



2025:DHC:10527



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 27.11.2025

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CM(M) 2292/2025, CM APPL. 74340/2025 & CM APPL. 74339/2025

NIKITA JAIN ALIAS NIKKI JAIN & ANR.

.....Petitioners

Through: Mr. Biraja Mahapatra, Mr. S. K. Jain,
Mr. Nalin Hingorani and Mr. Abhay
Singh, Advocates.

versus

RAM PHAL ALIAS RAM PAL AND ANR

.....Respondents

Through: Mr. Mukesh Anand, Advocate for R-
2.**CORAM: JUSTICE GIRISH KATHPALIA****ORDER (ORAL)**

1. Petitioners/plaintiffs have assailed order dated 15.10.2025 of the learned trial court, whereby their application under Order XVIII Rule 17 CPC was dismissed. Having heard learned counsel for petitioners/plaintiffs, I do not find it a fit case to even issue notice, though learned counsel for respondent no.2 is present in court on advance intimation.

2. Broadly speaking, the circumstances relevant for present purposes are as follows.

2.1 The petitioners/plaintiffs filed a suit for decree of declaration that the registered sale deed executed by defendant no.1 (*the present respondent no.1*) in favour of defendant no.2 (*the present respondent no.2*) is null and

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void; and for decree of *mesne* profits/damages and injunction from creating third party interest.

2.2 The issues in the suit were framed, including issue no.4 as to whether the ownership documents of the petitioners/plaintiffs were forged and fabricated, onus of which issue was placed on defendant no.2 (*the present respondent no.2*).

2.3 Both sides led evidence before the trial court. The present petitioner examined eleven witnesses while the present respondent no.2 examined four witnesses; the present respondent no.1 (*the defendant no.1*) was *ex-parte*.

2.4 After final arguments were partly advanced, the present petitioners/plaintiffs filed an application under Order XVIII Rule 17 CPC seeking permission to summon one witness namely Umesh Sharma in order to prove the Will, which is one of the documents in addition to the sale deed on the basis whereof petitioners/plaintiffs claimed title over the subject property.

2.5 After hearing both sides, the learned trial court dismissed the said application under Order XVIII Rule 17 CPC by way of the impugned order. The learned trial court, after elaborate discussion on the stages of the suit observed that the application was completely silent as to why Umesh Sharma was earlier not summoned and examined despite the petitioners/plaintiffs being aware of the defence raised by the respondent no.2/defendant no.2.



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3. Learned counsel for petitioners/plaintiffs submits that examination of Umesh Sharma would be vital for effective adjudication of the suit since it is he who, being the attesting witness can prove the Will, on the basis whereof, the petitioners/plaintiffs claimed title over the subject property. Learned counsel for petitioners/plaintiffs places reliance on the judgment of the Hon'ble Supreme Court in the case titled ***K. K. Velusamy vs N. Palanisamy***, (2011) 11 SCC 275.

4. The provision dealing with the scope of either party seeking to adduce additional evidence or recall an already examined witness existed earlier under Order XVIII Rule 17A Code of Civil Procedure, but that provision was repealed by way of amendment of the Code in the year 2002. The provision invoked by the petitioners/plaintiffs is Order XVIII Rule 17 CPC, which prescribes the scope dealing with the requirement of the trial court, in the sense that under Order XVIII Rule 17 CPC, it is up to the trial court to recall any witness and put such questions as the court thinks fit. The provision under Order XVIII Rule 17 CPC cannot be invoked to empower either of the parties to further examine or further cross-examine the already examined witness. The provision lays down that it is only the court which would put questions to the witness. As such, the core issue is the satisfaction of the trial court that the witness is required to be recalled to clarify on certain aspects. The provision cannot be used by either of the parties as adversarial tool.

5. In the case of ***Shubhkaran Singh vs Abhayraj Singh & Ors.***, 2025 INSC 628, relied upon by the learned trial court, the Supreme Court



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discussed the scope of the provision under Order XVIII Rule 17 CPC and held thus:

“6. Order 18 Rule 17 reads as under:-

“17. The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.”

This Rule provides the Court with a power which is necessary for the proper conduct of a case. If it appears to a court trying the suit at any stage of the proceedings that it is necessary to recall and further examine a witness it can always do so. This power can be exercised even at the stage of writing a judgment by the court. It is, however, proper that this power should not be exercised lightly and the rule is that it should be used sparingly and in exceptional cases only. The power is to be used for removing ambiguities, for clarifying the statement and not for the purposes of filling up the lacuna in a party's case. It is true that the power can be exercised by the Court at its own initiative and may even be so done at the instance of a party. Section 165 of the Evidence Act provides that a Judge may in order to discover or obtain proper proof of relevant facts, ask any question he pleases in any form at any time of any witness about any fact relevant. The section further provides that the parties shall not be entitled to make any objection to any such question, nor cross-examine any witness upon any answer given in reply to any such question without the leave of the Court. If the provisions of Order 18 Rule 17 are read along with the provisions of Section 165 of the Evidence Act it is clear that the power to recall and re-examine a witness is exclusively that of the court trying the suit. The parties to the suit cannot take any objection to the question asked nor can they be permitted to cross-examine any witness without the leave of the court.

8. The said rule, in our opinion, makes it abundantly clear that the right to put questions to the witness recalled under Rule 17 is given only to the court and even cross-examination is not ordinarily permitted on the answers given to such questions, without the leave of the court. Under that rule therefore, a witness cannot be recalled at the instance of a party for the purpose of examining, cross examining or re-examining, and that rule is not intended to serve such purpose, and the purpose for which that rule can be invoked is the one that is



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indicated above.”

6. In the case of **K. K. Velusamy** (supra), the circumstances were completely different from the present case, in the sense that it is the plaintiff's witnesses already examined were sought to be recalled and to be confronted with some audio recordings that took place subsequent to their testimony. It is in this context that the Supreme Court allowed the application. Even in **K.K. Velusamy** (supra), the Supreme Court clearly held that power under Order XVIII Rule 17 CPC is only for clarification in order to enable the trial court to remove any issue or doubt, that it may have in regard to the evidence led by the parties by recalling any witness so that the trial court itself could put questions to such witness and elicit answers.

7. In the present case, the learned trial court has taken a clear view that for effective adjudication of the suit, examination of Umesh Sharma is not required. The impugned order is clear that there is no ambiguity in the evidence available on record, for which Umesh Sharma would be required to be examined. More importantly, the onus to prove that the Will in question is a forged document, is on the present respondent no.2 and not on the petitioners/plaintiffs. The witness Umesh Sharma is not even named in the list of witnesses of either side.

8. As further clear from the above narrative, it is only after final arguments were partly addressed that the petitioners/plaintiffs came up with the application under Order XVIII Rule 17 CPC. Final arguments on behalf of respondent/defendant already stood concluded and final arguments on behalf of petitioners/plaintiffs were at the verge of conclusion according to



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the trial court, when the application under Order XVIII Rule 17 CPC was filed. It was nothing but to plug the loopholes. That cannot be allowed to be done, much less taking assistance of the court centric provision under Order XVIII Rule 17 CPC, which was allowed to remain on the statute book after repeal of Order XVIII Rule 17A CPC only as a mode to enable the trial court resolve ambiguities, if any, in the evidence available on record.

9. The purpose presented on behalf of petitioners/plaintiffs to summon Umesh Sharma invoking Order XVIII 17 CPC is so that being the attesting witness he can prove the Will. But in view of the settled legal position, a witness summoned under Order XVIII Rule 17 CPC cannot be examined by either side and it is only for the court to put questions to such person, that too only for removal of ambiguities. In the present case, admittedly evidence of plaintiff was closed by counsel for plaintiff only and not by way of order of the court; even the closing of plaintiff's evidence was not in the affirmative only. And as mentioned above, the learned trial court has found no ambiguity in the evidence available on record, for which the court would require Umesh Sharma to be examined.

10. I am unable to find any infirmity in the impugned order, so the same is upheld. The petition and the accompanying applications are dismissed.

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**GIRISH KATHPALIA
(JUDGE)**

NOVEMBER 27, 2025/as

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