

[2022 LiveLaw \(SC\) 160](#)

IN THE SUPREME COURT OF INDIA
A.M. KHANWILKAR; C.T. RAVIKUMAR, JJ.
CIVIL APPELLATE JURISDICTION
FEBRUARY 07, 2022

CIVIL APPEAL NO. OF 2022
(Arising from SLP(C) No. 31174 of 2016)

B. BORAIAH REP. THR. LRS.
VERSUS
M.G. THIRTHAPRASAD & ORS.

Code of Civil Procedure - Section 153A - The Trial Court has no jurisdiction to entertain the application for correction of decree passed by the High Court in the first appeal and cross objection - In such a case, the application for correction could be maintained only before the High Court where the decree has been finally confirmed.

Code of Civil Procedure - Section 153A - Order XLI Rule 41 - An application before the Trial Court for correction of a decree could be maintained only if the appeal was to be decided by the High Court under Rule 11, Order 41 of the Code of Civil Procedure.

(Arising out of impugned final judgment and order dated 03-06-2016 in WP No. 40521/2015 passed by the High Court Of Karnataka At Bengaluru)

For Petitioner(s) Mr. V. Chitambaresh, Sr. Adv. Mr. Ankit Anandraj Shah, AOR Mr. Saurabh Rajpal, Adv.

For Respondent(s) Mr. S.N. Bhat, Sr. Adv. Ms. Anuradha Mutatkar, AOR Mr. Lakshmeesh S. Kamath, AOR Ms. Smriti Ahuja, Adv.

ORDER

Leave granted.

This appeal takes exception to the judgment and order dated 03.06.2016 passed by the High Court of Karnataka at Bengaluru in Writ Petition No.40521/2015.

Heard learned counsel for the parties.

The short question involved in this appeal is: whether an application for correction of the decree which has been confirmed by the High Court while deciding the appeal filed thereagainst on merits can be corrected/alterd by the Trial Court keeping in mind the purport of Section 153A of the Code of Civil Procedure?

The High Court referred to this contention raised by the appellant(s), but chose to disregard the same on the finding that some other party to the suit had filed application for similar relief insofar as 'C' schedule property, referred to in the decree, but came to be rejected (vide order dated 14.03.2014 in IA No.1 of 2013 in RFA No.353/2001 along with Cross Objection No.16/2001) – on the finding that 'C' schedule property was not subject matter of the appeal at all before the High Court.

In our opinion, the fact that the High Court vide order dated 14.03.2014 had rejected another application, does not address the legal issue about the jurisdiction of the Trial Court to alter the decree passed by the High Court.

That question needs to be answered keeping in mind the final decree passed by the High Court albeit affirming the decree passed by the Trial Court. The final decree passed by the High Court while disposing of the appeal and cross objection filed by the parties, reads thus:

"The appeal is partly.

The partition in respect of "A" schedule property will be in accordance with the joint memo filed by the parties on 19.04.12 alongwith six sketches. The joint memo and sketches shall become part of the judgment and decree.

The final decree passed by the trial court in respect of the remaining schedule properties remain disturbed.

The cross objection is dismissed.

Parties to bear their own costs."

The appeal was filed in respect of 'A' schedule property, whereas cross objection was filed in respect of 'C' schedule property. This fact has

been noted by the High Court while disposing of the first appeal and cross objection vide judgment and decree dated 19.04.2012.

In light of the operative order passed by the High Court while disposing of the appeal and cross objection, it leaves no manner of doubt that the decree passed by the Trial Court had merged with the judgment and decree passed by the High Court, referred to above. In such a case, the application for correction could be maintained only before the High Court where the decree has been finally confirmed in terms of decision dated 19.04.2012.

Whereas, an application before the Trial Court for correction of such a decree could be maintained only if the appeal was to be decided by the High Court under Rule 11, Order 41 of the Code of Civil Procedure. It is not in dispute that the High Court had passed the stated judgment and decree after due consideration of all aspects on merits and not rejection of appeal under Rule 11, Order 41 of the Code of Civil Procedure.

As a result, we hold that the Trial Court had no jurisdiction to entertain the application for correction of decree passed by the High Court in the first appeal and cross objection. On that count alone, the application filed before the Trial Court for correction of decree in respect of 'B' schedule property to be corrected as 'C' schedule property, is rejected as not maintainable before the Trial Court.

The party who had moved such application will be at liberty to move a fresh application before the High Court in the first instance for the same relief in terms of this order.

The application in question stands dismissed as not maintainable before the Trial Court with liberty to the applicant (respondent) to move a formal application within four weeks from today for similar relief before the High Court in the first instance for correction of the decree, if so advised.

Accordingly, the appeal succeeds. The impugned judgment and order is set aside.

All contention available to both sides are left open.

We reiterate that we have not dealt with the merits of the claim in the proposed application.

The appeal is disposed of in the above terms.

Pending applications, if any, stand disposed of.

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