

Before R. N. Mittal, J.

BAWA SINGH AND OTHERS—Appellants.

versus

BABU SINGH (DECEASED) REPRESENTED BY DIAL SINGH
AND OTHERS—Respondents.

Civil Misc. No. 1443/C of 1978 in Regular Second Appeal,
No. 1009 of 1968

October 10, 1978.

Code of Civil Procedure (V of 1908)—Section 152—Limitation Act (XXXVI of 1963)—Section 29(2) and Article 137—Period of limitation prescribed by Article 137—Whether applies to applications under section 152 of the Code—Such applications—Whether controlled by any time factor.

Held, that preparation of a decree is the duty of the Court. Section 152 of the Code of Civil Procedure, 1908 prescribes that 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. Words used in this section are 'at any time', which show that the power of the Court to rectify clerical or arithmetical mistakes in the judgments or decree-sheets is not controlled by any time factor. No doubt Article 137 of the Limitation Act, 1963 prescribes a period of three years for making an application under any enactment but the period of limitation prescribed by it will not apply to the applications under section 152 of the Code. From section 29(2) of the Limitation Act, it is evident that where any special law prescribes limitation that will be deemed to be substituted in the Schedule to the Limitation Act. If section 152 of the Code is read along with this section of the Limitation Act, it would be clear that the words 'at any time' would be deemed to have been substituted in place of the period prescribed in the Article. An application can, therefore, be filed for rectifying any clerical or arithmetical mistakes in judgments or decrees at any time.

(Para 3)

Application under section 152 C.P.C. praying that the Decree-Sheet of the Additional District Judge be corrected by incorporating the figure Killa No. 3Min, Rect. No. 27 and total area 19 Kls. 3 Mar-6-14

las so that the Decree-Sheet of this Hon'ble Court be prepared correctly.

B. S. Jawanda, Advocate, for the Appellants.

Puran Chand, Advocate, for the Respondents.

JUDGMENT

Rajendra Nath Mittal, J. (Oral).

(1) This application has been filed under section 152 of the Code of Civil Procedure stating that in the decree-sheet dated May 3, 1968, prepared by the Additional District Judge, Patiala, in clause 'm' words Killa No. 3Min/6-4 and Rectangle No. 27 have not been incorporated through oversight. The applicant has, therefore, prayed that the decree-sheet be corrected accordingly so that it agrees with the judgment of the Court. The application has been opposed by the respondents on the ground that it is not within limitation.

(2) It is contended by the learned counsel for the petitioners that in clause 'm' in the heading of the decree-sheet after the words Mustateel No. 26, the words 'Killa 3 Min. 6-4 and Mustateel No. 27' have not been mentioned through an oversight. He submits that under section 152 of the Code of Civil Procedure, this Court has inherent powers to rectify clerical mistakes at any time. He requests that the mistake be ordered to be rectified. On the other hand, the learned counsel for the respondents, has vehemently argued that Article 137 of the Limitation Act which prescribes a period of three years, is applicable to the present case. He further submits that as the application for amendment has been filed after three years consequently it is barred by limitation.

(3) I have heard the learned counsel for the parties at a considerable length and find force in the contention of the learned counsel for the petitioners. It cannot be disputed that preparation of the decree is the duty of the Court. Section 152 of the Code prescribes that 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. Words used in this section are 'at any time', which show that the power of the Court to rectify clerical or arithmetical mistakes in the judgments or decree-sheets is not controlled by time factor. No doubt, it is true, that Article 137 prescribes a period of three years for making application under any enactment but period of limitation prescribed by it will not apply to the applications under section 152 of the Code. Section 29(2) of the Limitation Act says

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that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. From the aforesaid section, it is evident that where any special law prescribes limitation that will be deemed to be substituted in the Schedule to the Limitation Act. If section 152 of the Code is read along with section 29(2) of the Limitation Act, it would be clear that the words 'at any time' would be deemed to have been substituted in place of the period prescribed in the Article. Therefore, in my view, an application can be filed for rectifying any clerical or arithmetical mistakes in judgments and decrees at any time. In the aforesaid view, I am fortified by the observations of *Shyamal Bihari v. Girish Narain* (1), wherein it has been observed that section 152 permits clerical or arithmetical mistakes in judgments, decrees or orders to be corrected at any time. The phrase 'at any time' used in section 152 indicates that the power of the Court to amend its decree under this section is uncontrolled by any time factor, but only by the scope of the section within which it functions. It is further held that there is no limitation for an application to amend the decree. The decree may be amended under this section at any time although the time for appealing from the decree has expired.

Mr. Puran Chand, learned counsel for the respondents, has referred to *Kerala State Electricity Board, Trivandrum v. T. P. Kunhaliumma* (2) and *M/s. R. C. Abrol & Co. Pvt. Ltd. v. M/s. A. R. Chadha & Co.* (3). It may be sufficient to observe that the facts of the aforesaid cases are different and the observations made therein shall not be applicable to the present case.

(1) AIR 1962 Patna 116.

(2) AIR 1977 S.C. 282.

(3) 1978 P.L.R. (Delhi) 190.

(5) For the aforesaid reasons, I accept the petition and direct that the amendment may be made in the decree-sheet. No order as to costs.

N. K. S.

Before Surinder Singh, J.

INDRAWATI—*Plaintiff-Petitioner.*

versus

JAGMAL AND ANOTHER—*Defendant-Respondents.*

Civil Revision No. 475 of 1978

October 13, 1978.

Hindu Adoptions and Maintenance Act (32 of 1956)—Sections 16 and 30—Adoption made before the passing of the Act—Burden of proof in regard thereto—Whether lies on the person who claims on the basis of adoption.

Held, that section 30 of the Hindu Adoptions and Maintenance Act 1956 specifically provides that nothing contained therein shall affect any adoption made before the commencement of the Act and therefore the validity and effect of any such adoption has to be determined as if the Act had not been passed. One has, therefore, to revert to the general law regarding placing of burden on the question of adoption if the same had taken place before the Act came into force. The general law is that evidence in support of an adoption must be sufficient to satisfy the very grave and serious onus that rests upon any person who seeks to displace the natural succession by alleging an adoption. Thus, the burden of proving such an adoption lies on the person who claims on the basis of adoption. (Para 2)

Petition under section 115 C.P.C. for revision of the order of the Court of Shri S. D. Arora, Sub Judge 1st Class, Charkhi Dadri dated 16th February, 1978 dismissing the application for the amendment and recasting of the issues.

N. C. Jain, Advocate, for the Petitioner.

R. S. Mital, Advocate, for the Respondents.