that the order is not binding on her and that she is entitled to the right in the property claimed by her. Having considered the matter, we are not satisfied that the controversy can be brought within the description "clerical or arithmetical error".

A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. It represents that which the court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing. *Master Construction Co. (P) Ltd. v. State of Orissa and Another.*

The appellant points out that he invoked the inherent power of the High Court saved by s. 482 of the Code and that notwithstanding the prohibition imposed by s. 362 the High Court had power to grant relief. Now it is well settled that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. *Sankatha Singh v. State of U.P.* It is true that the prohibition in s. 362 against the Court altering or reviewing its judgment is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in section 362 and, therefore, the attempt to invoke that power can be of no avail.

The High Court, in our opinion, is right in declining to entertain the application. The appeal must be dismissed. But we may observe that anything said by the High Court in the criminal proceeding against Kailash Chandra Jain should not be allowed to influence the judgment of the court in the civil suits mentioned above or in any proceeding arising therefrom.

The appeal is dismissed.

N.V.K.

Appeal dismissed.