

District-Kishoregonj.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 819 of 2014.

Gopal Chandra Debnath.

---- Defendant-Respondent- Petitioner.

-Versus-

Rakhal Chandra Debnath being dead his legal heirs
Raton Dev Nath and others.

---- Plaintiff-Appellant -Opposite Parties.

Mr. Mohiuddin Ahmed, Advocate

---- For the Defendant-Respondent- Petitioner.

Mr. A.T.M. Mizanur Rahman, Advocate

---- For the Plaintiff-Appellant -Opposite Parties.

Heard On: 21.10.2025.

And

Judgment delivered On: 28.10.2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 18.08.2013 and 20.08.2013, passed by the learned District Judge, Kishoreganj in Other Appeal No. 101 of 2010, should not be set aside. By the impugned judgment, the learned District Judge allowed the appeal and set aside the order dated 18.04.2010 passed by the learned Joint District Judge, 2nd Court, Kishoreganj in Partition Suit No. 14 of 2005, whereby an application under section 152 of the Code of Civil Procedure was allowed and the preliminary decree was amended.

The relevant facts, in brief, are that the opposite party No.1, as plaintiff, instituted Partition Suit No. 14 of 2005. The suit was decreed preliminarily on 09.05.2005 pursuant to the judgment dated 02.05.2005 on the basis of a compromise petition filed by the parties, which formed an integral part of the decree.

Subsequently, on 14.08.2007, the defendant–petitioner filed an application under section 152 of the Code of Civil Procedure praying for correction of an alleged error by substituting Dag No. 446 in place of Dag No. 447 in the schedule of the decree. Upon hearing the parties, the trial court allowed the application by order dated 18.04.2010 and corrected the decree accordingly.

Being aggrieved, the plaintiff preferred Other Class Appeal No. 101 of 2010 before the learned District Judge concerned. The defendant raised a preliminary objection contending that the appeal was not maintainable in view of Order XLIII Rule 1 of the Code of Civil Procedure. The appellate court, however, overruled the objection and allowed the appeal, setting aside the order of correction on the ground that the amendment sought to be made went beyond the scope of section 152 of the Code, particularly having been made after more than two years from the date of the decree.

Against the said judgment, the defendant, as petitioner, moved the instant revisional application and obtained the present Rule, which is now taken up for disposal.

Mr. Mohiuddin Ahmed, learned Advocate appearing for the defendant–petitioner, submits that the impugned order passed by the trial court under section 152 of the Code was merely procedural and corrective in nature and did not involve any judicial adjudication; therefore, no appeal lay against such order under Order XLIII Rule 1 of the Code. He further submits that the appellate court exceeded its jurisdiction in entertaining the appeal. According to him, the trial court rightly exercised its power to correct an apparent clerical error which neither altered nor affected the substance of the compromise decree.

On the other hand, Mr. A.T.M. Mizanur Rahman, learned Advocate appearing for the plaintiff–opposite party No.1, submits that the so-called correction materially altered the compromise decree and affected the substantive rights of the parties. He contends that the amendment was made after about five years and without proper notice and, therefore, cannot be termed a clerical correction within the meaning of section 152 of the Code. Relying on the decision reported in **14 BLC (AD) 55**, he argues that after passing the judgment and

decree the court becomes functus officio and has no authority to alter the decree in the name of correction.

Having heard the learned Advocates for both parties and upon perusal of the impugned judgment, the relevant orders, the compromise decree, and other materials on record, this Court finds that the core issues for determination are:

1. Whether an appeal lies against an order passed under section 152 of the Code of Civil Procedure; and
2. Whether the correction made by the trial court was within the ambit of section 152 of the Code.

Section 152 of the Code empowers the court to correct clerical or arithmetical mistakes in judgments, decrees, or orders arising from accidental slips or omissions. The scope of this provision is narrow and well defined. It is settled law that section 152 cannot be invoked to alter, modify, or vary the substantive part of a decree or judgment, nor can it be used to reopen matters which have already attained finality.

In the present case, the trial court substituted Dag No. 447 with Dag No. 446 in the schedule of the compromise decree. Such substitution

directly affects the identity of the suit land itself. Unless the alleged mistake is admitted by the parties or is demonstrably apparent on the face of the record as an accidental slip, such alteration cannot be characterized as a clerical or arithmetical error.

It is now well settled that the power conferred under section 152 of the Code of Civil Procedure is confined strictly to correction of clerical or arithmetical mistakes or errors arising from accidental slips or omissions and cannot be exercised to modify or alter the substantive rights of the parties embodied in a decree, particularly a decree passed on compromise. Where a so-called correction results in substitution of a dag number, thereby changing the identity of the suit land, such alteration constitutes a substantive modification and not a mere clerical correction. An order effecting such modification partakes the character of a judicial determination and is, therefore, appealable notwithstanding that it is styled as an order under section 152 of the Code. Moreover, although section 152 prescribes no specific period of limitation, the power thereunder must be exercised within a reasonable time, and once a decree has attained finality, the court becomes functus officio and cannot alter the decree under the guise of correction after inordinate delay. Therefore, this Court finds that the order passed by the trial court was not a mere procedural correction but amounted to a substantive modification of the

compromise decree. Consequently, the order was appealable, and the learned District Judge rightly held the appeal to be maintainable.

The appellate court further rightly observed that the application for correction was filed after more than two years without establishing that the alleged mistake was an accidental slip apparent on the record. Therefore, the exercise of power by the trial court was improper and beyond the scope of section 152 of the Code.

In view of the foregoing discussions, this Court finds that the learned District Judge committed no illegality or material irregularity in setting aside the order dated 18.04.2010 passed by the trial court. The impugned judgment calls for no interference in revisional jurisdiction.

Accordingly, **the Rule is discharged.**

The judgment and decree passed by the learned District Judge, Kishoreganj in Other Appeal No. 101 of 2010 are hereby affirmed.

Let the order be communicated at once.

(Justice Md. Toufiq Inam)