



2023:DHC: 7259



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 19th July, 2023**
Pronounced on: 6th October, 2023

+ **C.R.P. 29/2023 & CM APPL. 5086/2023**

SAKET GROVER Petitioner

Through: Mr.Pradeep Dhingra, Mr.Nishant Kumar
and Mr. Nikhil Joshi, Advocates (Through
VC)

Versus

HEMANT GROVER & ANR. Respondents

Through: Mr.____, Advocate (Appearance not given)

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC") read with Article 226 of the Constitution of India, has been filed on behalf of the petitioner seeking the following reliefs: -

"(i) accept the civil revision petition of the petitioner;

(ii) set-aside and quash the order dated 17.10.2022 passed by the Ld. Trial Court on the application under order 6 Rule 17 of CPC read with Order I Rule 10 CPC filed by the petitioner in Civil Suit No.1 056/2018 titled as Saket Grover Versus Hemant Grover & Anr. presently pending disposal before the Hon'ble Court of Sh. Vishal Singh, ADJ, West, Tis Hazari, Delhi;

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(iii) Allow the application under Order 6 Rule 17 read with Order I Rule 10 in favour of petitioner.

(iv) Call for the records of the Civil Suit No. 1056/2018 titled as Saket Grover Versus Hemant Grover & Anr. presently pending disposal before the Hon'ble Court of Sh. Vishal Singh, ADJ, West, Tis Hazari, Delhi and fixed for hearing on 07.02.2023;

(v) cost of the present revision be granted in favour of the petitioner and against the respondents and;

Pass any further order (s) that this Hon'ble Court may deem fit and proper in the interest of justice.”

FACTUAL MATRIX

2. The details of the parties to the instant dispute are as follows:
 - a. Sh. Saket Grover, i.e., the petitioner herein, is stated to be the son born out of the wedlock between Late Sh. Surinder Dev Grover and his first wife.
 - b. Sh. Hemant Grover, i.e., the respondent no. 1 herein, is stated to be the son born out of the wedlock between Late Sh. Surinder Dev Grover and Smt. Surinder Grover, i.e., the respondent no. 2 herein.
 - c. The respondent no. 2 is stated to be the second wife of Late Sh. Surinder Dev Grover and step mother of the petitioner herein.
3. It has been stated in the plaint that the father of the petitioner namely, Late Sh. Surinder Dev Grover who died intestate on 19th May 1995, had purchased the property bearing No. A-2/199, Paschim Vihar, Delhi-110063, admeasuring about



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200 sq. yards (hereinafter Suit Property”), vide Lease Deed dated 27th January 1977, and thereafter, he constructed a structure thereto.

4. It has been further stated that the petitioner was denied his rights in the Suit Property by the respondents. Consequently, the petitioner had instituted a Civil Suit for partition, possession and permanent injunction against the respondents in respect of the Suit Property. The said suit was registered vide Civil Suit bearing No. 1056/2018, titled as ‘*Saket Grover v. Hemant Grover & Anr.*’ and is pending for adjudication before the learned ADJ-03, West, Tis Hazari, Delhi.

5. In the above said Suit, the respondents, upon issuance of summons, filed their written statement, whereby, they denied the rights of the petitioner to the Suit Property on the ground that the respondent no. 2, who is the second wife of Late Sh. Surinder Dev Grover, has been bequeathed with the Suit Property by virtue of a registered Will dated 25th May 1985, in her favour. It was further stated in the written statement, that the respondent no. 2 is now the owner of the said property by way of a Conveyance Deed dated 17th August 2017, duly registered.

6. Pursuant to filing of the written statement, the petitioner filed an application under Order VI Rule 17 of the CPC, read with Order I Rule 10 of the CPC, read with Section 151 of the CPC, seeking amendment of his plaint and impleadment of Delhi Development Authority (hereinafter “DDA”).

7. The above said application was dismissed vide order dated 17th October 2022, in Civil Suit bearing No. 1056/2018, passed by the learned ADJ-03, West, Tis Hazari, Delhi. Being aggrieved by the said dismissal the petitioner has approached this Court seeking revision of the impugned order dated 17th October 2022.



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8. The petitioner has filed the instant petition, wherein, he has raised the grounds in paragraph No. 'A to N' stating that the impugned order passed by the learned Trial Court is erroneous and has been passed against the settled principles of law.

9. The written submissions have been filed by the respondent on 28th July 2023, wherein he has opposed the instant petition on the grounds of maintainability in view of the proviso to Section 115 (1) of the CPC.

SUBMISSIONS

(On behalf of the petitioner)

10. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court erred in passing the impugned order since it failed to consider the entire facts and circumstances of the dispute of the petitioner.

11. It is submitted that the respondents filed their written statement wherein, they had alleged that the father of the petitioner namely, Late Sh. Surinder Dev Grover, executed a Will dated 25th May 1985, in favour of the respondent no. 2.

12. It is submitted that, the respondent No. 2, by way of the said written statement, had further alleged that pursuant to the above said Will, a conveyance deed dated 17th August 2017, had been executed, thereby, making the respondent No. 2 the absolute owner and possessor of the Suit Property. It is submitted that although the respondents are relying upon the Will dated 25th May 1985; however, they have not annexed the same along with the written statement. It is submitted that Order VIII Rule 1A of the CPC, mandates the respondents to produce the documents relied upon by them.



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13. It is further submitted that the respondents were directed by the learned Trial Court vide order dated 27th April 2022, to file an affidavit to the effect that they are not in possession of either the copy of the registered Will or the details thereof, however, the same was filed at a belated stage. As per the said affidavit filed by the respondents before the learned Court below, the original Will had already been deposited with the DDA, at the time of execution of the above stated Conveyance Deed.

14. It is submitted that the petitioner had filed an application under Order XI Rule 12, 13 and 14 of the CPC, seeking directions from the learned Trial Court, to direct the respondents to produce the alleged Will. The respondents never filed their reply to the said application and the same was duly taken into consideration by the learned Court below in its order dated 12th May 2022.

15. It is also submitted that along with the above said application, the petitioner had also filed an application under Section 151 of the CPC, whereby, he had sought directions to the DDA and Municipal Corporation of Delhi (hereinafter “MCD”), for production of the alleged Will.

16. It is submitted that as per order dated 12th May 2022, passed by the learned Court below, the learned Court observed that the respondents are not in possession of the alleged registered Will, on the basis of which the Conveyance Deed dated 17th August 2017, had been executed *qua* the Suit Property.

17. It is further submitted that in the said, the learned Court below had particularly observed that since the respondents are alleging to be the owners of the Suit Property, therefore, the production of the said Will is necessary for the adjudication of the Suit of the petitioner.



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18. It is submitted that the respondents have been persistently avoiding the production of the alleged Will and in view of the same, upon an application filed by the petitioner under Section 151 of the CPC, before the learned Court below, DDA and MCD were directed to produce all the documents lying with them *qua* the execution of the above said Conveyance Deed in favour of the respondent No. 2. It is further submitted that pursuant to the above said directions, DDA and MCD filed documents on 27th May 2022, and stated that no such documents could be found regarding the ownership of the Suit Property in favour of the respondents.

19. It is submitted that since no such documents exists which could prove the ownership of the respondent No. 2 in respect of the Suit Property *qua* the above said Conveyance Deed, the petitioner preferred to move an application under Order VI Rule 17 read with Order I Rule 10 of the CPC, seeking amendment of the plaint.

20. It is submitted that in the above said application the petitioner had raised the ground that the respondents are alleging their ownership based on the Conveyance Deed dated 17th August 2017, which was executed on the basis of the alleged Will. Since there is no Will in existence, the said Conveyance Deed *inter alia* was sought to be cancelled by way of the amendment.

21. It is submitted that the learned Trial Court failed to take into consideration the fact that the respondents had filed their written statement in which they intentionally, mischievously and with ulterior motives did not disclose the alleged Will. The said Will was neither disclosed at the time of adjudication of the



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application under Order XI Rule 12, 13 and 14 of the CPC, nor was the same found in the records of the DDA and MCD.

22. It is further submitted that the learned Trial Court committed grave error whilst dismissing the above said application on the ground that as per the settled law, plaint cannot be amended as to contain the pleadings of defendants or anything based on contents of written statements of defendants.

23. It is submitted that the petitioner sought for the amendment on the basis of subsequent events only and the petitioner could have derived the knowledge *qua* the Will or the Conveyance Deed, only from the written statements and the summoned records of DDA and MCD.

24. It is submitted that since the alleged Will does not exist, the petitioner cannot challenge the same and can only challenge the Conveyance Deed dated 17th August 2017. Thus, it is imperative for the petitioner to amend the plaint for cancellation of said Conveyance Deed.

25. It is submitted that the cause of action accrued only after the petitioner got the knowledge about the non-existence of the Will from the written statements and documents filed by DDA and MCD.

26. It is submitted that the learned Trial Court wrongly reached to the conclusion that the petitioner cannot amend his plaint on the basis of contents of written statement.

27. It is further submitted that the learned Trial Court erred by not appreciating the fact that the rights of the petitioner have been defeated on account of the said application having been rejected.



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28. It is submitted that it is necessary to amend the plaint and implead DDA as a party to the Suit, since the respondents are asserting their rights on the basis of false and fabricated documents, which if not allowed will cause grave prejudice to the rights of the petitioner.

29. Learned counsel has placed his reliance on the judgments of *Akshaya Restaurant v. P. Anjanappa*, 1995 Supp (2) SCC 303; *Sambhavnath Digambar Jain v. Mohanlal*, (2003) 9 SCC 219 and *Sajjan Kumar v. Ram Kishan*, (2005) 13 SCC 89.

30. It is therefore submitted that in view of the foregoing submissions, the instant petition may be allowed and the impugned order passed by the learned Court below may be set aside.

(On behalf of the respondent)

31. *Per Contra* learned counsel appearing on behalf of the respondents vehemently opposed the instant petition and submitted that at the outset the same is not maintainable, hence, is liable to be dismissed.

32. It is submitted that the petitioner has filed the present petition under Section 115 of the CPC, impugning the order dated 17th October 2022, passed by the learned Trial Court, whereby, the petitioner's application seeking amendment of the plaint was dismissed.

33. It is submitted that the present petition is non-maintainable as per the proviso to Section 115 (1) of the CPC and in view of the same; it is liable to be dismissed at the outset. After the amendment of CPC in the year 2002, the scope



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and ambit of Section 115 of the CPC, has been narrowed down by inserting a 'proviso' to Section 115 (1) of the CPC.

34. It is submitted that as per the proviso to Section 115 (1) of the CPC, only such orders can be impugned herein, which, in case it would have been passed in favour of the party applying for revision, shall have the result of final disposal of the suit.

35. It is submitted that in view of the above said proviso, the orders allowing or disallowing the amendment of plaint can never result in final disposal of the Suit. Therefore, such orders cannot be the subject matter of revisional jurisdiction of this Court. Therefore, the petitioner impugning the order, whereby, his application seeking amendment of the plaint was rejected is not maintainable, unsustainable and contrary to the settled principles of law of 'proviso' to Section 115 (1) of the CPC.

36. It is further submitted that, since the petitioner is impugning the order, whereby, his application seeking amendment of the plaint was rejected, the same is not maintainable, unsustainable and contrary to the settled principles of law.

37. It is contended that the issue raised by the respondents cannot be dealt with under the revisional jurisdiction of this Court, since the remedy for exercising such rights by the petitioner lies under Article 227 of the Constitution of India.

38. Learned counsel has placed reliance upon the judgment passed by a Coordinate Bench of this Court in ***Pritam Dass, Trading as Alka Food Industries v. Anil Food Industries, 2004 SCC OnLine Del 325***. In the said judgment, this Court had dismissed a revision petition, wherein, order disallowing the



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amendment was passed by the Trial Court. This Court held that a revision petition impugning such orders is not maintainable.

39. It is submitted in view of the aforementioned arguments that the instant petition is liable to be dismissed on the account of non-maintainability.

ANALYSIS AND FINDINGS

40. The matter was heard at length with arguments advanced by the learned counsels on both sides. This Court has also perused the entire material on record. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties and pleadings presented by the learned counsel of the parties.

41. Before embarking upon the technical paraphernalia of the case, it is pertinent to understand the context and legislative intent behind the enactment of Section 115 of the CPC. The said Section has been reproduced for reference hereunder:

“115. Revision.—⁴ [(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

*(a) to have exercised a jurisdiction not vested in it by law, or
(b) to have failed to exercise a jurisdiction so vested, or
(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:*

¹*[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had*



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been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]

²*[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.*

³*[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]*

Explanation.— In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue in the course of a suit or other proceeding.]”

42. Section 115 of the CPC, deals with the High Court’s power of revision. Briefly stating, in a case which is not subject to appeal, the High Court is empowered to call for the records of the case decided by the Court below, and if the Court below has exercised a jurisdiction vested in it by law, or failed to exercise jurisdiction vested by law or acted with material irregularity, etc. in the exercise of its jurisdiction, the High Court may interfere.

43. Section 115 of the CPC invests all High Courts with revisional jurisdiction. It declares that the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court wherein no appeal lies, to satisfy itself on three aspects; (i) that the order passed by the subordinate Court is within its jurisdiction; (ii) that the case is one in which the Court has power to exercise its jurisdiction; and (ii) that in exercising jurisdiction the Court has not acted illegally, that is, breach of some provision of law, or with material



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irregularity, that is by committing some error of procedure in the course of trial which is material in that it may have affected the ultimate decision.

44. The provision thus takes within its limited jurisdiction, the irregular exercise or non-exercise of it, or the illegal assumption of it. It is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. In other words, it is only in cases where the subordinate Court has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the jurisdiction of the High Court may be properly invoked.

45. In the landmark case of **Major S.S. Khanna v. Brig. F.J. Dillon, (1964) 4 SCR 409**, the Hon'ble Supreme Court stated that the said Section consists of two parts, *first* prescribes the condition in which jurisdiction of the High Court arises, i.e., there is a case decided by the subordinate Court in which no appeal lies to the Court of higher jurisdiction, *second* sets out the circumstances in which the jurisdiction may be exercised. If there is no question of jurisdiction, the concerned decision cannot be corrected by the High Court in the exercise of revisional powers. The relevant paragraphs of **Major S.S. Khanna (Supra)** have been reproduced herein:

“6. The jurisdiction of the High Court to set aside the order in exercise of the power under Section 115 of the Code of Civil Procedure is challenged by Khanna on three grounds:

- (i) that the order did not amount to “a case which has been decided” within the meaning of Section 115 of the Code of Civil Procedure;*
- (ii) that the decree which may be passed in the suit being subject to appeal to the High Court; the power of the High Court was by the express terms of Section 115 excluded; and*



(iii) that the order did not fall within any of the three clauses (a), (b) and (c) of Section 115.

The validity of the argument turns upon the true meaning of Section 115 of the Code of Civil Procedure, which provides:

“The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.”

The section consists of two parts, the first prescribes the conditions in which jurisdiction of the High Court arises i.e. there is a case decided by a subordinate Court in which no appeal lies to the High Court, the second sets out the circumstances in which the jurisdiction maybe exercised. But the power of the High Court is exercisable in respect of “any case which has been decided”. The expression “case” is not defined in, the Code, nor in the General Clauses Act. It is undoubtedly not restricted to a litigation in the nature of a suit in a civil court : *Balakrishna Udayar v. Vasudeva Aiyar* [LR 44 IA 261] ; it includes a proceeding in a civil court in which the jurisdiction of the Court is invoked for the determination of some claim or right legally enforceable. On the question whether an order of a Court which does not finally dispose of the suit or proceeding amounts to a “case which has been decided”, there has arisen a serious conflict of opinion in the High Courts in India and the question has not been directly considered by this Court. One view which is accepted by a majority of the High Courts is that the expression “case” includes an interlocutory proceeding relating to the rights and obligations of the parties, and the expression record of any case includes so much of the proceeding as relates to the order disposing of the interlocutory proceeding. The High Court has therefore power to rectify an order of a Subordinate Court at any stage of a suit or proceeding even if



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there be another remedy open to the party aggrieved i.e. by reserving his right to file an appeal against the ultimate decision, and making the illegality in the order a ground of that appeal. The other view is that the expression “case” does not include an issue or a part of a suit or proceeding and therefore the order on an issue or a part of a suit or proceeding is not a “case which has been decided”, and the High Court has no power in exercise of its revisional jurisdiction to correct an error in an interlocutory order.”

46. The primary objective of Section 115 of the CPC, is to prevent subordinate Courts from acting arbitrarily, capriciously and illegally or irregularly in the exercise of their jurisdiction. It clothes the High Court with the powers to see that the proceedings of the subordinate Courts are concluded in accordance with law within the bounds of their jurisdiction and in furtherance of justice.

47. The term ‘jurisdiction’ has not been defined in the CPC. The definition of the same has been defined by the Hon’ble Supreme Court and various High Courts by way of judgments. The said term means ‘the power of a Court to hear and decide a case or to pass a certain order’ and ‘the right or authority to apply laws and administer justice’. The expression ‘jurisdiction’ is a verbal cast of many colors, the adoptive definition of the same has to be interpreted subjectively, i.e., depending upon the nature of the facts and circumstances of each case.

48. It is a settled principle of law that the lower Courts have jurisdiction to decide the case, and in context of the provision of revision, even if the Court below decides the case wrongly, they do not exercise their jurisdiction illegally or with material irregularity.

49. This Court is of the view that there is no justification for the contention that the revisional jurisdiction is intended to authorize the High Court to interfere and



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correct gross and palpable errors of the subordinate Courts, so as to prevent grave injustice in non-appealable cases and that it would be difficult to formulate any standard by which the degree, or error of the subordinate Courts could be measured.

50. The CPC, however, enables the High Court to correct, when necessary, the errors of jurisdiction committed by subordinate Courts and provides the means to an aggrieved party to obtain rectification in a non-appealable order. In other words, for the effective exercise of its superintending powers, revisional jurisdiction is conferred upon the High Court. The said principle has been reaffirmed by the Hon'ble Supreme Court in the judgment of **Manick Chandra Nandy v. Debdas Nandy, (1986) 1 SCC 512**. The Hon'ble Court in the said judgment had observed as follows:

“5. We are constrained to observe that the approach adopted by the High Court in dealing with the two revisional applications was one not warranted by law. The High Court treated these two applications as if they were first appeals and not applications invoking its jurisdiction under Section 115 of the Code of Civil Procedure. The nature, quality and extent of appellate jurisdiction being exercised in first appeal and of revisional jurisdiction are very different. The limits of revisional jurisdiction are prescribed and its boundaries defined by Section 115 of the Code of Civil Procedure. Under that section revisional jurisdiction is to be exercised by the High Court in a case in which no appeal lies to it from the decision of a subordinate court if it appears to it that the subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law or has acted in the exercise of its jurisdiction illegally or with material irregularity. The exercise of revisional jurisdiction is thus confined to questions of jurisdiction. While in a first appeal the court is free to decide all questions of law and fact which arise in the case, in the exercise of its revisional



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jurisdiction the High Court is not entitled to reexamine or reassess the evidence on record and substitute its own findings on facts for those of the subordinate court. In the instant case, the respondents had raised a plea that the appellant's application under Rule 13 of Order IX was barred by limitation. Now, a plea of limitation concerns the jurisdiction of the court which tries a proceeding, for a finding on this plea in favour of the party raising it would oust the jurisdiction of the court. In determining the correctness of the decision reached by the subordinate court on such a plea, the High Court may at times have to go into a jurisdictional question of law or fact, that is, it may have to decide collateral questions upon the ascertainment of which the decision as to jurisdiction depends. For the purpose of ascertaining whether the subordinate court has decided such a collateral question rightly, the High Court cannot, however, function as a court of first appeal so far as the assessment of evidence is concerned and substitute its own findings for those arrived at by the subordinate court unless any such finding is not in any way borne out by the evidence on the record or is manifestly contrary to evidence or so palpably wrong that if allowed to stand, would result in grave injustice to a party.”

51. Regarding the scope of Section 115 of the CPC, the Hon’ble Supreme Court in the judgment of ***Sher Singh v. Jt. Director of Consolidation, (1978) 3 SCC 172***, had observed as follows:

“5. As the above section is pari materia with Section 115 of the Code of Civil Procedure, it will be profitable to ascertain the scope of the revisional jurisdiction of the High Court. It is now well-settled that the revisional jurisdiction of the High Court is confined to cases of illegal or irregular exercise or non-exercise or illegal assumption of the jurisdiction by the subordinate courts. If a subordinate court is found to possess the jurisdiction to decide a matter, it cannot be said to exercise it illegally or with material irregularity even if it decides the matter wrongly. In other words, it is not open to the High Court while exercising its jurisdiction under Section 115 of the Code of



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Civil Procedure to correct errors of fact howsoever gross or even errors of law unless the errors have relation to the jurisdiction of the court to try the dispute itself.

6. *The legal position was succinctly laid down by the Privy Council as early as 1884 in Rajah Amir Hassan Khan v. Sheo Baksh Singh [1884 LR 11 IA 237 : ILR 11 Cal 6 (PC)] in the following words:*

“The question then is, did the Judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.”

7. *Again in Balakrishna Udayar v. Vasudeva Aiyar [1917 LR 44 IA 261] the Privy Council while discussing the scope of Section 115 of the Code of Civil Procedure observed:*

“It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved.”

8. *In N.S. Venkatagiri Ayyangar v. Hindu Religious Endowments Board, Madras [(1948-49) LR 76 IA 67] the Privy Council observed that:*

“Section 115 empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the court ought to exercise jurisdiction and (c) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. And if the High Court is satisfied on those three matters, it has no power to



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interfere because it differs from the conclusions of the subordinate court on questions of fact or law.”

9. *The abovequoted observations made by the Privy Council have been approved and affirmed by this Court in a number of cases. In Manindra Land and Building Corporation Ltd. v. Bhutnath Banerjee [AIR 1964 SC 1336 : (1964) 3 SCR 495] , Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai [AIR 1964 SC 1341 : (1964) 5 SCR 157] and D.L.F. Housing & Construction Company Private Ltd., New Delhi v. Sarup Singh [(1969) 3 SCC 807 : (1970) 2 SCR 368] , this Court, however, drew a distinction between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said court, and errors of law which have no such relation or connection.*

10. *Again in Pandurang Dhondi Chougute v. Maruti Hari Jadhav [AIR 1966 SC 153 : (1966) 1 SCR 102] this Court held (SCR p. 107):*

“The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may be, or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of Section 115 indicate, it is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of jurisdiction is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on those pleas in favour of the party raising them would oust the jurisdiction of the court and so, an erroneous decision on these pleas can be said to be concerned



with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court cannot be corrected by the High Court under Section 115.

11. Again in *M.L. Sethi v. R.P. Kapur* [(1972) 2 SCC 427 : (1973) 1 SCR 697] this Court observed (SCC p. 434, para 12):

*“The word ‘jurisdiction’ is a verbal coat of many colours. Jurisdiction originally seems to have had the meaning which Lord Reid ascribed to it in *Anisminic Ltd. v. Foreign Compensation Commission* [(1969) 2 AC 147] namely, the entitlement ‘to enter upon the enquiry in question’. If there was an entitlement to enter upon an enquiry into the question, then any subsequent error could only be regarded as an error within the jurisdiction.”*

12. [*Ed. : This passage incorporates the corrections made by his Lordship vide his letter of July 22, 1978*] [The position that emerges from these decisions is that Section 115 of the Code of Civil Procedure empowers the High Court to satisfy itself on three matters: “(a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the court ought to have exercised its jurisdiction and failed to do so and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provisions of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.”] And if the High Court is satisfied that there is no error in regard to any of these three matters, it has no power to interfere merely because it differs from the conclusions of the subordinate court on questions of fact or law. A distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said courts, and errors of law which have no such relation or connection. An erroneous decision on a question of fact or of law reached by the subordinate court which has no relation to question of jurisdiction of



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that court, cannot be corrected by the High Court under Section 115.”

52. The scope and extent of the revisional powers of this Court has been discussed in depth in the foregoing paragraphs.

53. Before delving further into the analysis of issues pertaining to the instant dispute, the facts necessary for the adjudication of the present petition are recapitulated in the below stated paragraphs.

54. The petitioner had instituted a Civil Suit bearing No. 1056/2018, titled as ‘*Saket Grover v. Hemant Grover & Anr.*’, for partition, possession and permanent injunction against the respondents in respect of the Suit Property, which is pending for adjudication before the learned ADJ-03, West, Tis Hazari, Delhi. In the said Civil Suit, the respondents had filed their written statement, whereby, they have alleged their ownership *qua* the Suit Property by virtue of a Conveyance Deed dated 17th August 2017.

55. The petitioner has stated that by way of the said written statement of the respondents, they are claiming their ownership by placing reliance upon the above said Conveyance Deed which has been executed on the basis of an alleged registered Will dated 25th May 1985. The respondents have stated in their written statement that the Suit Property was bequeathed upon the respondent No. 2 by her husband and father of the petitioner and respondent No. 1, namely Late Sh. Surinder Dev Grover.

56. The respondents are stated to be not in possession of the above said alleged Will and even the DDA and MCD do not have such documents in their records.



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The said fact has been admitted before the learned Trial Court in its order dated 12th May 2022, and 27th May 2022.

57. It is the case of the petitioner that the respondents have alleged that respondent No. 2 is the owner of the Suit Property vide the above said Conveyance Deed. Further, since the respondents have been unable to produce the alleged Will by virtue of which, the said deed of conveyance has been executed, it is necessary to seek cancellation of the Conveyance Deed by way of an amended suit.

58. It has been contended on behalf of the petitioner that he is seeking the said amendment because in his original Suit he was asserting his rights *qua* the Suit Property since he is a legal heir of Late Sh. Surinder Dev Grover who had died intestate and due to the subsequent developments, he got the knowledge about the alleged Will and the above said Conveyance Deed. Therefore, in view of the admitted fact that neither the respondents, nor the DDA or MCD are in possession of the alleged Will, it is necessary to seek cancellation of the deed of conveyance and to implead DDA as a party to the Suit, in order to assert and protect the petitioner's legal rights *qua* the Suit Property.

59. At this juncture this Court deems fit to proceed with the adjudication of the instant petition by framing the following issues:

- i) *Whether the instant petition is maintainable in view of the proviso to Section 115 (1) of the CPC?*
- ii) *Whether the petitioner can be allowed to amend his plaint on the basis of the contents of the written statement?*



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i) Whether the instant petition is maintainable in view of the proviso to Section 115 (1) of the CPC?

60. The respondents have raised a preliminary objection with regards to the maintainability of the instant petition. It has been contended on behalf of the respondents that in view of the proviso to Section 115 (1) of the CPC, the present petition which has been filed seeking revision of the impugned order dated 17th October 2022, is not maintainable.

61. The respondents have alleged the same by contending to the effect that the provision prescribing the revisional powers of the High Court, explicitly state that an order cannot be sought to be revised under Section 115 of the CPC, unless it is evident that the concerned order, if would have been passed in favour of the party seeking revision, could have resulted in final disposal of the suit.

62. It has been averred on behalf of the respondents that the petitioner merely sought for cancellation of the conveyance deed by way of the amendment of the plaint and even if the application for amendment of plaint filed by the petitioner was allowed, the same could not have, in any manner, resulted in the final disposal of the suit. In view of the same, the respondents state that the instant petition, being non-maintainable, is liable to be dismissed at the outset.

63. As per the proviso to Section 115 (1) of the CPC, added by the Amendment Act, 1999 w.e.f. 2002, the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.



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For the purposes of deciding the instant issue, the relevant provision has been reproduced as under:

“115. Revision.—⁴ [(1)] *The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears....*

¹*[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]... ”*

64. This Court is of the view that the proviso to Sub-section (1) of Section 115 of the CPC, puts a restriction on the power of the High Court inasmuch as the High Court shall not under this Section modify, vary or reverse any order made or any order deciding an issue, in course of a suit or other proceedings except where the order made would have finally, disposed of the suit. By way of illustration, it may be stated that if a Trial Court holds by an interlocutory order that it has no jurisdiction to proceed the case or that suit is barred by limitation, it would amount to ‘finally’ deciding the case and such order would be revisable.

65. The intent of the legislature in enactment of this proviso is evidently and predominantly concerned with finality of any proceeding and the avoidance of multiplicity of judicial proceedings, which would only result in prolonging litigations instead of facilitating expeditious disposal of proceedings and cases.

66. Upon bare perusal of the above stated proviso, it indicates the concern of the legislature in deliberately curtailing the power of the High Court and introducing further restriction on such power and limiting it to entertain specified



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situations. The proviso creates an exception to the exercise of power of revision. The effect of the proviso is to create an exception or to qualify what is stated in the main provision, i.e., sub-section (1) of Section 115 of the CPC.

67. A careful perusal of the proviso to sub-section (1) of Section 115 of the CPC, makes it obvious that a revision petition may be maintained before the High Court and in such a revision petition, High Court may vary or reverse the impugned order before it only if the order under challenge, if it had been made in favour of the revisionist/petitioner, would have finally disposed of the suit or other proceedings.

68. In other words, the condition precedent for the maintainability of a revision petition under CPC is that if the order which is called in question in the revision petition had been otherwise, i.e., if the order were to be in favour of the revision petitioner, it ought to have had the effect of disposing of the entire suit.

69. The Hon'ble Supreme Court after the above stated amendment, on the aspect of limitation on the exercise of revisional powers prescribed under the proviso to sub-section (1) of Section 115 of the CPC, in one of its judgments titled as ***Shiv Shakti Coop. Housing Society v. Swaraj Developers***, (2003) 6 SCC 659, held as follows:

“14. Section 115 is essentially a source of power for the High Court to supervise the subordinate courts. It does not in any way confer a right on a litigant aggrieved by any order of the subordinate court to approach the High Court for relief. The scope for making a revision under Section 115 is not linked with a substantive right.

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20. The question is not what may be supposed and has been intended but what has been said. “Statutes should be construed not as theorems of Euclid.” Judge Learned Hand said, “but words must be



construed with some imagination of the purposes which lie behind them”. (See Lenigh Valley Coal Co. v. Yansavage [218 FR 547] .) The view was reiterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama [(1990) 1 SCC 277 : AIR 1990 SC 981] .

32. A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is “yes” then the revision is maintainable. But on the contrary, if the answer is “no” then the revision is not maintainable. Therefore, if the impugned order is interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject-matter of revision under Section 115. There is marked distinction in the language of Section 97(3) of the Old Amendment Act and Section 32(2)(i) of the Amendment Act. While in the former, there was a clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Section 32(2)(i). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered, the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation.

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33. Section 6 of the General Clauses Act has no application because there is no substantive vested right available to a party seeking revision under Section 115 of the Code. In Kolhapur Canesugar Works Ltd. v. Union of India [(2000) 2 SCC 536 : AIR 2000 SC 811] it was observed that if a provision of statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, there is no scope for granting it afterwards. There is modification of this position by application of Section 6 of the General Clauses Act or by making special provisions. Operation of repeal or deletion as to the



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future and the past largely depends on the savings applicable. In a case where a particular provision in the statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings, then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall continue but a fresh proceeding for the same purpose may be initiated under the new provision.”

70. Examining the observations made by the Hon’ble Supreme Court in regards to the proviso of subsection (1) of Section 115 of the CPC, it is evidently clear that the emphasis is upon the issue which is whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. In case the answer to the specific issue is in affirmative, i.e., ‘yes’, then the revision is maintainable. However, if the answer is “no”, then in such circumstances, the said revision is not maintainable.

71. Furthermore, the law regarding the inclusion of the ‘interim’ order within the ambit of the revisional jurisdiction of this Court has been settled by the Hon’ble Supreme Court in a catena of judgments. The said controversy was set at rest by the decision passed in **Major S.S. Khanna (Supra)**, wherein, the Hon’ble Court observed that the term ‘case decided’ would not be restricted to the entirety of the proceedings, and it would also include a part of the case, i.e., the interim or interlocutory order.

72. Therefore, if the impugned order which is sought to be revised is interim in nature or does not finally decide the *lis*, the revision petition challenging the said impugned order cannot be held to be maintainable. As also discussed above, the legislative intent behind such enactment is crystal clear; those orders which are



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interim in nature, cannot be the subject-matter of revision under Section 115 of the CPC.

73. Adverting to facts of the present matter, the petitioner had filed an application seeking amendment of the plaint. The original plaint was filed seeking partition in the Suit Property. The petitioner by way of the amendment application under Order VI Rule 17 of the CPC, had *inter alia* sought cancellation of the Conveyance Deed dated 17th August 2017, by virtue of which the respondents are claiming their ownership *qua* the Suit Property. In light of the judgments referred to hereinabove, for deciding the instant issue, this Court needs to look for the answer to the question which is '*whether the impugned order dated 17th October 2022, would have given finality to the suit or other proceedings?*'.

74. The petitioner was seeking the necessary amendments in view of the admitted facts before the learned Trial Court wherein, it was brought on record that neither the respondents are in possession of the Will dated 25th May 1985, nor the DDA or MCD has the same available in its records. The said developments were clearly recorded in the order dated 12th May 2022, and 27th May 2022, by the learned Court below in the abovementioned Civil Suit.

75. The petitioner in his application under Order VI Rule 17 of the CPC, explicitly admitted that he got the knowledge about the said facts and subsequent developments *qua* the Suit Property only after the respondents had filed their written statement. This Court is of the view that assuming the petitioner had knowledge about the alleged Will and the Conveyance Deed dated 17th August 2022, he could have directly sought for the cancellation of the same.



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76. Considering the consequential developments, it is noted that in case the petitioner's application for amendment of the plaint was allowed, it could have resulted in the final disposal of the Suit, in view of the admitted fact, that the respondents had failed to produce the alleged Will, on the basis of which the above said Conveyance Deed is alleged to be executed. The respondents had also submitted before the learned Court below that the said Will had been submitted with the DDA/MCD for execution of the Conveyance Deed and neither are they in the possession of the original Will, nor the photocopy. Upon further enquiry by the learned Court below, it was revealed that not even the DDA is in possession of the same. This led to the filing of the application under Order VI Rule 17 read with Order I Rule 10 of the CPC and Section 151 of the CPC.

77. Moreover, the learned Trial Court in its order dated 12th May 2022 had in explicit terms observed and noted that the production of the alleged Will dated 25th May 1985, is of utmost importance for the adjudication of the instant Suit and since the same has not been brought on record, the learned Court had directed the DDA to produce it. The relevant paragraphs of the said order are reproduced hereunder:

"7. In view of the pleadings of the defendants, the alleged registered WILL on which they are relying must be dating prior to 09.05.1995 (i.e. the date of death of late Shri Surinder Dev Grover). However, the copy of the said registered WILL of Late Shri Surinder Dev Grover was not filed on record by the defendants alongwith their WS. This lead to filing of the applications under consideration.

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12. Considering the overall facts of the case I am of the view that production of the said WILL on court record is essential for just and proper decision of the present case as the defendants are claiming ownership over the suit property and denying the share of the



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plaintiff therein on the basis of the said alleged WILL. I also find no merit in the submissions of ld.counsel for the defendants that passing directions for production of the documents on the basis of which the conveyance deed has been executed in favour of defendant no.2 by DDA would amount to collection of evidence on behalf of the plaintiff. Rather I am of the opinion that if the DDA is able to produce the alleged registered WILL of late Shri Surinder Dev Grover, it would only strengthen the case of the defendants. I am not able to understand the reason of the defendants to shy away from production of the alleged WILL which they had deposited with DDA in case they are coming to the court with clean hands.”

78. Therefore, in view of the aforementioned discussions of facts and legal principles settled by way of the judgments, and the observations made by the learned Trial Court, this Court is of the considered view that in the event the order deciding the application filed under Order VI Rule 17 of the CPC, were to be allowed, i.e., passed in favour of the petitioner herein, it might have resulted in final disposal of the Suit. The contention of the respondents that the impugned order does not comply with the terms and conditions stipulated in the proviso to the aforesaid Section are not acceptable to this Court.

79. It is therefore clear that there is no force in the arguments of the respondents and the present civil revision petition challenging the impugned order dated 17th October 2022, under Section 115 of the CPC, is maintainable.

80. In view of the above, it is, hereby, held that the instant petition is maintainable in light of the proviso to sub-section (1) of Section 115 of the CPC.

81. Accordingly, ‘issue no. i’ *qua* the maintainability has been decided.



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ii) Whether the petitioner can be allowed to amend his plaint on the basis of the contents of the written statement?

82. Before proceeding to test the legality of the impugned order, it would be appropriate to refer to the nature, scope and object of the law settled by the Courts with regards to Order VI Rule 17 of the CPC. In order to understand the basics, the relevant provision of law under which the application filed by the petitioner was dismissed by the learned Trial Court and is under challenge before this Court, is reproduced herein:

“Order VI – Pleadings generally

³[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.”

83. Order VI Rule 17 of the CPC, provides that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner as may be just and without causing prejudice to other parties. It also provides that such an amendment should be necessary for the purpose of determining the real questions of controversy between the parties.

84. This Court is of the firm belief that where the amendments are sought for a mere purpose of clarifying the averments which are pre-existing in the plaint, the same has to be allowed except when it is sought to make a new addition and for



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that purpose the law as laid down that it is the duty of the Court to arrive at a conclusion by reading the entire plaint as a whole. The said principle has been by the Hon'ble Supreme Court reaffirmed in the judgment passed in ***B.K. Narayana Pillai v. Parameswaran Pillai, (2000) 1 SCC 712.***

85. The aforesaid power of the Court, however, is subject to a rider put by proviso to Order VI Rule 17 of the CPC, which provides that no application for amendment should 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 for which amendment is sought, before the commencement of the trial. In ***Salem Advocate Bar Association, Tamil Nadu V. Union of India & Ors., (2005) 6 SCC 344,*** the Hon'ble Supreme Court has held that the object of adding the proviso is to prevent frivolous applications which are filed to delay the trial.

86. The purpose of Order VI Rule 17 of the CPC, is that all the substantial facts and necessary particulars must be stated in the pleadings. The object of the rule states that the Court should evaluate all the merits of the matter presented before it and therefore, consider allowing such vital amendments to accurately determine the primary issue in dispute between the parties in question.

87. Ultimately, the duty of Courts is to administer justice between the parties involved, rather than to inflict punishment upon them. The Courts are empowered to allow amendments or modifications to the pleadings, in order to serve the broad objective of ensuring comprehensive adjudication for all the parties. The provision of Order VI Rule 17 of the CPC serves the purpose of advancing the objectives of justice rather than defeating them.



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88. The Hon'ble Supreme Court in ***Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil, 1957 SCR 595***, discussed the tests laid down for allowing amendment of a plaint. It observed as follows:

“10. Learned counsel for the appellant referred us to the decision in Kisandas Rupchand v. Rachappa Vithoba [(1900) ILR 33 Bom 644, 655] and placed great reliance on the observations of Beaman, J. at p. 655: “In my opinion, two simple tests, and two only, need to be applied, in order to ascertain whether a given case is within the principle. First, could the party asking to amend obtain the same quantity of relief without the amendment? If not, then it follows necessarily that the proposed amendment places the other party at a disadvantage, it allows his opponent to obtain more from him than he would have been able to obtain but for the amendment. Second, in those circumstances, can the party thus placed at a disadvantage be compensated for it by costs? If not, then the amendment ought not, unless the case is so peculiar as to be taken out of the scope of the rule, to be allowed.”

89. The aforementioned judgment of the Hon'ble Supreme Court has been followed in ***North Eastern Railway Admn. v. Bhagwan Das, (2008) 8 SCC 511***, wherein, the Hon'ble Court stated that the above stated principle still holds the field. It was held that all such amendments ought to be allowed provided it satisfies two conditions, *firstly*, no injustice to be caused to the other side and *secondly*, the amendments are necessary for the purpose of determining the real issue in dispute between the parties. It further held that amendments are to be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in terms of costs. These are the broad



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principles to be kept in mind while dealing with an application under Order VI Rule 17 of the CPC.

90. Further, in the judgment of *State of M.P. v. Union of India*, (2011) 12 SCC 268, the Hon'ble Supreme Court reiterated the scope and extent of exercising the powers under the above said provision, and observed as follows:

“10. This Court, while considering Order 6 Rule 17 of the Code, in several judgments has laid down the principles to be applicable in the case of amendment of plaint which are as follows:

(i) Surender Kumar Sharma v. Makhan Singh [(2009) 10 SCC 626 : (2009) 4 SCC (Civ) 294] , at para 5 : (SCC p. 627)

“5. As noted hereinafter, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment.”

(ii) North Eastern Railway Admn. v. Bhagwan Das [(2008) 8 SCC 511] , at para 16 : (SCC p. 517)

“16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6



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Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions : (a) of not working injustice to the other side; and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.”

(iii) *Usha Devi v. Rijwan Ahamd [(2008) 3 SCC 717 : (2008) 1 SCC (Civ) 922] , at para 13 : (SCC p. 722)*

“13. Mr Bharuka, on the other hand, invited our attention to another decision of this Court in Baldev Singh v. Manohar Singh [(2006) 6 SCC 498] . In para 17 of the decision, it was held and observed as follows : (SCC pp. 504-05)

‘17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of



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documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion on the court to allow an amendment of the written statement at any stage of the proceedings.’”

(iv) Rajesh Kumar Aggarwal v. K.K. Modi [(2006) 4 SCC 385] , at paras 15 & 16 : (SCC pp. 392-93)

“15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.”

(v) Revajeetu Builders and Developers v. Narayanaswamy and Sons [(2009) 10 SCC 84 : (2009) 4 SCC (Civ) 37] , at para 63 : (SCC p. 102)

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) whether the application for amendment is bona fide or mala fide;*



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- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

The above principles make it clear that courts have ample power to allow the application for amendment of the plaint. However, they must be satisfied that the same is required in the interest of justice and for the purpose of determination of real question in controversy between the parties.”

91. This Court is of the view that the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice. It is true that the amendment cannot be claimed as a matter of right but it is equally true that the Courts while deciding such prayers should not adopt a hyper technical approach, rather, a liberal approach should be the general rule, particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the Courts in the process of administration of justice between the parties since amendments are sought in the pleadings to avoid uncalled-for multiplicity of litigation.



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92. The object of the rule is that the Courts should adjudicate upon the merits of the case which is before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. Order VI Rule 17 of the CPC, consists of two parts. Whereas the first part is of discretionary nature (*may*) and leaves it to the Court to allow the amendment of pleading. The second part is of mandatory nature(*shall*) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

93. The Hon'ble Supreme Court in the judgment of ***Ganesh Prasad v. Rajeshwar Prasad***, 2023 SCC OnLine SC 256, has enunciated on the aspect whether a Court may allow the plaintiff to amend the plaint on the basis of the defense taken by the defendant. It held as follows:

“42. A three-Judge Bench of this Court in the case of Firm Srinivas Ram Kumar v. Mahabir Prasad reported in 1951 SCC 136 : AIR 1951 SC 177, has held that a party is entitled to take alternative pleas in support of its case. Where alternative pleas arose to some extent from the admitted position of the defendant, such plea is not impermissible merely because it is inconsistent with the other plea. It held that a plaintiff may rely upon different rights alternatively and there is nothing in the CPC to prevent a party from making two or more inconsistent sets of allegations claiming relief therein in the alternative. It further observed that although, a Court should not grant relief to a plaintiff in a case in which there is no foundation in a pleading on which the other side was not called upon or had opportunity to meet yet when the alternative case which, the plaintiff could have made was not only admitted by defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper



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in giving the plaintiff a decree upon the case which the defendant himself makes.

43. The view that a plaintiff is entitled to plead even inconsistent pleas while seeking alternative reliefs was reiterated by this Court in *G. Nagamma v. Siromanamma* reported in (1996) 2 SCC 25. In that case, a suit for specific performance of an agreement of re-conveyance was filed by the appellants. Later, an application for amendment of the plaint was sought stating that the transactions of execution of sale deed and obtaining a document for re-conveyance came to be a single transaction, i.e., it was a mortgage by conditional sale. So, alternatively plaintiff sought relief to redeem the mortgage. The trial court and the High Court rejected the same on the ground that the suit was filed for specific performance and that the amendment would change the nature of the suit as well as the cause of action. But this Court reversed the said decision and held that since the plaintiff therein was seeking alternative reliefs, he is entitled to plead even inconsistent pleas and that the amendment of the plaint would neither change the cause of action nor would affect the relief.

44. In *Praful Manohar Rele v. Krishnabai Narayan Ghosalkar* reported in (2014) 11 SCC 316, this Court followed the decision in *Firm Srinivas Ram Kumar* (supra) and reiterated the principle that alternative and inconsistent pleas can be taken by a plaintiff. In that case, the plaintiff therein had alleged that the defendant therein and his legal representatives were occupying the suit premises as gratuitous licensees and upon termination of such licence, the plaintiff was entitled to a decree for possession. The trial court found that defendants were tenants and not licensees as alleged by the plaintiff. The 1st Appellate Court recorded a finding to the contrary, held that the defendants were let into the suit property by plaintiff on humanitarian grounds and as gratuitous licensees and the license was validly terminated by plaintiff. It thus, negated the defence of the defendants that they were tenants. In the plaint itself, the plaintiff therein had taken an alternative plea that he was entitled to vacant possession of the premises on the ground of bona fide personal need, nuisance, annoyance and damage allegedly



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caused to the premises and to the adjoining garden land belonging to him by the defendants. This Court held that the alternative plea of plaintiff and the defence set up by defendants was no different from each other. The Court held that it was open to the plaintiff not only to take a plea of license but also to alternatively plead tenancy in support of his plea for relief of recovery of possession. The Court held that defendants therein had specifically admitted that the property belongs to plaintiff and that they were in occupation thereof as tenants, and an issue was also framed whether defendants were in occupation as license or as tenants, and defendants had full opportunity to prove their respective cases. So, the defendants cannot be said to have been taken by surprise by the alternative case pleaded by plaintiff nor could any injustice would result to them from the alternative plea being allowed and tried by the Court. It observed that even if the alternative plea had not been allowed to be raised in the suit filed by appellant, he would have been certainly entitled to raise that plea and seek eviction in a separate suit filed on the very same grounds.”

94. The decision passed by the Hon’ble Supreme Court in ***Ganesh Prasad (supra)***, holds value since the same has been discussed on the issues which are, to some extent, similar to the facts and issues involved in the instant petition. It was held by the Hon’ble Supreme Court that if a plea introduced by the plaintiff through an amendment is one which the defendant set up in his written statement, although inconsistent with the original plea, the Court is not precluded from allowing the amendment if it does not cause prejudice to the defendant.

95. The decision on an application made under Order VI Rule 17 of the CPC, is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. It can be concluded from the above discussion that while deciding the application for amendment the Courts must not refuse *bona fide*,



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legitimate, honest and necessary amendments and should never permit *mala fide*, false and/or dishonest amendments. The said principle is also supported by the observations of the Hon'ble Supreme Court in the judgment titled as ***Revajeetu Builders & Developers v. Narayanaswamy & Sons, (2009) 10 SCC 84.***

96. Before proceeding further, it is pertinent to mention here that the petitioner, i.e., the plaintiff before the learned Court below, had filed his application under Order VI Rule 17 read with Order I Rule 10 of the CPC, and the same was dismissed. Order I Rule 10 of the CPC, requires the plaintiff to file an amended plaint in the event a defendant is added to the plaint. The petitioner by way of the said application was *inter alia* seeking impleadment of DDA in the said Suit since he has alleged that the Conveyance Deed dated 17th August 2022, has been executed by them on the basis of a forged and fabricated document, i.e., the Will dated 25th May 1985.

97. As the principle governing the provision of Order VI Rule 17 of the CPC, has been discussed in the preceding paragraphs, therefore, at this stage, this Court shall delve into the merits of the instant case.

98. The petitioner has approached this Court seeking revision of the impugned order dated 17th October 2022, wherein, the learned Court below had dismissed the application filed by the petitioner under Order VI Rule 17 read with Order I Rule 10 of the CPC. The relevant paragraphs of the impugned order have been reproduced herein for reference:

“Application of plaintiff under Order VI Rule 17 CPC r/w Order I Rule 10 CPC is taken up for hearing.

Arguments heard on application from both sides.

Through the application, plaintiff seeks to amend the plaint, to incorporate paragraph no. 8(a) to 8(d), mentioning therein the

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Digitally Signed By: DAMINI ADARSH R.P. 29/2023

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contents of written statements of defendants no. 1 and 2. As per law, plaint cannot be amended so as to contain the pleadings of defendants or anything based on contents of written statements of defendants. The application under Order VI Rule 17 CPC r/w Order I Rule 10 CPC is ex facie not maintainable and is dismissed.”

99. Upon perusal of the above quoted impugned order, it is observed that the learned Trial Court had dismissed the application filed by the petitioner under Order VI Rule 17 read with Order I Rule 10 of the CPC, whilst noting the same to be *ex facie* non maintainable. The learned Court below dismissed the said application on the ground that the petitioner is pleading relief of incorporating paragraph no. 8(a) to 8(d) in his plaint, thereby, mentioning the contents of the written statement which is contrary to the law. Such relief cannot be granted in view of the rules of pleadings and settled legal principles of Order VI Rule 17 of the CPC.

100. By way of the said application, the petitioner sought for following amendments:

i) In the heading of Suit, the petitioner seeks new heading as, ‘*SUIT FOR PARTITION, CANCELLATION POSSESSION AND PERMANENT & MANDATORY INJUNCTION*’.

ii) The petitioner seeks the following addition, after para 8 of his plaint:

“8a. The Plaintiff on basis of written statement had come to know, that defendants by carrying misrepresentation, impersonation, forgery, cheating, concealment, suppression, falsity and fraud had got the property transferred from Sh. Surrender Dev Grover to Ms. Surinder Grover.



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That the Written Statement of defendants, Records by DDA, NDMC, as well as Affidavits in response to Application under Order XI, Rule 12, 13 & 14 from basis of knowledge wherein Conveyance Deed dated 17th August, 2017 has been allegedly registered on basis of forged, fabricated alleged registered Will, which seems to be either non existing, or have been prepared and used and destroyed, as none of these claims to have even the copy.

The relevant extracts are being reproduced:

29/04/2022 by DEFENDANT NO 1

"That I do not have in my possession or power the registered testament of my deceased father."

(29 /04/2022) DEFENDANTS NO 2 :-

That I have had but not now in my possession or power the registered testament of my deceased husband. Said registered testament was obtained from the office of Sub Registrar and then deposited/submitted by me with Delhi Development Authority at the time of having conversion of leasehold right into freehold of my Property No. A-2/199, Paschi In Vihar, New Delhi.

12 Nov, 2014, Affidavit before DDA, by Defendant No.2

"That the said Sh. Surinder Dev Grover alias S.D. Grover S/o Sh. Lakshman Dev Grover had died on 9.05.1995, at Batra Hospital Sangam Vihar, New Delhi leaving behind Will 25.05.1985, in my favour of Surinder Grover, the said Will has been probated in respect of said will have been granted by Sub Registrar-2, Delhi on 25.05.1985, vide registration No. 3970, Additional Book No. 3, Volume No. 358 on pages 35-36."

DDA claims to have carried mutation on the basis of alleged non existing or forged and fabricated document.

8B. The Plaintiff seeks direction from this Hon'ble Court seeking cancellation of the above transfer and issuance of



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Conveyance deed dated 17th August 2017, allegedly registered along with cancellation of any other document on the basis of which said conveyance deed dated 17th August, 2017 have been registered.

8C. The Plaintiff also seeks partition of Moveable assets being Bank Accounts, Gratuity, Salary Account, Insurance Policies (which included Insurance policy for benefit of Plaintiff), Jewellery. Moveable Household assets and cash and all these are in power and possession of defendants only.

8D. That it is clear that Defendant-1 & 2, with corrupt officials of DDA, along with others have carried fraud, forgery and destruction of evidence of erogenous nature and DDA ought not to have allowed such corrupt practise, which shakes the faith of people in entire system to take place and on these facts being in their knowledge, necessary actions ought to have been taken by them.”

iii) The petitioner seeks the following addition, in para 9 of his plaint:

“... The cause of action further arose, when the Plaintiff came to know from WS and documents filed by DDA about the Conveyance Deed dated 17th August, 2017, allegedly registered on Forged and Fabricated Will and same was destroyed after registration or such will never existed at all necessitating cancellation of these documents as well. It was further affirmed by DDA and NDMC that no such alleged forged and fabricated document exists....”

vi) The petitioner seeks the following addition, in para 12 of his plaint:

“...The Plaintiff Value the relief of cancellation of Conveyance Deed dated 17th August, 2017 & any other document as Rs 1000/- as no consideration is involved and have been paid and on which the necessary court fees of Rs. 110/- is affixed....”



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vi) The petitioner seeks *following* addition in prayer clause, after Para a:

“(aa) Decree of Cancellation, that the alleged conveyance deed dated 17th August 2019 be declared as cancelled, null and void and non est in eyes of law.

(ab) Partition of Moveable assets being Bank Accounts, Gratuity, Salary Account, Insurance Policies (which included Insurance policy for benefit of Plaintiff), Jewellery, Moveable Household assets and cash.

d. Decree for Mandatory injunction in favour of the plaintiff an against the defendants of the suit property bearing no A-2/199 Paschim Vihar, Delhi-110063 measuring area 200 sq. yds thereby direction the defendants, their successors, attorneys, employees, servant etc. not to create any third-party interest during the pendency of the present suit.”

101. The learned Trial Court in its order dated 12th May 2022, which is annexed as Annexure P-2 with the instant petition, had discussed the contents of the written statement and observed as under:

“6. Defendants filed their WS, wherein defendant no.2 is alleged to be a sole and absolute owner of the suit property by virtue of registered conveyance deed dated 17.08.2017. It is also alleged that the name of defendant no.2 is wrongly mentioned in the memo of parties as Krishna Grover in place of Surinder Grover. Accordingly, the right of the plaintiff in the suit property as alleged has been denied. It is also the case of the defendants that late Shri Surinder Dev Grover had expired on 09.05.1995, leaving behind a registered WILL bequeathing the suit property upon defendant no.2 and on the basis of this registered WILL, the registered conveyance deed dated 17.08.2017 had been executed in favour of defendant no.2.”



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102. This Court has perused the contents of the amended plaint/application filed by the petitioner. The contents of the written statement filed by the respondents have also been noted, by reading the observations made by the learned Trial Court in its order dated 12th May 2022. Upon examining the contents of the amended plaint, it is observed that the petitioner through such amendments is seeking the cancellation of the Conveyance Deed dated 17th August 2022. The proposed amendment, in a way, seeks for incorporation of the contents of the written statement and affidavit filed by the respondents.

103. This Court has also observed that the learned Trial Court whilst considering the contents of the written statement of the respondents, noted that they are claiming their ownership *qua* the Suit Property by placing reliance upon the Conveyance Deed dated 17th August 2022, which has been executed on the basis of an alleged registered Will dated 25th May 1985. The respondents have stated in their written statement that the Suit Property was bequeathed upon the respondent No. 2 by her husband and father of the petitioner and respondent No. 1, namely Late Sh. Surinder Dev Grover.

104. The law laid down by the Hon'ble Supreme Court in this regard states that it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, then the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on the merits of the amendment. In cases like this, the Court should also take into consideration the subsequent events in order to abridge the litigation



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process, to preserve and safeguard the rights of both parties and to sub serve the ends of justice. It is settled by a catena of decisions of the Hon'ble Supreme Court and various High Courts that the rule of amendment of pleadings is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

105. Adverting to the instant issue, the only question which this Court has to decide is as to whether the prayer for making amendment in the plaint was justified or not. This Court is of the view that by way of the proposed amendment, the cause of action will not be altered, further neither the pleas raised therein are inconsistent, nor is the same changing the basic structure of the plaint. Further, the respondents shall not be caused any prejudice since it is already an admitted fact before the learned Trial Court that they are not in possession of the alleged Will dated 25th May 1985, either the original or the copy thereof. Further, the respondents had stated that the said Will has been submitted with the authorities at the time of execution of the above said Conveyance Deed and the DDA or MCD have rather particularly admitted no such Will exists in their records.

106. It is clear from the discussions of the above facts and law that a matter already contained in the original pleading can always be clarified and such an amendment should ordinarily be allowed. Upon examining the facts of the instant case, it is crystallized that there is an uncertainty and vagueness in the averments made on behalf of the respondents *qua* the Will dated 25th May 1985. The Suit filed before the learned Trial Court was originally seeking the reliefs with respect to the partition of the Suit Property and the respondents in their defense, are



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alleging their ownership on the basis of a Conveyance Deed dated 17th August 2017 which has been executed by virtue of the above said alleged Will. The respondents although have claimed the ownership, but have not produced the said Will on record. It has been observed by this Court that DDA and MCD have also not brought the above said Will on record of the learned Trial Court and have stated that they are not in possession of the same.

107. The petitioner by way of the amended plaint is seeking the original relief of partition of the Suit Property *inter alia* the cancellation of the above said Conveyance Deed. It is being alleged by the petitioner that the respondents in connivance with the officials of DDA have committed fraud, forgery and destruction of evidence by failure to produce evidence of the alleged Will which was subsequently admitted in the pleadings of the respondents.

108. Keeping in mind the law as laid down by the Hon'ble Supreme Court in a catena of judgments and more particularly the tests laid down in the judgment of ***Revajeetu Builders & Developers (Supra)***, this Court is of the view that allowing the application filed under Order VI Rule 17 of the CPC, for amendment of the plaint, would not only prevent gross injustice to the petitioner but would also prevent the concourse of multiple litigation. The same is imperative for proper and effective adjudication of the case. This Court is of the considered view that such application for amendment was made with *bona fide* intent.

109. Moreover, the proposed amendment is of such nature that it shall not change the fundamental nature or character of the case but only provides the additional approach to the same facts by subsequently providing a more clarifactory view to the dispute. There is no change in the basic structure of the



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suit but merely a change in the nature of relief claimed and the grounds thereto. The reliefs claimed in the original suit and by way of the proposed amended plaint are with respect to the Suit Property, thereby, ultimately seeking partition. Since the cause of action arose during the pendency of the suit, proposed amendment, the said amendment is also not barred by the limitation.

110. It is a settled principle of law that the High Court shall not interfere with an order of the Court below unless it satisfies the conditions mentioned within the provision of Section 115 of the CPC, pertains to the grounds of error of jurisdiction. Furthermore, the Courts, while deciding an application under Order VI Rule 17 of the CPC, are required to take a liberal approach.

111. In regard to the facts of the instant petition, the errors of jurisdiction, as explained in brief in the foregoing paragraphs, are present in the impugned order and there is considerable force in the propositions put forth by the petitioner, hence, inviting the attention of this Court to exercise its revisional powers.

112. In view of the above, it is held that since there exists infirmities in the impugned order, therefore, this Court is inclined to interfere with the same by exercising its powers provided under the revisional jurisdiction.

113. Accordingly, 'issue no. ii' has been decided.

CONCLUSION

114. The present petition has been filed under Section 115 of the CPC, thereby, seeking revision of the impugned order. It is a settled law that under Section 115 of the CPC, this Court has to look only into the issue of the jurisdiction of the Court below in deciding any application and not to go into the merits of the case.



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115. The mere fact that a decision of the Trial Court is erroneous due to a question of fact or of law does not amount to any illegality or a material irregularity. Only those matters are to be allowed under the revisional jurisdiction of the High Court, wherein, there has been an irregular exercise, or non – exercise, or the illegal assumption of the jurisdiction by the Court below.

116. It has been deliberated by way of the aforementioned judgments that liberal principles which ultimately guide the exercise of discretion in allowing an amendment which could result in multiplicity of proceedings should be avoided, and that amendments which do not substantially alter the character of the suit or the cause of action should be readily granted. Moreover, due care should be taken to see that injustice and prejudice of an irremediable character is not inflicted upon the opposite party under the pretence of amendment, that a specific and distinct cause of action shall not be substituted, and that the subject matter of the suit should not be altered materially.

117. In view of the above, it is held that the learned Trial Court has not exercised its jurisdiction in accordance with the law. Therefore, this Court is of the view that the instant petition is a fit case for exercising the revisional powers as defined under Section 115 of the CPC, since there is found to be material irregularity in the exercise of its jurisdiction whilst dismissing the application under Order VI Rule 17 read with Order I Rule 10 of the CPC.

118. This Court is satisfied that the present revision petition deserves to be allowed as the learned Trial Court while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed



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by the learned Court below is liable to be corrected by this Court in exercise of its supervisory jurisdiction enshrined under Section 115 of the CPC.

119. This Court is of the opinion that the proposed amendment in the plaint is necessary for the purpose of bringing to the fore the real question in controversy between the parties to the dispute before the learned Court below and the refusal to permit the said amendment would create needless complications which are contrary to the settled position of law.

120. In view of the above discussion of facts and law, the impugned order dated 17th October 2022, passed in Civil Suit bearing No. 1056/2018, by the learned ADJ-03, West, Tis Hazari, Delhi, is hereby set aside and the application filed by the petitioner under Order VI Rule 17 read with Order I Rule 10 of the CPC, is allowed.

121. Accordingly, the instant petition stands disposed of along with pending applications, if any.

122. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 6, 2023
dy/ryp/db