

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Before:

**MR. JUSTICE MIRAN MUHAMMAD SHAH
MR. JUSTICE MUHAMMAD HASAN (AKBER)**

Constitution Petition No.375 of 2014
and
Constitution Petition No.1794 of 2015

Petitioner: Abdul Kareem through his legal heirs, through Mr. Aqeel Ahmad Siddiqui, Advocate (in both petitions).

Respondent 1: Abdul Waheed, through Rafiq Ahmad Advocate

Respondents 2 - 7: Allah Bachayo Soomro, Additional Advocate General (for official Respondents 2-7 in CP.375/2014 and Respondents 2-4 in CP.1794/2015).

Date of hearing: 13.02.2025
Date of decision: 13.02.2025

JUDGMENT

MUHAMMAD HASAN (AKBER), J.- Both these petition Nos.375 of 2014 and 1794 of 2015 are being decided through this consolidated Judgment, since the facts, the contesting parties and the subject property are same, and the issues involved are inter-connected and emanate from the same proceedings.

2. In Constitution Petition No.375 of 2014 (**First petition**) filed by legal heirs of (late) Abdul Kareem, the Order dated 19.12.2013 has been challenged which was passed by the learned Vth Additional District Judge Hyderabad in Civil Revision No.18 of 2013, whereby the order dated 27.02.2013 passed by the learned first Senior Civil Judge Hyderabad in Execution No.01 of 2011 was upheld, which emanated from (late) Abdul Kareem's F.C.Suit No.99 of 2006.

3. In Constitution Petition No.1794 of 2015 (**Second Petition**) which is also filed by legal heirs of Abdul Kareem, the Order dated 31.07.2015 passed in Civil Revision Application No.05 of 2015 has been assailed, whereby plaint of

F.C.Suit No. 20/2014 (filed by (late) Abdul Kareem) was ordered to be rejected under Order VII Rule 11 CPC. by the learned District Judge Hyderabad, while setting aside the Order dated 19.12.2014 of the learned Senior Civil Judge-II, Hyderabad, refusing to allow the application under Order VII Rule 11 CPC.

4. Concise facts in both the petitions are, that Plot No.146 admeasuring 1058 square feet being part of entire C.S.No.G/146, situated at Rishi Ghat, Hyderabad (**subject property**) was transferred in the name of Hakeem Abdul Rahim, by the Settlement Department. Upon demise of (late) Hakeem Abdul Raheem on 03.01.1985, the said plot, the house and the *karkhana*/ power loom thereon devolved upon his legal heirs, Abdul Kareem (Petitioner/ Plaintiff), Abdul Waheed (elder brother/ Respondent No.1) and Din Muhammad, as sons, and Mst. Imtiaz Begum as daughter. Din Muhammad and Mst. Imtiaz Begum sold their respective shares for cash consideration in favour of Abdul Kareem (Petitioner/ Plaintiff) whereby he became the major shareholder in the said property. Both younger brothers, Abdul Kareem and Din Muhammad were working jointly in the *karkhana* on the subject plot. After demise of their father (Hakeem Abdul Raheem), differences cropped up between the brothers and on 2nd May 2006, Abdul Kareem (petitioner) was forcibly ousted by his elder brother Abdul Waheed (Respondent No.1) from the suit property and the *karkhana* in the presence of witnesses. On repeated requests to restore possession by the petitioner, he was informed by Respondent No.1 that the subject property was gifted to him by their father (late) Hakeem Abdul Raheem, and based whereon, Respondent No.1 claimed himself to be the exclusive owner of the subject property.

5. Petitioner therefore filed F.C.Suit No.99/2006 (**First Suit**) before the learned Senior Civil Judge-I, Hyderabad, seeking declaration that the purported gift deed dated 12.09.1992 be declared as forged; the gift deed be cancelled along with all entries based thereon; direction to pay mesne profits @ Rs.6000/- from 02.05.2006 till satisfaction of decree; permanent injunction; cost of the suit and other reliefs.

6. After a full-dressed trial, the first suit was decreed in favour of Abdul Kareem vide Judgment dated 31.05.2010, whereby the said Gift Deed was declared as forged; and the same was ordered to be cancelled; the entries in City Survey Record concerning the subject property was ordered to be mutated; and the suit was decreed. The decree was prepared on 07.06.2010. (henceforth "**the subject Decree**"). The entire controversy in both these

petitions revolve around this decree, as discussed in the latter part of this Judgment.

7. Abdul Waheed assailed the said decree in Civil appeal No.151 of 2010 before the learned Additional District Judge-VII, Hyderabad, which was dismissed vide Judgment dated 28.10.2010. The same was challenged in Civil Revision No.344 of 2011 which was also dismissed by this Court vide Order dated 16.3.2018. Such Order was assailed before the Supreme Court in Civil Petition No.607-K of 2018, which was also dismissed vide Order dated 27.07.2018. Hence, the Judgment and Decree passed in the First Suit attained its finality.

8. For implementation of the subject decree, Execution Application No.01 of 2011 was filed by Abdul Kareem before learned Senior Civil Judge-I, Hyderabad, which was allowed vide Order dated 12.12.2011 and entries in the City Survey Record concerning the subject property were mutated. The issue in hand started when the petitioner side requested for possession and mesne profits, they were informed that there was a fundamental flaw in the decree, i.e. no decree for mesne profits and possession was drawn, despite the fact that reliefs were granted in the Judgment in favour of the petitioner, and even directions in this regard were also made against Respondent No.1 in the original Judgment dated 31.05.2010. Upon knowledge, the petitioner side moved an application dated 23.4.2012, under sections 151, 152, 153 and 114 CPC., seeking alteration/ modification in the subject decree. Such application was rejected vide Order dated 27.02.2013, which was assailed in Civil Revision No.18 of 2013 before the learned Additional District Judge-V, Hyderabad, which was also dismissed by Order dated 19.12.2013., and which is presently being challenged in the First Petition/ C.P.No.375/2014.

9. While the above petition was pending before this Court, the petitioner side filed a fresh F.C.Suit No.20 of 2014 (**Second Suit**) before learned Senior Civil Judge-II, Hyderabad against the Respondent, with the following prayers:

- a. "That the defendant No.1 be directed to hand over the physical possession of the entire suit property No.G/146, admeasuring 1058 Sq. Ft. situated at Rishi Ghat, Hyderabad Sindh comprising Karkhana on ground floor and the entire upper storey thereon, situated at Rishi Ghat, Hyderabad to the plaintiffs.
- b. To direct the defendant No.1 to pay the amount of Mesne Profits to the plaintiffs being arrears at Rs.5,46,000/- at the rate of Rs. 6000/- per month since 02.05.2006 to 31.12.2103 and future Mesne profit at the same rate till final decision of the suit.
- c. For Permanent injunction directing the defendants directly and indirectly from causing any change in the city survey record or

- transferring or alienating the suit property or creating any third part interest in the suit property.
- d. Cost
- e. Any other relief. "

10. In response to the Second Suit, Respondent No.1 filed an application under Order VII Rule 11 C.P.C. for rejection of the plaint, which was rejected vide Order dated 19.12.2014. Such order was challenged by Respondent No.1 in Civil Revision Application No.05 of 2015 before learned District Judge Hyderabad. In terms of Order dated 31.07.2015, the Revision was allowed and plaint of the Second suit was ordered to be rejected under Order VII Rule 11 CPC. The said Order has been impugned in the Second Petition/ C.P. No.1794/2015.

11. Learned counsel for the petitioner has argued that in the First Suit, the gift deed claimed by Abdul Waheed was declared as forged and such decree has attained finality up to the level of Supreme Court. Further argued that in the very Judgment of the First Suit, clear directions were given by the trial Court to Abdul Waheed to vacate the subject property so also suit of the petitioner was decreed and no adverse observations were made in respect of prayers for mesne profit, which clearly implies grant of mesne profits as well. It was next argued that it was the duty of the Court to have drawn the decree strictly in accordance with the Judgment, as required under Order XX CPC. and in several decisions of the superior Courts. It was pleaded that if at all, there was a mistake in drawing the decree, the succeeding party (petitioner) should not be prejudiced and punished for such an act of the Court. It was then argued that due to the above mistake in drawing the decree, the petitioner, who is declared as lawful owner of the property, is not even able to enter his property, but he is deprived of his right to property which is guaranteed as a fundamental right under the Constitution and he has been made to run from post to pillar for no fault of his own. On the contrary, the Respondent No.1 who has been declared as responsible for preparing forged gift deed, is freely enjoying the fruits of the subject property, only because of the mistake in properly drawing the decree. Per learned counsel, such an injustice ought to have been remedied by the Courts below. He lastly argued that it was because of the above situation that the petitioner was left with no other remedy, and he had to file the Second Suit out of fear and abundant caution, which was also very much maintainable, and the averments of plaint should have been considered while deciding application under Order VII Rule 11 C.P.C. per learned counsel, principles of Res-Judicata would not be applicable in the present suit as in the First Suit, the relief of possession was allowed with directions but despite the

application, the same was dismissed by both Courts below, although limitation was not applicable to the facts of the case. Conversely, the Respondent No.1 has disputed the maintainability of the second suit as being barred under section 11 and Order II Rule 2 CPC. With respect to the First suit, record reflects that the Judgment and decree therein has attained finality till the stage of the Honourable Supreme Court.

12. Heard learned counsel and perused the record. Before dilating upon the factual aspects of the matter, it would be pertinent to look into the relevant provisions of law, starting with the terms, “**Judgment**” as defined under sub-section (9) of section 2 of the Civil Procedure Code 1908, (**CPC**), and the term “**Decree**”, as defined under sub-section 2 of Section 2 CPC.:

*"Section 2(9). '**Judgment**' means statement given by the Judge of the grounds of decree or order."*

*"Section 2(2). '**Decree**' means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint the determination of any question within Section 144, and an order under Rule 60, 98, 99, 101 or 103 of Order XXI but shall not include—*

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order for dismissal for default."

13. The next two relevant provisions, being Section 33 and Order XX Rule 6 CPC., provide as under:

"33. Judgment and decree. The Court, after the case has been heard, shall pronounce judgment, and on such judgment decree shall follow."

14. Order XX Rule 6 CPC. stipulate the requirements for preparation a decree in the following terms:

" 6.-(1) The decree shall agree with the judgement; it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set-off against any sum which is admitted or found to be due from the former to the latter."

(emphasis supplied)

15. It may be noted that the following underlined words in rule 6, i.e. “*shall contain*”, “*particulars of the claim*” and “*shall specify clearly the relief granted*”,

clearly stipulate that, (a) the provision is mandatory in nature;¹ (b) that the particulars of the claim, as prayed by the plaintiff in the plaint are to be specified in the decree; and (c) that in addition to containing the claims of the plaintiff, the relief granted by the Court must also be clearly specified in the decree. The Decree, and Judgment, are two separate and distinct documents. It is the decree that has to be executed, and as such, it should agree with and be in accordance with the judgment, therefore, it should be self-contained and capable of execution, without reference to any other document.²

16. The relevant questions for determination, would therefore, be:
- (i) who was responsible to draw the decree in the present case?;
 - (ii) what should be the contents of a decree, in terms of section 33 and Order XX Rule 6 CPC.?
 - (iii) what remedies would be available to a party if a decree is not drawn in terms of section 33 and Order XXI rule 6 CPC?
 - (iv) while drawing up the subject decree in the First Suit, whether mandatory compliance of section 33 and Order XX Rule 6 CPC. were fulfilled by the Court?

17. The response to the first question is quite simple, since there appears no confusion in the established legal position that, it is the duty of the Court to draw up a decree in accordance with the judgement,³ and not the duty of the litigant;⁴ and that it is the decree, and not the judgment, that is to be executed.⁵

18. Turning to the second question, section 33 and rule 6 of Order XXI CPC. stipulate as follows:

“33. Judgment and decree. *The Court. after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.”*

Order XX rule “6. Contents of decree. (1) *The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties, their registered addresses, and particulars of the claim and shall specify clearly the relief granted or other determination of the suit.*

(2). The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3). The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.”

-
- 1. PLD 2020 Lahore 831 ‘Abdul Aziz & 2 others V. Ch. Asghar Ali’
 - 2. 2010 CLC 1462 ‘Abdul Sattar & 10 others V. Haji Fateh Khan & 6 others’
 - 3. PLD 1963 SC 265, 2001 CLC1847, 1993 CLC 1202, 1982 CLC 550,
 - 4. AIR 1961 SC 832, AIR 1924 Nagra 271, AIR 1914 Bombay 23.
 - 5. 2005 SCMR 668 ‘Rehmat Wazir and others v. Sher Afzal and others’

19. With respect to the applicability of section 33 and Order XX rule 6 CPC., the case law which has evolved so far provides the following guidance: that the decree shall be in accordance with the Judgment,⁶ and it should automatically follow the Judgement.⁷ That the judgment is the substratum on which the decree has its foundation, and it cannot stand independent of the same;⁸ that the decree shall be in accordance with the relief granted by the Court, or other determination of the suit;⁹ that decree is to be prepared and construed, with reference to the judgement and not with reference to the pleadings of the parties;¹⁰ That the decree drawn by the Court must not be vague, leaving the parties to guess the decision of the Court, or to ascertain its terms from some other document. The decree must be precise, deliberate and couched in legal terminology. It must conform to the requirements of Order XX rule 6, CPC.¹¹

20. The rule has been settled long ago that where law requires an act to be done in a particular manner, it shall be done in that manner alone, for if done otherwise it would be non-compliance of the legislative intent, and such a dictate of law could not be termed a mere technicality.¹²

21. This takes us to the third question, regarding the course of action to be adopted when a decree is not prepared in accordance with the above provisions. In this regard, the Honourable Supreme Court has declared that where the form of the decree is not in accordance with law, rectification in the decree is to be ordered, in accordance with the reliefs granted in the Judgment.¹³ For instance, where the Court granted a decree for rendition of accounts of the income of the different plots and the subject house, but the decree which was prepared by the Court was wrongly described as decree for partition only, such a decree was ordered to be corrected by the Court.¹⁴

-
6. 2005 SCMR 668 '*Rehmat Wazir v. Sher Afzal*'; PLD 1983 SC 243 '*Sultan Ali v. Khushi Muhammad*'; 2006 CLC 1126 '*Shaukat Ismail Charania v. Mrs. Shakeela Hayat Khan*'; PLD 1990 Lahore 229 '*Muhammad Shareef Uppal v. Muhammad Hussain*'; PLD 1970 Dacca 475 '*Tepri Mai Bewa v. Farey Mahmood and others*'
 7. AIR 1932 Patna 228 '*Kedar Nath Goenka v. Chandra Mauleshwar Prasad Singh*'
 8. PLD 1963 SC 265 '*Ghulam Muhammad v. Sultan Mahmood*'
 9. 1990 CLC110 '*Muhammad Suleman v. Wilayatullah Khan*'.
 10. AIR 1944 PC 46 '*Seth Manakchand v. Chaube Manoharlal and another*'; AIR 1960 SC 388; 1993 CLC 1202 '*Mst. Mumtaz Begum v. Said Zaman and 11 others*'; PLD 2011 Quetta 48 '*Lasbella Industrial Estate Development Authority and another v. Prism Printer (Pvt.) Ltd.*'; 2003 MLD 484 '*Dilmeer v. Rajab Ali and others*'.
 11. 1998 CLC 27 '*Kareem Bux v. Province of Sindh and others*'
 12. PLD 2016 SC 995 '*Shahida Bibi and others v. Habib Bank Limited and others*'; PLD 2013 SC 255 '*Muhammad Anwar and others v. Mst. Ilyas Begum and others*'; 2014 SCMR 1015 '*Zia ur Rehman v. Syed Ahmad Hussain*'.
 13. 1980 SCMR 397 '*Muhammad Shamshad v. Haji Allah Rakha*'
 14. PLD 1990 Lahore 229 '*Sh. Muhammad Sharif Uppal v. Sh. Akbar Hussain and others*'

Hence, failure of the Court to draw up a formal decree containing its essentials as required by mandatory provisions in Section 33 of Civil Procedure Code read with Order XX, rule 6 *ibid* will not deprive a party of his right of appeal. It is open to the party to apply to the Court to prepare proper decree-sheet. Court would be under duty to prepare a proper and complete decree sheet in line with its judgment. Court's failure to perform its duty would not justify punishment to the party for the default of Court. For a party cannot be penalized for the act or neglect of the Court or its officials.¹⁵ *Abdul Aziz's case*¹⁶ is yet another classic example where, in an almost identical situation, despite grant of relief for possession by the appellate Court, the same was somehow not included in the decree sheet prepared by the Court and such defect was noticed after the stage of appeal before the Honourable Supreme Court. Subsequently, an application under section 152 of C.P.C. for correction of decree sheet was moved for amendment/correction of the decree. The decree was therefore ordered to be corrected in accordance with the reliefs granted in the Judgment.

22. Considering the above guidelines, we reach to the last question on the issue i.e. while drawing up the subject decree in the First Suit, whether mandatory compliance of section 33 and Order XX Rule 6 CPC. were fulfilled by the Court? For this firstly, the relevant portion of the Judgment in the First suit will have to be seen, which was as follows:

“In view of detailed discussion on above issues I am of the humble view that the defendant number five Abdul Wahid has made entries in city survey record on the basis of alleged declaration of gift are fraudulent, illegal and invalid as such the same are illegal, void and therefore, is liable to be cancelled. **The defendant number five Abdul Wahid is hereby directed to vacate the share in his possession of remaining legal heirs plaintiff, Dean MUHAMMAD and MUHAMMAD Imtiaz Begum as both have already surrendered their share in favour of plaintiff Abdul Kareem and handed over the same to the plaintiff within a period of 60 days from the day of this judgement.**

Under the circumstances mentioned above, declaration of gift dated 12 nine 1992 as exhibit 64 is here by declared as illegal, void forged and entries made in the record are also cancelled. **Suit of the plaintiff stand decreed** with no order as to cost.”

(emphasis supplied)

15. 1993 CLC 1202 'Mst. Mumtaz Begum v. Said Zaman and 11 others'

16. PLD 2020 Lahore 831 'Abdul Aziz and 2 others v. Ch. Asghar Ali'

23. As is evident from the above portion of the Judgment, in addition to declaring the gift deed (being claimed by Respondent No.1) as forged, clear directions were also issued by the trial Court to Respondent No.1 to vacate and hand over to the Plaintiff within a period of 60 days from the day of this judgement, the share of the remaining legal heirs (i.e. the plaintiff, Deen Muhammad and Imtiaz Begum since the latter two had already surrendered their share in favour of plaintiff). Moreover, the suit of the plaintiff was also decreed, which included the prayer of mesne profits in the plaint. However, such clear directions were completely absent and were not incorporated in the decree, as prepared by the Court. As already discussed in the above precedents, it was the duty of the Court to have drawn up the decree strictly in accordance with the reliefs granted in the Judgment. As soon as such mistake of the Court was noticed, application under sections 151, 152, 153 and 114 CPC. was moved, which was the most appropriate remedy under the law. Such provisions provide that,

"151. Saving of inherent powers of Court. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

152. 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 on its own motion or on the application of any of the parties.

153. General power to amend. The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceedings."

24. The established legal position is that where the Decree and the Judgment do not reconcile with each other, the Court has the inherent power to correct the decree and to bring them in consonance with each other, under section 152 CPC.; and while exercising such powers the Court has to gather material from the judgment. Where the decree before amendment/clarification was not clear or was ambiguous and not in consonance with the Judgment, the same was not executable. Hence, necessary clarifications in such a decree can be made to make under section 152 CPC., to bring such decree absolutely in consonance with the judgment passed by the trial Court, as required under Order XX Rule 6 CPC., so that after clarification, the decree becomes executable.¹⁷ Such powers of the Court have been further extended, to the

17. 2010 CLC 1462 'Abdul Sattar and 10 others V. Haji Fateh Khan and 6 others'; PLD 2006 Karachi 410, 1980 CLC 110, PLD 1976 Lahore 269, PLD 1970 Dacca 475, PLD 1964 Dacca 101, AIR 1962 SC 663, AIR 1950 TC 220, AIR 1959 Punjab 88, AIR 1953 Allahabad 485, PLD 1956 Lahore 27 'Ashraf Bibi v. Barkat Ali'.

extent that if any of the defects in the decree, which could not be remedied under section 152 alone, then the Court may also exercise its powers under sections 151 and 153 CPC., since section 152 is not the sole remedy available to the parties, and it does not curtail any other remedy or exercise of powers of the Court under the law;¹⁸ and for which, even the decree holder is not bound to apply for amendment of the decree and alternatively, can even file a fresh suit regarding the matter with respect to the matter which was omitted in the decree,¹⁹ since even the Court can do it *suo motu*. Where the decree is ambiguous, the Court may also construe the decree.¹⁹ Lastly, with respect to the duty of the executing Courts in such circumstances, it has been held that where the executing Court cannot alter a decree, it may direct the parties, in appropriate cases, to get the decree modified and rendered executable.²¹

25. In the present case, it was the duty of the Court to have prepared the subject decree in accordance with the reliefs granted under the Judgment, which was not done, and for such an act of the Court, the petitioner should not have been punished. "**Actus Curiae Neminem Gravabit**" lays down the fundamental principle of the Administration of Justice, that an act of the court shall prejudice no man. Hence in the words of the Honourable Supreme Court²² where any court is found to have not complied with the mandatory provision of law or omitted to pass an order, required by law in the prescribed manner then, the litigants/ parties cannot be taxed, much less penalized for the act or omission of the court. The fault in such cases does lie with the court and not the litigants and no litigant should suffer on that account unless he/they are contumaciously negligent and have deliberately not complied with a mandatory provision of law. In another case, it was held that, once it is established that initial error was committed by the learned Civil Judge then the blame cannot be shifted to the respondent/pre-emptor, in view of the well embedded principle that, an act of the court shall prejudice none.²³ It was further held that to provide

18. PLD 1963 SC 265 'Ghulam Muhammad v. Sultan Mahmud and others',

19. *ibid*

20. 2003 SCMR 1202 'Allah Ditta v. Ahmad Ali Shah', 2005 CLD 42 'Tajammal Hussain v. MCB & others', 1990 MLD 2333 'Azad Govt. of Jammu & Kashmir v. Muhammad Aslam Khan'; PLD 1987 Lahore 537 'Muhammad Inayat v. Ghulam Murtaza'; PLD 1975 Quetta 29 'Muhammad Lal v. Abdul Qudoos'; AIR 1972 Supreme Court 137 'Bhavan Vaja v. Solanki Hanuji Khodaji Mansang'; 2007 YLR 2921 'Ghulam Shabbir v. Dilshad Ali'.

21. AIR 1956 Supreme Court 359, 'Jai Narain Ram Lundia vs Kedar Nath Khetan and others'; 2007 CLC 145 'Muhammad Tahir v. Khanan', 1999 SCMR 2150 'M.D. Punjab seed Corporation v. Muhammad Awais Buksh sahib', 2000 6YLR1900 'Zubair Ahmad v. Shahid Mirza'.

22. 2016 SCMR 834 'Muhammad Ijaz and another v. Muhammad Shafi through L.Rs.'; PLD 1972 SC 69 'Hidayatullah v. Murad Ali Khan'.

23. 2016 SCMR 40 'Wasal Khan and others v. Dr. Niaz Ali Khan'.

remedy in such like situation where injustice is caused due to act or omission of the court, the courts are required to remedy the defect that occurred as a consequence thereof.²⁴ The same principles have been expressed by the Privy Council ²⁵ in the following words:

"One of the first and highest duties of all Courts is to take care that the act of the Court does not cause injury to any of the suitors and when the expression 'the act of the Court', is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of Appeal, but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case."

26. It is noted with concern that while the first mistake was committed by the Court (in not drawing up the decree in consonance with the reliefs granted in the Judgment), the miseries of the petitioner were doubled, when both the learned Courts below declined to grant relief to the petitioner on his application under sections 151, 152, 153 & 114 CPC. Both the Courts below acted in a stereotype mechanical manner and failed to exercise jurisdiction vested in them under the above provisions to correct and amend a decree which was *ex-facie* wrongly drawn for no fault of the decree holder. The learned Courts also failed to realize that drawing of the decree without containing all reliefs granted in the Judgment was the root cause of the entire complication, which caused injustice to the petitioner; which was the cause for delaying the implementation of the reliefs granted to the Petitioner in the Judgment; and was also the cause for multiplicity of litigation and filing of the Second Suit as well, which otherwise would not have been required, had the correct decree been prepared by the Court, or had been ordered to be corrected when it was pointed out to the Court by the petitioner. The Courts also failed to consider that due to the above mistake of the Court in properly drawing up the decree, the petitioner, who was declared as lawful owner of the property around 15 years ago (in 2010), was not able to even enter into his own property, but was also deprived of his fundamental right to property and he also had to run from post to pillar for his already declared rights. In contrast, the trespasser who was also responsible for preparing a forged gift deed, continues to enjoy the fruits of the subject property since last more than 19 years (since 2006) and that too, free of cost, only because of a mistake of the Court in properly drawing up the decree. Such a situation is absolutely in contrast the concept of justice for the which the Courts are established. Such an injustice ought to have been remedied by the Courts below, and which must be remedied without any further delay.

24. 1995 SCMR 584 '*Sherin and 4 others v. Fazal Muhammad and 4 others*'; PLD 1972 SC 69 '*Hidayatullah v. Murad A. Khan*'.

25. AIR 1922 PC 269 '*Jai Berham v. Kedar Nath*'

27. Additionally, the Courts also failed to apply the correct law and did not both to exercise their own powers and jurisdiction to foster the ends of the justice and equity, as deliberated in the precedents on the subject. It was the fundamental duty of both the Courts below to apply correct law on the issue, which was not done, and which resulted into denial of rights of the petitioner, for no fault of his own,²⁶ and even the excuse of improper assistance to the Court by the counsel,²⁷ could not even be raised in the present case, when the counsel was already agitating implementation of the correct law, which was refused by both the Courts below without applying the correct law. Even the mischiefs of the law of Limitation were wrongly applied to the facts of the present case, without looking at the dictum settled by the Court²⁸ that while drawing the decree if there was an accidental slip or omission on part of the Court, then the Court, under S.152, C.P.C. may also correct accidental slip or omissions as well and no limitation would come in the way of the applicant or in the way of the Court in exercise of such jurisdiction to deprive a party of the fruit of the judgment, which otherwise he was found entitled. It was held that the power under section 152 CPC could be exercised at any stage, on the application of any party as well as on its own motion by the court and it matters not whether the said power was exercised after the limitation period prescribed by law for a party to the proceedings to invoke the said jurisdiction because rules of limitation are ordinarily not applicable to acts which the court can perform by exercising its *suo motu* powers.²⁹ The issue couldn't have been summed up more appropriately, than the following words of the Honourable Supreme Court:³⁰

“...High Court could have suo motu amended the decree so as to make it conform to the judgment. This is true, but it does not follow that the appellant, if he failed to resort to that remedy, had no other remedy left at all. He was not bound to apply under section 152, C.P.C. for the correction of decree. He could treat it as a declaratory decree alone and then base a suit for ejectment on it against the respondents, who after the date of that decree occupied the position of trespasser. The two remedies were concurrently open to him and we have not been shown any provision of law or referred to any principle, which could stand in the way of a suit for ejectment being brought in circumstances.”

26. *Government of NW.F.P. and others v. Akbar Shah and others* (2010 SCMR 1408)

27. *Muhammad Sarwar's case* PLD 1969 SC 278

28. 2006 CLC 1126 '*Shaukat Ismail Charania v. Mrs. Shakeela Hayat Khan and others*'

29. PLD 2020 Lahore 831 '*ABDUL AZIZ and 2 others v. Ch. ASGHAR ALI*'.

30. PLD 1963 SC 265 '*Ghulam Muhammad v. Sultan Mahmud and others*',

28. Conclusion of the above discussion, spreading from paragraphs 17 to 27 *ibid* is that firstly, the trial Court was bound to draw up the decree dated 07.06.2010 in consonance with the Judgment dated 31.05.2010 in F.C.Suit No.99 of 2006, strictly in terms of Order XX rule 6 and section 33 CPC., which was not done in the present case. Secondly, the mistake in drawing up the decree, being an act of the Court, could not prejudice a party. Thirdly, the Court had the power either to correct such decree out of its own motion, or the petitioner also had the remedy available under sections 151, 152 153 and 114 CPC., to apply for rectification/ correction of such a mistake, since the jurisdiction under these provisions vests ample powers on the Court to amend and bring the decree in consonance with the reliefs granted in the Judgment. Fifthly, in the present case, when such mistake in drawing up the decree was pointed out to the Court, the decree should have been corrected by the Court, which was also not done. Lastly, even upon filing of application by the petitioner under sections 151, 152, 152 and 114 CPC., the Court failed to exercise the jurisdiction vested in it and did not rectify such mistake. Instead, limitation was also wrongly applied, in contrast to the *dictum* settled in the cases of *Shaukat Ismail Charania* ²⁸ and *Abdul Aziz*.¹⁶ The Courts below also failed to apply the correct law. The cumulative effect of the above was that the petitioner/ younger brother, despite having a decree in hand and despite being lawful owner of his inherited property, remained deprived of his right to enter into his property since 2006, whereas the Respondent No.1/ elder brother, despite having a Court declaration against him up to the level of Supreme Court, for cancellation of his forged and fictitious gift deed, was freely enjoying the possession and fruits of the subject property since 2006, without even having to pay a single penny, and all this occurred only due to a simple mistake of the Court in properly drawing up the subject decree. Such a mistake ought to have been corrected by the Court at the first opportunity in the interests of justice and in accordance with law. The pendency of these petitions for ten long years, is yet another painful addition to the miseries of the petitioner, which should come to an end.

29. Consequently for the foregoing reasons, both the Orders impugned in the First Petition No.375/2014 are set-aside, and the petition is disposed-off with directions to the learned trial Court to rectify the mistake in the subject decree within 30 days of this Judgment and draw up the same in accordance with the Judgment dated 28.10.2010. The certified copy thereof be placed by the petitioner before the learned executing Court, which shall entertain the same in Execution application No.1 of 2011 for implementation, strictly in accordance with law. The First C.P. No.375/2014 having been disposed-off in the above terms, the Second petition C.P. No.1794/2015 has become

infructuous, and is hereby dismissed, along with all pending applications in both the petitions. Parties to bear their own costs. Let Record and proceedings be returned.

These are the reasons for our short order dated 13.02.2025.

J U D G E

J U D G E

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-375 of 2014
CP. No.D-1794 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE (S)
1.	For hearing of main case petitiio.

13.02.2025

Aqeel Ahmad Siddiqui Advocate for the petitioners in both petitions.
Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.
==

Heard learned counsel for the petitioners in both the petitions who has argued at length and has relied upon certain case law as well. For reasons and terms to follow, C.P. D-375 of 2014 stands disposed-off and C.P.1794 of 2015 is dismissed.

JUDGE

JUDGE