

CIVIL APPEAL NO. 3443 OF 2003

IN THE MATTER OF:

MUNISWAMAPPA  
@ MONTAPPA (D) BY LRS.

APPELLANTS

VERSUS

G.S. BASAVARAJAIAH & ORS.

RESPONDENTS

ORDER

A short question that arises for our consideration in this appeal is as to whether the High Court was justified in altogether reviewing and amending the decree granted by it pursuant to a compromise deed entered into by and between the parties? Section 152 of the Code of Civil Procedure, 1908 confers jurisdiction upon the court to correct either of its own motion or on the application of any of the parties any clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. It is settled law and needs no restatement that the powers under Section 152 are neither to be equated with the power of review nor can be

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said to be akin to review. Under the guise of exercising jurisdiction under Section 152 court cannot amend, modify or make any changes in the judgment or any portion or part of it. The

corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the court while passing the judgment, decree or order. The Section cannot be invoked for claiming a substantive relief, which was not granted under the decree.

In the present case RFA filed by the respondents herein has been disposed of by the High Court vide its judgment dated 7th April, 2000 in terms of the compromise deed dated 5.6.1994 entered into by

and between the parties. There is no dispute whatsoever about the parties entering into the compromise deed and filing the same into the court. The terms incorporated in the compromise deed dated 5.6.1994 alone form part of the judgment and decree granted in RFA. The court while recording the compromise made it clear that the decree shall be only in terms of compromise deed dated 5.6.1994. The High Court, accordingly, disposed of RFA vide its judgment dated 7th April, 2000.

The respondents thereafter filed an application purporting to be the one under Section 152 of the Code of Civil Procedure to make the memo filed on 2.8.1999 as part of the decree and to incorporate the terms contained thereunder into the judgment and decree. The High Court allowed the said application on the ground that "there

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appears to be omission earlier in incorporating this memo along with the compromise deed dated 5.6.1994" and, accordingly, directed the memo to form part of the decree.

That is the order challenged in this appeal.

The High Court by the impugned order has virtually amended the decree granted in RFA in its entirety. We find it difficult to discern as to how the High Court could have passed such an order of far-reaching consequences which virtually modified the entire decree granted vide judgment dated 7th April, 2000.

Surely, it was not an attempt on the part of the High Court to correct any clerical or arithmetical mistakes in judgment or decree or any error arising from any accidental slip or omission.

The impugned order resulted in reviewing the judgment and decree in its entirety. Such a course was impermissible for the High Court under the garb of exercising its jurisdiction under Section 152 of the Code.

It is not as if the High Court was not aware of the respondents' filing of memo dated 2.8.1999 into the court which was very much available on record even at the time of recording of the compromise in terms of compromise deed dated 5.6.1994. It is evident from the judgment dated 7th April, 2000 that an attempt was

made by the respondents to rely on the said memo dated 2.8.1999 at the time when the matter was being heard for recording of the compromise to which a serious objection was raised by the appellants. The High Court having considered the objection refused

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to make the memo dated 2.8.1999 as part of the compromise. The High Court made it clear that both the appellants and as well as the respondents agreed and desired to record the compromise only in terms of compromise deed dated 5.6.1994. The RFA was, accordingly, disposed of specifically in terms of compromise deed dated 5.6.1994. The court while recording compromise between the parties expressly limited the same and made it clear that the decree shall be only in terms of compromise deed dated 5.6.1994. Having expressly rejected the request of the respondents to incorporate the memo dated 2.8.1999 into the compromise deed, the court could not have allowed the application granting the relief to incorporate the memo dated 2.8.1999 into the compromise. The High Court cannot amend the judgment and decree in such manner virtually reviewing the entire decree and judgment. The High Court committed serious error in incorporating the terms of memo dated 2.8.1999 into the compromise decree which otherwise attained its finality. It is rather surprising that the compromise decree has been ordered to be amended at the instance of one of the parties to the compromise decree. Such an order could not have been passed by the court even in exercise of its appellate or review jurisdiction as the case may be.

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For all the aforesaid reasons, we find it difficult to sustain the impugned order. The impugned order is set aside and the appeal is, accordingly, allowed without any order as to costs.

.J.

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(B. Sudershan Reddy)

New Delhi  
November 16, 2010

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ITEM NO.109

Court No.9

SECTION IVA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CIVIL APPEAL NO(s). 3443 OF 2003

MUNISWAMAPPA @ MONTAPPA (D) BY LRS.

Appellant (s)

VERSUS

G.S. BASAVARAJAIAH & ORS.

Respondent(s)

(With office report )

Date: 16/11/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY  
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s)

Ms. Kiran Suri, Adv.  
Mr. S.J. Amith, Adv.

For Respondent(s)

Mr. S.K. Kulkarni, Adv.  
Mr. M. Gireesh Kumar, Adv.  
Mr. K.H. Nobin Singh, Adv.  
Mr. Khwairakpam Nobin Singh, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is allowed without any order as  
to costs in terms of the signed order.

(DEEPAK MANSUKHANI)  
Court Master

(RENUKA SADANA)  
Court Master

(The signed order is placed on the file)