

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No.58 of 2020**

Ramchandra Ram Petitioner
Versus
1. Shailendra Kumar @ Abhay Kumar
2. Mira Devi Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner : Mr. Amar Kumar Sinha, Advocate
For the Respondent No.1 : Mr. Rahul Kumar Gupta, Advocate

10/10.09.2021 The present civil miscellaneous petition is taken up today through Video conferencing.

2. The present civil miscellaneous petition has been filed for quashing the orders dated 19th September, 2018 and 13th November, 2019 passed by the learned Civil Judge (Junior Division)-II (Munsif), Koderma in Execution Case No.04 of 2013, whereby the petition filed by the decree holder/petitioner under Order VI Rule 17 read with Sections 151, 152 and 153 of CPC has been rejected.

3. The factual background of the case as stated in the present civil miscellaneous petition is that the plaintiff/petitioner and one Mira Devi – the respondent no.2 filed Title Suit No.41 of 2010 against the defendant/respondent no.1 in the court of learned Civil Judge (Junior Division)-II (Munsif), Koderma praying inter alia for declaration of their title and possession with respect to the suit land as described in 'Schedule-A' of the plaint and for grant of permanent injunction against the defendant/respondent no.1 restraining him from going over the suit land. The learned court below disposed of the said suit in terms with the Judgment dated 12th March, 2013 (the decree was signed on 18th March, 2013). Thereafter, the decree holder/petitioner filed Execution Case No.04 of 2013 before the learned court below. In the said execution case, the petitioner filed a petition under Order VI Rule 17 read with Sections 151 and 152 of CPC seeking amendment in 'Schedule A' of the plaint and for corresponding amendment in the judgment and decree of Title Suit No.41 of 2010 with regard to area of the suit property stating inter alia that due to mistake, the area of the land was wrongly mentioned as '0.08' decimal instead of '8' decimals although specific boundary was given in the land described in Schedule 'A' of the plaint. The executing court, however, vide order dated 19th September, 2018, rejected the said

petition filed by the decree holder/petitioner seeking amendment in Schedule 'A' of the plaint as well as in the judgment and decree. The decree holder/petitioner thereafter filed a separate petition under Order VI Rule 17 read with Sections 151, 152 and 153 of CPC seeking amendment/rectification in Schedule 'A' of the plaint, judgment and decree of Title Suit No.41 of 2010 with regard to area of the suit property stating that due to some typographical error, the area of the land was wrongly mentioned as '0.08' decimals instead of '8' decimals in the plaint, judgment and decree of Title Suit No. 41 of 2010. The learned court below vide order dated 13th November, 2019 also rejected the said petition filed by the decree holder/petitioner.

4. The learned counsel for the petitioner submits that during pendency of the execution case, it was pointed out that due to typographical mistake, the area of the suit land was wrongly mentioned as '0.08' decimal instead of '8' decimals in the plaint, judgment and decree of Title Suit No.41 of 2010 and as such, a petition for correcting the said mistake was filed before the learned court below, however, it refused to exercise the power vested in it. It is further submitted that sufficient evidence was already available on record so as to disclose that the area of the suit property is '8' decimals. As such, the learned court below ought to have allowed the petition filed by the petitioner for making necessary correction in the plaint and for corresponding corrections to be made in the judgment and decree. It is also submitted that the decree holder/petitioner cannot be deprived of getting the actual fruits of the decree due to some typographical error. It is a settled law that the Court has the power to verify the identity of the suit property taking assistance from the description of the land and as such, the learned court below committed an error in rejecting the prayer of the decree holder/petitioner seeking amendment of the plaint and corresponding amendment in the judgment and decree with regard to area of the suit property.

5. The learned counsel appearing on behalf of the respondent no.1 while opposing the prayer of the petitioner submits that the learned court below has rightly rejected the highly belated application filed for amendment of plaint, judgment and decree. It is further submitted that the petitioner is trying to amend the area of the suit land which will in

fact change the nature of suit itself and will cause serious prejudice to the respondent no.1. It is also submitted that the petitioner has failed to explain the huge delay committed in filing the amendment petition which is a pre-requisite for allowing such petitions.

6. Heard the learned counsel for the parties and perused the materials available on record. The petitioner filed an application under Order VI Rule 17 read with Sections 151, 152 and 153 CPC seeking amendment in Schedule 'A' of the plaint and corresponding amendment in the judgment and decree to the extent of deleting '0.0' before 8 decimal, as the same was a typographical mistake and was required to be corrected for effective execution of the decree.

7. The learned court below rejected the amendment petition of the petitioner holding inter alia that the proposed amendment was not formal in nature and if the same was allowed, it would change the entire structure of the suit land. It was further held that the decree holder tried to seek amendment in the plaint, judgment and decree at a very belated stage, which would cause prejudice to the interest of the judgment debtor.

8. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of ***Tilak Raj Vs. Baikunthi Devi (Dead) by LRs.*** reported in ***(2010) 12 SCC 585***, the relevant paragraphs of which are quoted hereinbelow:

"23. The aforesaid mistake was of clerical nature which could have been corrected by applying the provisions of Section 152 CPC. The 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. 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 the khasra number in khasragirdawari, we find 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.

24. In K. Rajamouli v. A.V.K.N. Swamy [(2001) 5 SCC 37] this Court held as follows: (SCC p. 41, para 6)

"6. Section 152 provides that a clerical or arithmetical mistake 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."

25. 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 subserving 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

court should not bind itself by the shackles of technicalities.”

9. In the aforesaid judgment, the Hon'ble Supreme Court has held that clerical or arithmetical mistake in judgments, decrees or orders or errors arising therein from any accidental slip or omission may be corrected at any time by the court in exercise of the power conferred under Section 152 CPC either of its own motion or on the application of any of the parties, so as to dispense effective justice. It has further been held that no party should suffer due to bona fide mistake.

10. The learned counsel for the petitioner has invited the attention of this Court to the registered sale deed no.3127 dated 23rd November, 1993 and deposition of plaintiff-witness No.3 (the petitioner herein) of Title Suit No.41 of 2010 (Annexure-6 series to the supplementary affidavit dated 21st August, 2020 filed on behalf of the petitioner). On perusal of the sale deed of the suit property, it appears that the area of the land has been mentioned as '8' decimals as also P.W.3 stated in his deposition recorded at paragraph 5 that the area of the land is '8' decimals and the said fact was not contradicted in the cross-examination. Thus, it appears that the evidence to the effect that the area of the land is '8' decimals was already available on record and only due to inadvertent/typographical mistake, the same was mentioned as '0.08' decimal in the plaint due to which the said mistake continued to occur in the judgment and decree as well.

11. In view of the aforesaid facts and circumstance, I find that the learned court below has committed error in not allowing the petitioner to correct such typographical mistake which is necessary for the effective execution of the decree.

12. Moreover, the area of the suit property written as '0.08' decimal in the plaint, judgment and decree is too meager (i.e., about 35 square feet) which cannot be reasonably believed to be true. Apparently, due to typographical mistake, the area of the suit land was written as '0.08' decimal instead of '8' decimals in the plaint and consequently the said mistake appeared in the judgment and decree also.

13. Under the aforesaid facts and circumstance and in view of the ratio laid down in the case of ***Tilak Raj (Supra)***, the orders dated 19th September, 2018 and 13th November, 2019 passed by the learned Civil Judge (Junior Division)-II (Munsif), Koderma in Execution Case No.04 of 2013 are, hereby, quashed. The petitioner shall be permitted by the

learned court below to amend the area of '0.08' decimal to '8' decimals in the plaint and, accordingly, the appropriate amendment will be carried out in the judgment and decree by the order of said court.

14. The present civil miscellaneous petition is, accordingly, allowed with the aforesaid observation.

Rohit/AFR

(Rajesh Shankar, J.)