

**Order below Exh. 143 in R.C.S. No. 16/2012.**

1. Read application and say filed by defendants at exh.146. Heard both the sides.
2. The learned advocate for the plaintiff Shri V.K. Hipparkar argued that the plaintiff had claimed temporary injunction for area 1 H 26 R from Northern side of gat no.176. The court has allowed the application but while passing the operative order there was clerical mistake. While passing operative order the court has written ***Southern side*** instead of writing ***Northern*** side. It is just a clerical and arithmetical mistake and it can be corrected u/sec.152 of the C.P.C. He further submitted that “the defendants would not have to suffer any irreparable loss if said mistake is corrected. On the contrary, the plaintiff would have to suffer irreparable loss as his possession would be disturbed by the defendants in spite of the order of the court.” In support of these contentions he kept reliance on **Laxman Ram Bhuyan Vs. Hari Prasad Bhuyan & oth.2003(1) Mah.L.R. 469.** It is the ratio that “*the power u/s 152 of CPC can be invoked for correcting clerical or arithmetical mistakes in judgments, decree or orders or errors, arising therein from any accidental slip or omission*”. He has also relied on **Jayalakshmi Coelho Vs. Oswald Joseph Coelho, AIR 2001 S.C.1084.** It is the ratio that “*Power under S.152 is confined to something initially intended by Court but left out or added against such intention*”.
3. Shri T.R. Kanse learned advocate for the defendants argued that the application is itself not maintainable. It is filed u/sec.151 of the C.P.C. and not u/sec.152 of the said Code. The plaintiff has mentioned both the properties in the plaint; therefore, the court has intentionally mentioned the South side portion. There is no clerical or arithmetical mistake in the order. The court has intentionally mentioned word “South” in the order and same cannot be corrected by invoking powers u/sec.152 of the Code. If

said correction is made the defendants would have to suffer irreparable loss and they would be dispossessed from the suit property. As such the order cannot be corrected. For said purpose he has relied on **State of Maharashtra Vs. Abdulla Alisaheb Kazi,2003(3) Mh.L.J.661**, the ratio of present case law that- *“the powers bestowed upon the Civil Court u/sec.152 of the C.P.C. cannot be exercised to correct omissions, however, erroneous which are intentionally, either in the sense that the court meant to omit which was omitted or because they do not arise for the consideration or were not to be required to be considered in the matter, and therefore, omitted. An error of the Court which is not an accidental slip or omission cannot be remedied by taking recourse to the provisions of law under section 152 of Civil Procedure Code.”* Her has also relied on **State of Punjab Vs. Darshan Singh, 2004(2) BCJ 24**. The present case law is that- *“The powers to correct clerical or arithmetical errors in the judgment does not contemplate passing of effective judicial orders, said power cannot be equated with power to review the own order. The omissions which go to merits of case cannot be corrected and is beyond scope of S.152 C.P.C.”*

4. Admittedly, in the plaint the plaintiff has described entire gat no.176 but he has further contended that he is the owner and exclusive possessor of Southern side portion adm. 1 H 26 R. He has contended that the original owner has executed an agreement to sale in respect of remaining Northern portion adm.1 H 26 R and since the date of agreement to sale he is in possession of Northern side portion. It is a fact on record that defendants are the subsequent purchasers and claiming possession over this Northern side portion. The factum of possession of the plaintiff over southern part is not at all disputed. Admittedly, the plaintiff has filed application exh.5 so as to seek the relief of temporary injunction to protect his possession over the Northern side portion adm.1 H

236 R area. The prayer in that application is specifically restricted to the Northern portion. It is a fact on record that this court has allowed said application.

5. I have carefully perused the entire order. My predecessor while passing order below exh.5 has prima-facie held that the original owner has executed an agreement to sale in favour of the plaintiff in respect of Northern side of the gat no.176 and since the date of agreement to sale said plaintiff is in the possession of the said land. It nowhere appears from the entire order that my predecessor had intention to deal with the question of possession at the Southern side of gat no.176. Basically, no question regarding the possession over the Southern side was raised and dealt with by my predecessor. The prayer of the plaintiff in exh.5 is specific about the Northern side of gat no.176 and entire discussion in order exh.5 was about said specific area. While passing the order my predecessor has held in Para 22 of the order that plaintiff is in actual and physical possession of the entire suit property. He has recorded the prima facie finding that plaintiff is in possession of the entire suit land. In Para 31 my predecessor has specifically mentioned that ***taking into consideration all the aspects I hold that the plaintiff is entitled for temporary injunction as prayed.*** This Para describes the intention of my predecessor that he had to allow application exh.5 as prayed by the plaintiff. It is clear from prayer clause in exh.5 that the plaintiff has claimed relief only in respect of the Northern side of gat no.176. It seems that in the entire order my predecessor has discussed about the plaintiff's possession over the Northern side of the suit property but while passing the operative order the word "South" is written instead of "North". It clearly appears that it is an accidental slip. It no where seems from entire order that my predecessor was intending to pass any order about the Southern side.

**Section 152 of the C.P.C. reads as under-**

*“Amendment of judgments, decrees or orders- 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”.*

6. Therefore, being a clerical or arithmetical mistake it can be rectified or corrected, as per section 152 of the Code. In my humble opinion, the ratio cited in the case of Laxman’s case and Jayalakshmi Coelho’s case cited supra is rightly applicable in this matter.

7. Admittedly, while passing order exh.5 my predecessor has held that plaintiff is in the possession of entire suit property. While passing operative order my predecessor has also ordered to maintain the status quo in respect of the suit property. As such no question arise for the defendants to claim their possession over any part of the suit property. In that situation there would be no prejudice to them if the order is corrected. Such correction does not go to the roots of the matter. It would not amount to review the order. It is just a correction of an unintentional mistake which is necessary to avoid further complications. Therefore in my humble opinion the ratio cited in Abdulla’s case and in Darshansing's case is not helpful for the defendants.

8. No doubt, the application is filed u/sec.151 of the C.P.C. But it is settled rule that quoting of wrong provision would not affect the merits of the case. It is the duty of the court to see and apply the correct provision.

9. It is a fact on record that the order below exh.5 is passed by C.J.S.D. Latur. Now the question is whether this court being court of C.J.J.D has jurisdiction to correct the order? Admittedly this suit has been transferred to this court when the

pecuniary jurisdiction of this court has been exceeded. In that situation this court definitely enters in the same shoes of predecessor court. Therefore I hold that this court has every jurisdiction to invoke the powers u/sec.152 of the C.P.C. and correct clerical or arithmetical mistake of the previous order passed by its predecessor. In the light of above said discussion I hold that application exh.143 is liable to be allowed. In the result I pass the following order.

**Order.**

1. Application exh.143 is allowed.
2. In the result of this order I am going to correct the arithmetical mistake in the operative order of exh.5 and correct the word **Northern** instead of word **Southern** appearing in the operative order.

Dated: 03.09.2013  
Renapur

(A. A. Yadav)  
Civil Judge, Jr. Division, Renapur.