APPELLATE CIVIL

Before Sir Syed Wazir Hasan, Chief Judge, and Mr. Justice B. S. Kisch.

1932
April, 26.

PARSOTAM DAS, SETH, AND OTHERS (DECREE-HOLDERS-APPELLANTS) *v.* MUHAMMAD HAMID MIRZA BEG AND OTHERS (JUDGMENT-DEBTORS-RESPONDENTS).*

Civil Procedure Code (Act V of 1908), sections 151 and 152—Inherent power of court—Execution of decree—Order dismissing execution application as time-barred—Order due to lapse of memory that the day preceding the day of its presentation was a Sunday—Order appealable but appeal not filed—Court's power to correct the error under sections 151 and 152 of the Code of Civil Procedure.

Where an application for execution of a decree is held as time-barred due to an error arising from an accidental lapse of memory that the day preceding the one on which the application was made was a Sunday, the error could be corrected in the exercise of the inherent jurisdiction of the court as provided in sections 151 and 152 of the Code of Civil Procedure. It is true that the error could also have been corrected by a court of appeal if an appeal had been preferred from that order, but the fact that it could have been so corrected does not in a matter of this nature, debar the exercise of jurisdiction with which the court was clearly vested under the provisions of those sections.

Where there is a clear case of a clerical or arithmetical mistake or of an error arising from an accidental slip or omission in judgments, decrees, or orders the court may correct the mistake or the error independently of the fact that the same mistake or error could have been corrected by the court of appeal. It will be reading section 152 out of the Code and not interpreting it were it held that it would not apply to a case where the mistake or error could be corrected on appeal, but was not so corrected or where no appeal was preferred. The procedure is intended to provide for a speedy and inexpensive relief to a party affected by any such mistake or error and does not contemplate to impose upon him the necessity of preferring an appeal as regards such a matter which in the

*Execution of Decree Appeal No. 33 of 1931, against the order of Babu Gauri Shankar Varma, Subordinate Judge of Sitapur, dated the 11th of February, 1931.

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very nature of things must entail large expenditure of money and time. *Hatton* v. *Harris* (1), and *E.* v. *E.* (2), referred to.

Messrs. *Radha Krishna Srivastava* and *S. N. Srivastava*, for the appellants.

Mr. *Hyder Husain*, for the respondents.

HASAN, C. J., and KISCH, J. :—This is the decree-holders' appeal from the order of the Subordinate Judge of Sitapur, dated the 11th of February, 1931, in proceedings relating to the execution of the decree held by the appellants against the judgment-debtors-respondents. It is necessary that the material facts of this case should be stated in a chronological order.

14th September, 1918

The decree in question was obtained on the 14th of September, 1918, against one Hamid Mirza Beg. Several applications for execution were made but without any result.

7th August, 1926.

The third application for execution was made on the 7th of August, 1926, but was disposed of by an order consigning it to record on the 24th of November, 1926.

24th November, 1926.

25th November, 1929.

The fourth application for execution was presented on the 25th of November, 1929. In respect of that application the office made the following report on the same date: "The application for execution is barred by time, because the application for execution was dismissed on the 24th of November, 1926. The applicant has made this application on the 25th of November, 1929, after the expiry of the period of limitation."

28th November, 1929.

The report was placed before the presiding Judge on the 28th of November, 1929, and the learned Judge endorsed the following order on the application: "Rejected with reference to the office report."

15th December, 1930.

The application, out of which these proceedings have arisen, is the fifth application and it was made on the 15th of December, 1930. On the same date the office reported that as the previous application had been rejected as barred by limitation the last application was not maintainable.

(1) (1892) A.C., 547. (2) (1903) P. 88.

16th December, 1930. The office report was placed before the presiding officer on the 16th of December, 1930. Thereupon he made the following order: "Rejected as barred by time as per office report."

18th December, 1930 On this date the decree-holders made an application under sections 151 and 152 of the Code of Civil Procedure with a prayer that the orders dismissing the previous applications as barred by time was not a proper order and was due to an accidental mistake of the office. This is the substance of the application though its language is different.

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20th December, 1930 The court passed the following order on this application: "The order dated the 15th of December, 1930, is set aside. The execution application was presented within limitation as the 24th of November was a Sunday and the application was presented on 25th, the next working day. Issue attachment asked for . . . 20th December, 1930."

29th January, 1931. This is the date on which one Munshi Lal, who is apparently one of the decree-holders, filed a petition of objections in which he questioned the propriety of the order of the 20th of December, 1930. This petition was disposed of by the order of the 11th of February, 1931, against which the present appeal is preferred. Under that order the learned Subordinate Judge held that the order of the 20th of December, 1930, was not binding on the judgment-debtors as it was passed without notice having been issued to them and also because the provisions of sections 151 and 152 of the Code of Civil Procedure were inapplicable to such a case. He accordingly decided that the present application for execution was barred by time both on its merits and on the principle of *res judicata*.

11th February, 1931.

We are of opinion that the order of the learned Subordinate Judge under appeal is not right and should be set aside. It is obvious that the report made by the office on the 25th of November, 1929, that the application for execution of that date was barred by time was

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clearly due to an error arising from an accidental lapse of memory that the preceding day, that is the 24th of November, 1929, was a Sunday. It is also clear that the Subordinate Judge in passing the order of the 28th of November, 1929, did not bring to bear his own judgment on the question of limitation. He simply followed and repeated the error which the office had made. It is also obvious that the order of the 20th of December, 1930, corrected that error and was eminently just and proper. We are of opinion that the case falls within the letter and spirit of the provisions of section 152 of the Code of Civil Procedure.

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The argument that an appeal could have been preferred from the order of the 25th of November, 1929, and that therefore the application of the provisions of sections 151 and 152 of the Code is excluded does not appear to us to be sound. As we have already said, the error was due to an accidental slip of memory. It could, therefore, be corrected in the exercise of the inherent jurisdiction of the court as provided for in sections 151 and 152 of the Code of Civil Procedure. It is true that the error could also have been corrected by a court of appeal if an appeal had been preferred from that order but the fact that it could have been so corrected does not in our opinion in a matter of this nature debar the exercise of jurisdiction with which the court was clearly vested under the provisions of those sections.

Rule 11 in Order XXVIII of the Rules of the Supreme Court in England is as follows: "Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court or a judge on motion or summons without an appeal." Section 152 of the Code of Civil Procedure is substantially the same except that the last three words in Rule 11 "without an appeal" are omitted in the section. This however does not in our opinion alter the substance of the Rule. In *Hatton* v. *Harris* (1), Lord

(1) (1892) A.C., 547 (560).

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WATSON said that "the correction ought to be made upon motion to that effect, and is not matter either for appeal or for rehearing." In *E.* v. *E.* (1), rectification was allowed even where the order was under appeal and though the request for alteration was made by the party who had given notice of the appeal against the order as originally drawn up. It seems to us that where there is a clear case of a clerical or arithmetical mistake or of an error arising from an accidental slip or omission in judgments, decrees or orders the court may correct the mistake or the error independently of the fact that the same mistake or error could have been corrected by the court of appeal. In our judgment it will be reading section 152 out of the Code and not interpreting it were we to hold that it would not apply to a case where the mistake or error could be corrected on appeal but was not so corrected or where no appeal was preferred. The procedure is intended to provide for a speedy and inexpensive relief to a party affected by any such mistake or error and does not contemplate to impose upon him the necessity of preferring an appeal as regards such a matter which in the very nature of things must entail large expenditure of money and time.

The argument that the order of the 29th of December, 1930, was passed without notice to the judgment-debtors does not lead to anything further than giving the judgment-debtors an opportunity to be heard. They had that opportunity now, but the order of the 20th of December, 1930, should have been maintained on its merits and we so maintain it. It is agreed that on this conclusion the present application for execution is in time and should be proceeded with.

We accordingly set aside the order under appeal and remand the case to the court below for disposal according to law. The appellants are entitled to their costs in both courts from Munshi Lal as well as from the judgment-debtors.

Case remanded.

(1) (1903) P. 88.