

ORDER PASSED BELOW EXH. 1

This is an application forwarded by the applicants u/s 152 of C.P.C seeking the relief of rectification of arithmetic i.e area of the suit field mentioned in judgment passed in R.C.S. 110/2012 dated 24-09-2014. Applicants have contended that applicants no. 1 to 3 had instituted the suit for partition and separate possession vide R.C.S. No. 110/2012. Applicant no. 4 to 7 are the defendants nos. 2 to 5 in the suit R.C.S. 110/2012 whereas non-applicant is the defendant no. 1 in suit R.C.S. No. 110/2012. The said suit was decreed and plaintiff and defendants got the 1/8th share. The description of suit field in the plaint is mentioned as “field bearing gut no. 131 area 2 H. 39 R. situated at village Karanja Bahiram, Tq. Chandur bazar. But the description of the suit field was mentioned in the decree as Gut no. 131 area 42 R. only. It was the clerical and arithmetical mistake therefore it is to be corrected. The applicants have filed on record the 7/12 extract of the suit property.

2. The non-applicant has resisted this application by filing his say at Exh. 11. He submitted that the description of suit property shown in the plaint was legal and correct. It was not the clerical or arithmetical mistake. Plaintiffs specifically pleaded in the plaint the area is 42 R. only, it was not the error committed by the court, therefore application is not tenable under the provision of section 152 of C.P.C. Moreover, the judgment was passed by this court on 24-09-2014 and since then applicants have not preferred the application. The present application is

not presented within the prescribed period of limitation. Moreover the judgment dated 24-09-2014 was challenged before the appellate court which is the subject matter pending before Hon'ble District court. Applicants have filed this false and vexatious application Lastly he prayed for rejection of this application.

3. ***Section 152 of CPC provides*** – 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.

4. Section 152 of CPC empowers the court to correct the errors or mistakes in judgments or decree or orders only with respect to clerical or arithmetical mistakes. The present case in hand shows that the plaint and judgment provides the same subject of matter. The description of subject matter provided in plaint is the same which was considered in the judgment. Therefore, it could not be said that it was the mistake either clerical or arithmetical in the judgment dated 24-09-2014. Therefore, the submission made by the applicants folds no water in it. Hence, the application is devoid of merit. Hence, I am inclined to pass the order.

ORDER

1. ***The application is rejected.***

Date: 15-01-2020

(Laxmikant C. Wadikar)

Civil Judge J. D., Chandur Bazar, Dist. Amravati