



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.**

CIVIL REVISION APPLICATION NO.629 OF 1999.

- APPLICANTS** :
1. Madhav s/o Tukaram Kulal,
aged about 32 years,
 2. Ramdas s/o Tukaram Kulal,
aged about 28 years,
- Both Cultivators, r/o Ekhaspur, Tq. Risod,
Distt. Akola.

...VERSUS...

- NON-APPLICANTS:**
1. Kisan s/o Ayaji Bodakhe,
aged about 60 years
 2. *Ishanaji s/o Ayaji Bodakhe,
aged about 55 years,*

Legal representatives

- 2(i) Smt. Baynabai wd/o Ishnaji Bodkhe,
aged about 60 years,
- (ii) Bhagwan s/o Ishnaji Bodkhe,
aged about 40 years,
- (iii) Laxman s/o Ishnaji Bodkhe,
aged about 60 years,

Nos.(i) to (iii) are r/o Village Wakad, Tq.
Risod, Distt. Washim.

- (iv) Smt. Lilabai w/o Vikram Jadhao,
aged about 37 years, r/o Chincholi

(Sangle),Tq.Lonar,Distt.Buldhana.

3. Uttam s/o Ayaji Bodakhe,
aged about 58 years,

All Cultivators, all resident of Wakad,Tq.
and Distt.Akola.

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Shri S.Y.Deopujari, Advocate for the applicants.
Shri S.N.Dhangare, Advocate for the non-applicants.

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CORAM: C.L.PANGARKAR,J.
DATE : 1st March, 2007.

ORAL JUDGMENT :

1. This revision is filed by the original defendants/applicants against the order passed by Civil Judge (Jr.Dn.),Risod on an application under Section 152 of the Code of Civil Procedure.

2. The facts giving rise to this revision are as under -

The non-applicants/plaintiffs had instituted civil suit No.104 of 1991 in the court of Civil Judge (Jr.Dn.), Risod for possession of field S.No. 124/1 of village Wakad. The suit came to be decreed on 9/3/1994. Being aggrieved by that decree in civil suit, the defendants i.e. present

applicants filed Civil Appeal No.52 of 1994. The said appeal was partly allowed and decree of the trial court was set aside with respect to mesne profits and a Second Appeal was also preferred by the defendants/applicants before the High Court. The High Court dismissed the said appeal.

3. The non-applicant/plaintiff thereafter filed an execution proceeding before the trial court. Subsequently, the non-applicants moved an application under Section 152 of the Code of Civil Procedure, contending that Survey No.124/1 has been wrongly mentioned in the judgment and decree and sought to correct survey number as 127/1. The trial court allowed the application under Section 152 of the Code of Civil Procedure. Being aggrieved by that, this revision has been preferred.

4. I have heard the learned counsel for the applicants and the non-applicants.

5. It was contended by the counsel for the applicants that the judgment and decree cannot be corrected, since the judgment and decree has assumed finality and the non-applicant/plaintiff does not seek to amend the plaint. There is no doubt that the plaintiff seeks to correct

judgment and decree only. It is apparent that the mistake in the judgment and decree has occurred due to the fact that the wrong Survey number is mentioned in the plaint.

6. The lower court has passed a very detailed order and has made a great deal of discussion in it. It is observed by the lower court that when the evidence of the plaintiff was recorded, he had given correct survey number in the deposition. It is also clear from the order of the lower court that the plaintiff had produced on record 7/12 extracts of survey No.127/1 only and not 124/1. It is thus very clear from this that the parties were very much aware that they were litigating in respect of survey No.127/1 and that the subject matter of the suit is survey no.127/1 only. The mistake, it appears, therefore, is *bonafide* and only a typographical mistake. In a similar such case reported in *A.I.R.2004 Bombay 342 (Narhari Balku Kavade ..vs.. Hanmanta Timma Pujari)*, this court found that such an error could be corrected. The Apex court in *A.I.R. 2003 SC. 643 (Pratibha Singh ..vs.. Shanti Devi Prasad)* observed as follows -

“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 O.7 R.3 and O.20 R.3 of the C.P.C. is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to S.152 or S.47 of the C.P.C. 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 S.152 of the C.P.C. 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 S.47, C.P.C. 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.”

7. In the case at hand, the parties had litigated up to High Court. The mistake was only typographical and the defendant was fully aware that the plaintiff was litigating in respect of survey No.127/1 only. The

ratio of this ruling can squarely be applied to the case at hand.

8. Mr.Deopujari, the learned counsel for the applicants contended that the appellate court, which confirmed the decree, can alone correct the decree and not the lower court. He relied on a case reported in A.I.R. 1979 Patna pg. 5 (Ramsundar Singh ..vs.. Most.Pana Kuer). In the case of *Pratibha Singh* cited above, the Apex court has held that the court, which passes a decree, can correct it under Section 152 of Code of Civil Procedure. Decree in the present case was passed by the trial court hence, the trial court had jurisdiction to correct the decree.

9. Mr.Deopujari, the learned counsel, also relied on a case reported in (2004)1 SCC 328 (State of Punjab ..vs.. Darshan Singh) and contended that the court has no power to alter or add terms of original judgment or order. There can be no dispute on this proposition. In the reported case one para in the final order was sought to be deleted. Here only a typographical mistake which is carried in to the judgment and decree is sought to be corrected. The case as cited by Advocate Mr.Deopujari has, therefore, no bearing in the case at hand. As observed by the Apex Court in *Pratibha Singh's case*, the litigant cannot be deprived of the fruits of the decree for accidental slips and omissions. In this case, the slip ought

to be said to be accidental and typographical only. The plaintiff has fought right from trial court to High Court. He cannot be deprived of fruits of the decree for such inadvertence. The learned counsel for the applicants could not show me any perversity or any illegality in the order. I, therefore, see no merit in the revision. It is dismissed.

JUDGE.

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