Supreme Court of India
Lakshmi Ram Bhuyan vs Hari Prasad Bhuyan & Ors on 20 November, 2002
Author: R Lahoti
Bench: R.C. Lahoti, Brijesh Kumar.

CASE NO.:
Appeal (civil) 7450 of 2002

PETITIONER:
Lakshmi Ram Bhuyan

RESPONDENT:
Hari Prasad Bhuyan & Ors.

DATE OF JUDGMENT: 20/11/2002

BENCH:
R.C. LAHOTI & BRIJESH KUMAR.

JUDGMENT:

J U D G M E N T [Arising out of S.L.P. (C) No.5229 of 2002] R.C. Lahoti, J.

Delay condoned.

Leave granted.

An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved nine.

In the year 1978 a title suit was filed. The parties arrayed are 3 as plaintiffs and 19 as defendants. The properties involved in the suit too are very many, described in several schedules appended to the plaint and marked as Schedule A, B, C, D, E & F. The reliefs prayed for in the plaint are also very many. Briefly stated they are :-

(i) a decree or decrees for recovery of khas possession of the 'B' Schedule lands which comprise the D, E, F Schedule lands and for confirmation of possession on 'C' Schedule lands with declaration of title by the plaintiff alone on 'A' Schedule lands as self-acquired property of Late Mamat Ram, father of the plaintiffs; and

(ii) a decree or decrees for cancellation of Khatian No. 35 of defendant No. 6 and of Khatian No. 21 of defendant No. 7 and of Khatian No. 10 of defendant Nos. 8 & 9 over D,E & F Schedule lands respectively and for declaration that the defendant Nos. 6 to 10 have no tenancy rights or rights of occupancy as raiyats over 'B' Schedule lands in their respective possession; and

(iii) decrees for cancellation of the mutation of late Nandiram, predecessor-in-interest of the defendant No. 10 to 18 of late Rajani Kanta Bhuyan, predecessor-in-interest of Abhiram,

predecessor-in-interest of defendant No. 1 to 5 and of Abhiram defendant No. 19 and of late Joyram, predecessor-in-interest of Abhiram defendant No. 19 in the dag chitha of the dags Nos. 1017, 1013, 1182 and 1011 of K.P. Patta No. 518 of village Majirgaon, Mouza-Ramcharani of District Kamrup, described in the 'A' Schedule and for sending a precept to the Revenue Authority for correction of the Chitha accordingly and for issue of separate patta for 'A' Schedule lands the annual Revenue Authority for correction of the chitha accordingly and for issue of separate patta for 'A' Schedule lands and annual Revenue of which is more than five rupees in the name of the plaintiffs and to issue precept to the proper Revenue Authority with direction of the Revenue Authority for cancellation of the said Khatian Nos. 34, 21 and 10 and for cancellation of the mutation or names of the aforesaid persons namely Nandiram, Rajani, Abhiram and Joyram in the Dag Chitha in the said dags Nos. 1017, 1013, 1182 and 1017 of K.P. Patta No. 518 of village Majirgaon Mouza Ramcharani, District Kamrup and for issue of a separate K.P. Patta for the A Schedule dag Nos. 1017, 1013, 1182 and 1017 in the names of the plaintiff; and

(iv) decree of the costs of the suit against the defendants contesting the plaintiffs claim and the suit; and

(v) decree for any other relief or reliefs to which the plaintiffs are legally entitled.

The above said reliefs are sought for in the background of multiple litigations between the parties preceding the institution of the suit.

The suit was seriously contested. By judgment and decree dated 10.01.1994, the Trial Court directed the suit to be dismissed. The dismissal of the suit was upheld in first appeal by learned Additional District Judge. The plaintiffs filed second appeal, which was heard by a learned single Judge of the High Court who formed an opinion that the appeal deserved to be allowed and allowed the same by judgment dated 18.05.1995. The operative part is contained in paragraphs 5 & 6 which are reproduced hereunder:- "5. From my above discussion the appeal is allowed. Respondents are directed to pay Rs.

500/- as cost to the appellants. The case is sent back to the original court for preparation of the decree accordingly.

6. In the result the appeal is allowed."

As per directions of the High Court, the Trial Court drew up a decree on 07.04.1996. The said decree mentions costs only. The reliefs claimed by the plaintiffs in the suit were not mentioned therein. Execution was applied for. Therein, it appears, the plaintiffs sought for the same reliefs as they had set out in the plaint, being allowed to them in execution, which was resisted to by the judgment-debtors. On 26.08.1997, the learned Civil Judge passed two orders. In execution proceedings the learned Civil Judge held that as no formal decree regarding delivery of khas possession etc. was drawn up, the execution was liable to be stayed till preparation of a proper decree in the suit. The record of the suit was directed to be put up for preparation of necessary decree. On the same date, by a separate order passed in the suit, the learned Civil Judge set out

briefly the operative parts of the judgment of the Trial Court in the original suit and that of the High Court in second appeal (referred to hereinabove) and then concluded as under:-

"In the circumstances stated above, I respectfully understand that the Hon'ble High Court desired that the decree should be prepared by this court granting all the reliefs claimed by the plaintiffs/appellants. The earlier decree prepared by this Court was only in respect of the cost granted by the Hon'ble High Court, the decree should have contained all the reliefs claimed in the plaint. Therefore, for ends of justice, it is necessary to amend and correct the said decree. Accordingly the Sheristadar is directed to prepare the decree as per direction of the Hon'ble High Court and put up the same before the undersigned on 10.09.1997. After preparing the decree, the learned counsels for the parties be informed about the corrected decree."

The orders dated 26.08.1997 were challenged in Revision by the judgment-debtors. Incidentally, the Civil Revision came to be heard by the same learned Single Judge who had disposed of the second appeal. On 29.9.1999, the learned Single Judge directed the Civil Revision to be dismissed forming an opinion that there was no infirmity or illegality in the orders of the Civil Judge and there was no jurisdictional error therein.

The present appeal by special leave by the judgment-debtors is directed against the order of the High Court dated 29.09.1999.

Certain provisions of the Code of Civil Procedure, 1908 may be noticed. Order VII Rule 1 of the CPC requires the plaintiff to give sufficient particulars of the relief, which the plaintiff claims. Order XX requires a judgment to contain all the issues and findings or decision thereon with the reasons therefor. The judgment has to state the relief allowed to a party. The preparation of decree follows the judgment. The decree shall agree with the judgment. The decree shall contain, inter alia, particulars of the claim and shall specify clearly the relief granted or other determination of the suit. The decree shall also state the amount of costs incurred in the suit and by whom or out of what property and in what proportions such costs are to be paid. Rules 9 to 19 of Order XX are illustrative of contents of decrees in certain specified categories of suits. The very obligation cast by the Code that the decree shall agree with the judgment spells out an obligation on the part of the author of the judgment to clearly indicate the relief or reliefs to which a party, in his opinion, has been found entitled to enable decree being framed in such a manner that it agrees with the judgment and specifies clearly the relief granted or other determination of the suit. The operative part of the judgment should be so clear and precise that in the event of an objection being laid, it should not be difficult to find out by a bare reading of the judgment and decree whether the latter agrees with the former and is in conformity therewith. A self-contained decree drawn up in conformity with the judgment would exclude objections and complexities arising at the stage of execution.

The obligation is cast not only on the Trial Court but also on the Appellate Court. In the event of the suit having been decreed by the Trial Court if the Appellate Court interferes with the judgment of the Trial Court, the judgment of the Appellate Court should precisely and specifically set out the reliefs granted and the modifications, if any, made in the original decree explicitly and with particularity and precision. Order XLI Rule 31 of the CPC casts an obligation on the author of the appellate

judgment to state the points for determination, the decision thereon, the reasons for the decision and when the decree appealed from is reversed or varied, the relief to which the appellant is entitled. If the suit was dismissed by the Trial Court and in appeal the decree of dismissal is reversed, the operative part of the judgment should be so precise and clear as it would have been if the suit was decreed by the Trial Court to enable a self-contained decree being drawn up in conformity therewith. The plaintiff, being dominus litus, enjoys a free hand in couching the relief clause in the manner he pleases and cases are not wanting where the plaintiff makes full use of the liberty given to him. It is for the Court, decreeing the suit, to examine the reliefs and then construct the operative part of the judgment in such manner as to bring the reliefs granted in conformity with the findings arrived at on different issues and also the admitted facts. The Trial Court merely observing in the operative part of the judgment that the suit is decreed or an appellate Court disposing of an appeal against dismissal of suit observing the appeal is allowed, and then staying short at that, without specifying the reliefs to which the successful party has been found entitled tantamounts to a failure on the part of the author of judgment to discharge obligation cast on the Judge by the provisions of Code of Civil Procedure.

In the case at hand, a perusal of the reliefs prayed for in the plaint shows that the reliefs are not very happily worded. There are some reliefs which may not be necessary or may be uncalled for though prayed. The reliefs may have been considered capable of being recast or redefined so as to be precise and specific. May be that the Court was inclined to grant some other relief so as to effectually adjudicate upon the controversy and bring it to an end. Nothing is spelled out from the appellate judgment. The Trial Court, on whom the obligation was cast by second appellate judgment to draw up a decree, was also, as its order shows, not very clear in its mind and thought it safe to proceed on an assumption that all the reliefs sought for in the plaint were allowed to the plaintiffs. The learned single Judge allowing the second appeal, should have clearly and precisely stated the extent and manner of reliefs to which the plaintiffs were found to be entitled in his view of the findings arrived at during the course of the appellate judgment. The parties, the draftsman of decree and the executing Court cannot be left guessing what was transpiring in the mind of the Judge decreeing the suit or allowing the appeal without further placing on record the reliefs to which the plaintiffs are held entitled in the opinion of the Judge.

There is yet another infirmity. Ordinarily the decree should have been drawn up by the High Court itself. It has not been brought to the notice of this Court by the learned counsel for either parties if there are any rules framed by the High Court which countenance such a practice as directing the Trial Court to draw up a decree in conformity with the judgment of the High Court.

How to solve this riddle? In our opinion, the successful party has no other option but to have recourse of Section 152 of CPC which provides for clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission being corrected at any time by the Court either on its own motion or on the application of any of the parties. A reading of the judgment of the High Court shows that in its opinion the plaintiffs were found entitled to succeed in the suit. There is an accidental slip or omission in manifesting the intention of the Court by couching the reliefs to which the plaintiffs were entitled in the event of their succeeding in the suit. Section 152 enables the Court to vary its judgment so as to give effect to its meaning and

intention. Power of the Court to amend its orders so as to carry out the intention and express the meaning of the Court at the time when the order was made was upheld by Bowen L.J. in re Swire; Mellor V. Swire, (1885) 30 Ch. D. 239, subject to the only limitation that the amendment can be made without injustice or on terms which preclude injustice. Lindley L.J. observed that if the order of the Court, though drawn up, did not express the order as intended to be made then "there is no such magic in passing and entering an order as to deprive the Court of jurisdiction to make its own records true, and if an order as passed and entered does not express the real order of the Court, it would, as it appears to me, be shocking to say that the party aggrieved cannot come here to have the record set right, but must go to House of Lords by way of appeal."

For the foregoing reasons the appeal is allowed. The order of the Trial Court drawing up the decree is set aside. The parties are allowed liberty of moving the High Court under Section 152 CPC seeking appropriate rectification in the judgment of the High Court so as to clearly specify the extent and manner of reliefs to which in the opinion of the High Court the successful party was found entitled consistently with the intention expressed in the judgment. The delay which would be occasioned has to be regretted but is unavoidable. Once the operative part of the judgment is rectified there would be no difficulty in drawing up a decree by the High Court itself in conformity with the operative part of the judgment. If the rules of the High Court so require, the ministerial act of drawing up of the decree may be left to be performed by the Trial Court.

The appeal stands disposed of in the abovesaid terms with no order as to the costs.