



Judgment Reserved on:14.08.2026

Judgment Delivered on:21.08.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE SRI JUSTICE SUBHASH UPADHYAY

CIVIL REVISION NO.31 OF 2026

Swami Krishnacharya Ji Maharaj ...Revisionist/Plaintiff

Versus

Rishikesh Giri ...Respondent/Defendant.

Counsel for the revisionist	:	Mr. Neeraj Garg, learned counsel
Counsel for the respondent	:	Mr. Nikhil Singhal, learned counsel.

JUDGMENT: (per Mr. Subhash Upadhyay, J.)

The present civil revision under Section 115 of the C.P.C. has been filed assailing an order dated 13.03.2026 passed by the learned 1st Additional District Judge, Rishikesh in Original Suit No.35 of 2016, "Swami Krishnacharya Ji Maharaj Vs. Rishikesh Giri" whereby the application (paper no.375A), filed by the revisionist /plaintiff under Order 6 Rule 17 CPC seeking amendment in the plaint, was rejected.

2. The Original Suit No.35 of 2016 was filed by the plaintiff/ revisionist on 08.03.2016 with the following prayers:

"a) A decree for permanent injunction be passed in favor of the plaintiff and against the defendant whereby the defendant, his legal heirs, servants, employees, associates and person or persons, be restrained from interfering in the peaceful possession, use and enjoyment of the property in suit and to oust the plaintiff from the property in suit and take forcible possession of the property in suit, fully described at the end of the plaint.



b) Cost of the suit be awarded in favor of the plaintiff and against the defendant.

c) Any other relief in addition to the above for which the plaintiff be found entitled in law or equity, be also granted in favor of the plaintiff and against the defendant."

3. As per the case of revisionist, an interim order was passed on 08.03.2016 in the said suit, whereby the respondent, his legal representatives, employees or agents were restrained from interfering in the possession of the plaintiff over the suit property and the said order was served personally upon respondent/defendant. It is further case of the revisionist that on 10.03.2016, the respondent broke lock of the gate and obstructed the power attorney holder of the revisionist from entering the property. On 14.03.2016, application no.19-C was filed before the Court praying for implementing the order dated 08.03.2026 through police force and for directing the defendant to maintain *status quo ante* as it was on 08.03.2016.

4. On 08.07.2016, the revisionist filed an application under Order 39 Rule 2A CPC for violation of *ex parte* interim injunction order dated 08.03.2016, which was registered as Misc. Case No.15 of 2016.

5. On 04.10.2021, the application filed by the revisionist under Order 39 Rule 2A CPC was allowed, the defendant was found guilty of willful disobedience of the



order dated 08.03.2016 and was directed to undergo simple imprisonment for a period of one month.

6. The defendant filed an application for recalling order dated 04.10.2021 passed in Misc. Case No.15 of 2016, which was registered as Misc. Case No.2 of 2021 and the same was rejected on 22.08.2022. Against the said order, the respondent preferred AO No.337 of 2022, which is pending before this Court.

7. The defendant also assailed order dated 04.10.2021 in AO No.7/2023 which is also pending before this Court. In the intervening period, the learned Trial Court framed the issues on 16.11.2021 and additional issues on 20.12.2021. The issues framed on 16.11.2021 and the additional issues framed on 20.12.2021 are as follows:

“न्यायालय प्रथम अपर जिला न्यायाधीश, ऋषिकेश, जिला देहरादून।

मूल वाद संख्या 35/2016

स्वामी कृष्णाचार्य

बनाम

ऋषिकेश गिरी

दिनांक: 16.11.2021

पुकारा गया। पक्षकारों के विद्वान अधिवक्ता न्यायालय उपस्थित। उभय पक्षों के अभिवचनों के आधार पर इस याचिका में निम्नलिखित वाद बिन्दु विरचित किये जाते हैं।

1— क्या वादी वादग्रस्त सम्पत्ति / सूची सम्पत्ति वादपत्र 3ए1/15 उसके पक्ष में निष्पादित विक्रय पत्र दिनांकित 02.06.2011 के आधार पर स्वामी व अध्यासी है? यदि हां तो प्रभाव।

2— क्या प्रतिवादी वादग्रस्त सम्पत्ति पर काबिज अध्यासी है?

3— क्या वादी को वर्तमान वाद का वाद कारण प्राप्त है? यदि हां तो प्रभाव।

4— क्या प्रतिवादी को प्रतिदावे का वाद कारण उत्पन्न / प्राप्त है?

5— क्या वादी का वाद आदेश 7 नियम 11 सी.पी.सी. के प्राविधानों से बाधित है तथा खारिज किये जाने योग्य है? यदि हां तो प्रभाव।

6— क्या प्रतिवादी को प्रतिदावा आदेश 7 नियम 11 सी.पी.सी. के प्राविधानों से बाधित है तथा खारिज किये जाने योग्य है? यदि हां तो प्रभाव।

7— क्या वादी का वाद अल्पमूल्यांकित है? यदि हां तो प्रभाव।

8— क्या प्रतिवादी का प्रतिवाद अल्पमूल्यांकित है? यदि हां तो प्रभाव।



2026:UHC:7588

9— क्या प्रतिवादी अपने काउन्टर क्लेम में चाहा गया स्थाई निषेधाज्ञा का अनुतोष प्राप्त करने का अधिकारी है? यदि हां तो प्रभाव।

10— क्या वादी अपने वादपत्र में चाहा गया स्थाई निषेधाज्ञा का अनुतोष प्राप्त करने का अधिकारी है? यदि हां तो प्रभाव।

11— अनुतोष?

अन्य कोई वाद बिन्दु नहीं बनता है, न ही बल दिया गया है। नियत तिथि तक अंतरिम निषेधाज्ञा आदेश यदि कोई हो तो प्रभावी रहेगा। पत्रावली वास्ते निस्तारण प्रार्थना पत्र 6ग2 व साक्ष्य वादी हेतु दिनांक 25.11.2021 को पेश हो।

ह०अ०

16.11.2021

(धर्म सिंह)

प्रथम अपर जिला जज

ऋषिकेश, देहरादून।”

“दिनांक 20.12.2021

पुकार पर पक्षकारों के विद्वान अधिवक्ता उपस्थित। पक्षकारों के विद्वान अधिवक्तागण को प्रार्थनापत्र 256ए पर सुना गया। जहां तक पूर्व में विरचित वाद बिन्दु दिनांकित 16.11.2021 का सम्बंध है तो इस सम्बंध में पक्षकारों को कोई आपत्ति नहीं है जबकि वादी के विद्वान अधिवक्ता के द्वारा अपने प्रार्थनापत्र कागज संख्या 256ए के द्वारा विबंधन एवं प्रांग न्याय परिसीमा अधिनियम से प्रतिदावा बाधित होने के सम्बंध में व प्रतिदावा विशिष्ट अनुतोष अधिनियम के प्राविधान से बाधित होने के सम्बंध में वाद बिन्दु विरचित करने के सम्बंध में तर्क किये गये हैं जिसमें पक्षकारों को कोई आपत्ति नहीं है। तदनुसार निम्न अतिरिक्त वाद बिन्दु विरचित किये जाते हैं।

वाद बिन्दू संख्या 12—

प्रभाव। क्या वादी का वाद प्रांग न्याय के सिद्धांत से बाधित है? यदि हां तो

वाद बिन्दू संख्या 13—

क्या वादी का वाद विबंधन के सिद्धांत से बाधित है? यदि हां तो प्रभाव।

वाद बिन्दू संख्या 14—

क्या प्रतिवादी का प्रतिदावा विशिष्ट अनुतोष अधिनियम के प्रावधानों से बाधित है?

वाद बिन्दू संख्या 15—

क्या प्रतिवादी का प्रतिदावा परिसीमा अधिनियम से बाधित है? यदि हां तो प्रभाव।

इसके अलावा कोई अन्य वाद बिन्दू नहीं बनता है। पत्रावली दिनांक 06.01.2022 को वास्ते प्रार्थनापत्र 6ग, 34ग एवं 249ए के निस्तारण हेतु पेश हो।”

8. On 21.09.2022, temporary injunction application no.6C2 of the plaintiff / revisionist and temporary injunction application of the defendant / respondent (34C2) were decided and the parties were directed to maintain status quo over the property, not to interfere, encroach and change the nature of the property.

9. Against the said order, the plaintiff had filed AO No.361 of 2022 and AO No.362 of 2022, which are pending before this Court. Application No.19C filed by the revisionist



/ plaintiff for implementing order dated 08.03.2016 through police force and for restoring the *status quo ante* was rejected on 26.02.2024 against which Civil Revision No.28 of 2024 filed by the revisionist is pending before this Court.

10. On 19.08.2025, learned 1st Additional District Judge disposed of the pending application for marking exhibits on the documents and fixed the case for evidence of plaintiff for 02.09.2025.

11. The plaintiff / revisionist, on 20.09.2025 filed list of witnesses along with affidavit of the plaintiff as PW1 and also filed an amendment application no.347C2 along with other Misc. Applications.

12. Through the said amendment application, the revisionist / plaintiff sought the following amendment:

A) After paragraph No. 29 of the plaint and before paragraph no. 30, following new paragraph be added: -

29A. That despite service of ex-parte ad-interim injunction order dated 08.03.2016 upon defendant on 09.03.2016, defendant continued his illegal act of interfering in possession of plaintiff and created hindrance in carrying out demolition work over the suit property by attorney holder of plaintiff Sri Gopalacharya on 10.03.2016 and have broken the lock of the gate and despite reporting the incident to police, no steps were taken by the police, consequently application paper no. 19C was filed by the plaintiff for implementation of the order dated 08.03.2016 on the spot through police force for ensuring the status as on 08.03.2016 of the property.



2026:UHC:7588

29B. That application paper no. 19C remained pending for long and could be disposed of finally vide order dated 26.02.2024 resulting in its dismissal observing that since temporary injunction application of both parties have been disposed of directing maintenance of status quo vide order dated 21.09.2022, the said order has overriding effect over order dated 08.03.2016. The plaintiff has filed Civil Revision No. 28 of 2024 against order dated 26.02.2024 before Hon'ble High Court of Uttarakhand, Nainital, and the same is pending.

29C. That in the separate proceedings initiated under Order 39 Rule 2A CPC by the plaintiff against the defendant for violating the interim order dated 08.03.2016, defendant was held guilty of willful disobedience of the order dated 08.03.2016 vide final order dated 04.10.2021 passed in Misc. Case No. 15 of 2016 sentencing him to undergo civil imprisonment for a period of one month. The application for recalling and setting aside the said final order dated 04.10.2021 filed by the defendant was also rejected vide order dated 22.08.2022. Defendant preferred AO No. 337 of 2022 against the said order dated 22.08.2022 before Hon'ble High Court of Uttarakhand, Nainital and AO No. 7 of 2023 alongwith delay condonation application against final order dated 04.10.2021 and the same are pending. The said final order dated 04.10.2021 is operative and binding upon defendant.

29D. That as such defendant taking law in his hands made frivolous unsuccessful attempt to grab the property just to raise voice on the basis of his frivolous defence regarding possession, and caused damage to the plaintiff for which defendant is liable to compensate the plaintiff.

29E. That in the aforesaid circumstances, it has become inevitable for plaintiff to seek appropriate relief in the facts and circumstances of the case for protection of rights of plaintiff in the light of the aforesaid subsequent events and in the interest of justice.

B) That in paragraph No. 30 of the plaint, in the ninth



line, after the words possession thereof from the plaintiff, and before the words all within the jurisdiction of this learned Court, following be added: -

"and thereafter when the defendant committed illegal act in violation of the interim injunction order and caused loss and damage to plaintiff and when the application paper no. 19C of plaintiff was disposed of and dismissed vide order dated 26.02.2024.

C) That paragraph no.31 of the plaint be deleted and be substituted as under: -

"31. That suit for the purpose of Court fee and jurisdiction is valued at Rs.36,50,000/-.

Relief (a) is valued at Rs.18,00,000/- and the relief being for permanent injunction, maximum Court fee of Rs.500/- is being paid.

Relief (b) is valued at Rs.18,00,000/- and relief being for injunction, maximum Court fee of Rs.500/- is being paid.

Relief (c) is valued at Rs.50,000/- on which Court fee of Rs.4,157.50 is being paid.

D) That in paragraph no.32, existing relief b) be re-numbered as "d)" and existing relief c) be re-numbered as "e)" and following new relief be added after relief a): -

"b) A decree of mandatory injunction be passed in favor of the plaintiff and against the defendant, directing defendant to ensure status of property in suit to remain maintained as of date of institution of suit ensuring safety of life and liberty of plaintiff being lawful owner of property in suit further ensuring plaintiff's unfettered possession, right and freedom to retain and maintain the property in dispute.

c) A decree for realization of damages be passed in favor of plaintiff and against defendant directing defendant to pay sum of Rs.50,000/- as damages to plaintiff for causing damage to the gate of plaintiff's property."



13. The amendment application no.347C2 was rejected on 10.11.2025 and the said order became final as the revisionist did not challenge the said order dated 10.11.2025 in any other proceeding.

14. The revisionist, thereafter, preferred another application no.375A on 13.01.2026 for amendment in plaint and sought the following amendment:

“A) That after paragraph No. 29 of the plaint and before paragraph no. 30, following new paragraph be added:-

29A. That after the incident dated 09-03-2016 of violating the ad-interim injunction order by defendant, which was reported to Hon'ble Court vide application paper no. 19C dated 14-03-2016 by plaintiff, defendant is misrepresenting the fact regarding possession over disputed property, which is also evident from contents of his written statement.

29B. That in order to avoid any technicality, it would be just and proper for plaintiff to seek alternative relief in the suit regarding possession cause of action whereof accrued to plaintiff post 09-03-2016. The alternate relief sought is within limitation in view of Article 64 of the Limitation Act, 1963.

29C. That as such it would be expedient in the interest of justice that alternate relief of



decree of possession be granted to plaintiff in case Hon'ble Court comes to the conclusion that plaintiff is out of possession.

B) That paragraph no. 31 of the plaint be deleted and be substituted as under: -

31. That suit for the purpose of Court fee and jurisdiction is valued at Rs. 18,00,000/- on which maximum court fee of Rs. 500/- for decree of permanent prohibitory injunction is paid and for alternate relief, on thirty times of annual value of the property assessed by municipality i.e. Rs. 2250/- per annum which comes to Rs. 67,500/-, on which court fee as per law is being paid.

C) That after relief a) and before b) following alternate relief be added: -

Or in alternate

In case Hon'ble Court comes to the conclusion that plaintiff is out of possession, a decree for possession be passed in favour of plaintiff and against defendant, directing defendant to hand over actual, physical and vacant possession of the property in suit to plaintiff."

15. The defendant filed objection to the said amendment application and the learned Trial Court vide order dated 13.03.2026 rejected the amendment application paper no.375A against which the present



revision under Section 115 CPC has been filed.

16. Learned counsel for the revisionist submits that the learned Trial Court erred in rejecting the amendment application on the premises that the application for amendment is belated and barred by proviso to Order 6 Rule 17 CPC without recording any finding as to whether the proposed amendment is necessary for determining the real controversy between the parties.

17. He further submits that though issues and additional issues were framed and examination-in-chief of PW1 was filed, however, the cross-examination of PW1 had not commenced. Thus, trial has not commenced in *stricto sensu* when the application for amendment was filed and the term 'commencement of trial' ought to have been considered in a liberal view to advance cause of justice.

18. He further submits that no prejudice would be caused to the respondent in case the application for seeking alternative relief of possession was allowed.

19. Learned counsel for the plaintiff / revisionist placed reliance on the following judgments:

1. Baldev Singh & Others Vs. Manohar Lal, reported in 2006 (6) SCC 498.
2. Gurbaksh Singh & Others Vs. Buta Singh & Another (2018) 6 SCC 567.
3. Dinesh Goyal alias Pappu Vs. Suman



Agarwal (Bindal) & Others, reported in 2024 SCC OnLine (SC) 2615.

4. Nitaben Dinesh Patel Vs. Dinesh Dahyabhai Patel, reported in 2021 (20) SCC 210.

5. North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (dead) by LRs, reported in 2008 (8) SCC 511.

6. Revajeetu Builders and Developers Vs. Narayanaswamy & Sons and Others, reported in 2009 (10) SCC 84.

7. Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Another, reported in 2022 (16) SCC 1.

8. Ganesh Prasad Vs. Rajeshwar Prasad & Others, reported in 2023 SCC Online 256.

9. Arjun Singh Vs. Mohindra Kumar & Others, reported in AIR 1964 (SC) 993.

20. Per contra, learned counsel for the respondent submits that, at the time of filing of application no.19C on 14.03.2016, the revisionist / plaintiff was aware of the fact that he was not in possession of the suit property. Moreover, the respondent in their written statement had specifically denied the possession of the plaintiff, at any point of time, over the suit property.

21. He further submits that, as per proviso to Order 6 Rule 17 CPC, no application for amendment shall be allowed after the trial has commenced unless the Court comes to a conclusion that, in spite of due diligence, the party could not have raised the matter before



commencement of trial.

22. He submits that the trial had commenced on the date when the plaintiff had filed the evidence affidavit and the issues were framed much earlier in 2021. Moreover, prior to filing of the amendment application no.375A, the revisionist had filed application no.347C seeking similar amendment in plaint which was rejected.

23. The said earlier amendment application was filed after the rejection of application no.19C whereby the plaintiff / revisionist was seeking to restore the possession, as it existed on 08.03.2016.

24. Learned counsel for the respondent refers to the prayer made in the original suit and the prayer sought to be added through amendment and contends that the prayer made at the time of filing of the suit and the prayer, which are sought to be added are totally inconsistent and contrary to each other. Thus, the prayer sought to be added would change the nature of the suit, which is impermissible and would cause serious prejudice to the respondent.

25. Lastly, learned counsel for the respondent submits that the second amendment application, after the dismissal of the earlier amendment application on similar facts and ground, would also be barred by principle of *res*



judicata as the Hon'ble Apex Court has held in catena of judgments that principle of *res judicata* also applies at different stages of the same proceedings.

26. Learned counsel for the respondent placed his reliance on the following judgments:

1. Vidyabai and Ors Vs. Padmalatha and Another, 2009(2) SCC 409.
2. J. Samuel and Others Vs. Gattu Mahesh and Others, 2012 (2) SCC 300.
3. M. Revenna Vs. Anjanamma (dead) by LRs and Others (2019) 4 SCC 332.
4. Basavaraj Vs. Indira and Others 2024 (3) SCC 705.
5. Bhanu Kumar Jain Vs. Archana Kumar and Others 2005 (1) SCC 787.

27. Heard learned counsel for the parties and perused the record.

28. It is not in dispute in the present case that the original suit filed in the year 2016 was for permanent injunction. For the violation of interim order dated 08.03.2016 passed in the said case the proceedings were initiated by the plaintiff / revisionist, which culminated in the various orders passed by the learned Trial Court against which AOs and revisions are pending before this Court.

29. The revisionist / plaintiff since 2016 was aware of the fact that he is not in possession of the suit property.



The issue no.1 framed in the year 2021 was to the effect as to whether the plaintiff, in view of the sale deed dated 02.06.2011, is the owner, landlord and in occupation / possession of the suit property. The issue no.2 was to the effect that as to whether the respondent is in possession of the suit property.

30. After issues and additional issues were framed, the plaintiff PW1 filed the evidence affidavit and the case was fixed for cross-examination of PW1. The plaintiff / revisionist had filed an amendment application no.347C2 in which the entire facts since institution of the suit in the year and the entire developments that took place till filing of the first amendment application no.347C2 (on 20.09.2025) were detailed and on the basis of which amendment was sought in the plaint. The said application was rejected by an order dated 10.11.2025 and in absence of any challenge to the said order the same has attained finality.

31. The plaintiff, admittedly, filed another amendment application subsequently on the same grounds and the learned Trial Court rejected the said application considering the fact that the said application was barred by proviso to Order 6 Rule 17 CPC. Order 6 Rule 17 CPC reads as under:



*“1[17. **Amendment of pleadings.**—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.]”

32. Thus, under the proviso to Order 6 Rule 17 CPC application for amendment shall not be allowed after commencement of trial unless the Court comes to a conclusion that, in spite of due diligence, the party could not raise the matter before commencement of trial.

33. A perusal of the second amendment application filed by the revisionist reveals that the revisionist had failed to specify as to how, in spite of due diligence, the amendment sought to be incorporated could not be incorporated before the commencement of trial. In the first amendment application, the plaintiff / revisionist had given the detailed reason as to how, in spite of due diligence, the amendment could not be sought to be incorporated before commencement of trial, however, the said amendment application was rejected and the said order has attained finality.

34. The action of the revisionist / plaintiff in filing the subsequent amendment application after the dismissal of



the first amendment application, on the similar facts, would thus, also be barred by principle of *res judicata*.

35. I have gone through the various decisions cited by the revisionist and this Court is of the view that the judgments, relied upon by the plaintiff / revisionist, are distinguishable as the said judgments were rendered on different set of facts and circumstances. As per proviso to Order 6 Rule 17 CPC, the amendment application can be considered after the commencement of trial wherein the plaintiff is able to specify that the amendment sought could not be carried out earlier in spite of due diligence.

36. The Hon'ble Apex Court in the case of ***Rajkumar Gurawara (dead) Through LRs Vs. S.K. Sarwagi and Company Private Limited and Another (2008) 14 SCC 364*** considered Rule 17 of Order 6 CPC and held in paragraph nos.12 and 13 as hereunder:

“12. In order to consider whether the appellant-plaintiff has made out a case for amendment of his plaint, it is useful to refer Order 6 Rule 17 CPC which reads as under:

“17. Amendment of pleadings.—The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

The first part of the rule makes it abundantly clear that at any stage of the proceedings, parties are free to



alter or amend their pleadings as may be necessary for the purpose of determining the real questions in controversy. However, this Rule is subject to proviso appended therein. The said Rule with proviso again substituted by Act 22 of 2002 with effect from 1-7-2002 makes it clear that after the commencement of the trial, no application for amendment shall be allowed. However, if the parties to the proceedings are able to satisfy the court that in spite of due diligence they could not raise the issue before the commencement of trial and the court is satisfied with their explanation, amendment can be allowed even after commencement of the trial.

13. To put it clear, Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As rightly pointed out by the High Court in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the latter case, namely, after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the court to satisfy the conditions prescribed in the proviso.”

37. The Hon'ble Apex Court in the case of **Basavaraj Vs. Indira and Others 2024 (3) SCC 705** in paragraph no.12 of the said judgment held as under:

12. This Court in *M. Revanna v. Anjanamma* [*M. Revanna v. Anjanamma*, (2019) 4 SCC 332 : (2019) 2 SCC (Civ) 338] opined that an application for amendment may be rejected if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. Order 6 Rule 17CPC prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier. It is not a matter of right. Para 7 thereof is extracted below : (SCC p. 335)

“7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order 6 Rule 17CPC virtually prevents an



2026:UHC:7588

application for amendment of pleadings from being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.”

(emphasis supplied)

38. The Hon’ble Apex Court considered the judgment passed in the case of **Rajkumar Gurawara (supra)** in a recent judgment of **Chitra & Anr. v. C. Natarajan 2026 INSC 781** and reiterated the said view that proviso to Order VI Rule 17 specifically speaks of amendment after commencement of trial to be permitted only if party, despite having exercised due diligence could not have raised the matter before the commencement of trial.

39. In the present case, the plaintiff / revisionist was not able to specify any reason as to why the amendment was not sought earlier when the fact of his dispossession was in his knowledge since 2016. The first amendment application, seeking the similar amendment, was filed in 2025 i.e. after nine years, which was dismissed on 10.11.2025 and the said order has attained finality. The



second amendment application seeking amendment of similar nature does not specify as to how the issue of dispossession could not be raised earlier.

40. Learned Trial Court had considered the entire facts in detail and has passed a reasoned order providing cogent reasons for not allowing the subsequent amendment application taking into consideration the import of Order 6 Rule 17 CPC in its correct perspective.

41. The Hon'ble Apex Court has dealt with the power of the Court under Section 115 CPC and in the case of ***Madan Mohan (dead) through LRs. Vs. Thakar Dass (dead) through LRs. 2026 INSC page no.730*** in paragraph no.10 has held as under:

“10. It is well settled that the scope of Section 115 Code of Civil Procedure, 1908 is limited. We may refer to a few pronouncements:

10.1 35 years ago, it was observed in ***Masjid Kacha Tank, Nahan v. Tuffail Mohammed***¹⁰, that:

“3. It is well settled position in law that under Section 115 of the Code of Civil Procedure the High Court cannot reappreciate the evidence and cannot set aside the concurrent findings of the courts below by taking a different view of the evidence. The High Court is empowered only to interfere with the findings of fact if the findings are perverse or there has been a non-appreciation or nonconsideration of the material evidence on record by the courts below. Simply because another view of the evidence may be taken, is no ground by the High Court to interfere in its revisional jurisdiction.”

10.2 The Constitution Bench in *Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh*¹¹, while dealing with this very question of the scope of revisional power in the context of rent acts,



particularly in issue therein held as under:

“...Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

10.3 A three judge Bench of this Court in **Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar**¹², while dealing with a landlord-tenant dispute observed as under:

“14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.”

(Emphasis supplied)”

42. In view of the above discussion, this Court is of the considered view that there is no material irregularity or illegality in the order passed by the learned Trial Court.

43. The revision fails and the same is dismissed.

44. As a sequel thereto, the miscellaneous applications, if any pending, shall stand closed.

SUBHASH UPADHYAY, J.

Dt:21.08.2026
Sukhbant