

Exn. Case No.10 of 2012

Order dated 08.09.2014 :

This order relates to the petition under Section 152 read with Section 151 and Order 6 Rule 17 of CPC.

The gist of the petition is that the present Execution Case is arising out of Money Suit No. 66/244 of 2012 which has been disposed of on 30.08.2012 on the basis of a compromise petition which is made part of the decree. In the suit schedule, it is mentioned as Mouza Bhubaneswar Sahar, Khata No. 453/266 but by typographical error in the compromise petition, the same are wrongly stated as mouza Bhubaneswar and Khata No.453/226 which were pointed out in the Execution case. So the petitioner therefore prayed that the Hon'ble Court may graciously be pleased to allow the petition and grant leave to the petitioner to amend/correct the schedule portion of the compromise petition as mouza Bhubaneswar Sahar and Khata No. 453/266 in place of the wrong typing mouza Bhubaneswar and Khata No. 453/226 for the interest of justice.

Learned counsel for the J.Dr. files a memo stating that they have no objection if the amendment petition filed by the petitioner/D.Hr. is allowed.

Learned counsel for the D.Hr. during course of his argument submitted that in the present suit which has been decreed on compromise on contest that the terms of the compromise will form the part and parcel of the decree and the parties are bound to follow the terms and conditions of the compromise. So the typographical error occurred as above in the compromise petition may be corrected. In this

regard he relied on one decision of our Hon'ble High Court reported in 2013 (I) OLR 363 (Santosh Kumar Sahoo-vs-Radhanath Sahoo).

Perused the Execution petition, judgment and the case record vide Civil Suit No.244 of 2012 along with the compromise petition. In plaint as per the schedule 'X' it has been reflected that the suit schedule property situate in Mouza Bhubaneswar Sahar, Unit No.-16, Jayadev Vihar, Khata No. 453/266 vide Plot No. 2291/2399/4101, Plot No.2291/2400 and Plot No.2291/4102. The same is also found support from the xerox copy of ROR attached to the plaint which reveals the Khata No.453/266. In fact, in compromise petition it has been wrongly reflected the Khata No.453/226. Accordingly, the judgment vide order dated 30.08.2012 passed that the compromise will form part of the decree and the parties are bound to follow the terms and conditions averred in the compromise petition. Similarly the decree has been drawn. Learned counsel has submitted that this is a clerical error and it has to be corrected for the interest of justice.

It is settled law that when a clerical and mathematical error crops up in the plaint consequently in the decree it can be rectified under Section 152 even after the decree. Similar view has been observed in a case reported in 2013 (I) OLR 363 (Santosh Kumar Sahoo-vrs-Radhanath Sahoo and four others) where the Hon'ble High Court has observed that :

“suit decreed on compromise-correction of final decree--prayer rejected-writ-mistake is a bona fide one and since both the parties agree for such correction, it cannot cause injustice to any of them in as much as by correcting the plaint and the compromise petition by way of amendment as well as the final decree, the same would not affect the right accrued in favour of any of the parties--Trial Court directed to allow the amendment of the plaint

and the compromise petition as well as correction in the final decree".

In view of the above authorities and applying the present fact and circumstance of the case, it is a suit where the same has been decreed basing upon one compromise petition and that the present petition which has been filed under Section 152, 151 and order 6 Rule 17, CPC, the other party has no objection to it. Keeping in view the settled position of law and the discussion made supra, I am of the humble views that the petition filed by the petitioner is allowed. Let correction be made in the compromise petition as well as the decree where the wrong entry has been made. Accordingly, the petition is disposed of.

(Dictated & corrected)

2nd Addl. Sr. Civil Judge, BBSR