IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No. 54 of 2023

1.Miss Susmita Roy, aged about 60 years, daughter of Late Sitish Chandra Roy,
2.Smt. Swapna Roy @ Swapna Ray, aged about 58 years, wife of Late Subrata Kumar Roy,
3.Sri Sushan Roy, aged about 36 years, son of Late Subrta Kumar Roy, represented though Power of attorney holder Swapna Roy @ Swapna Ray.
4.Smt. Sudeshna Roy @ Sudeshna Ray (Tripathy), aged about 43 years, wife of Satyabrata Tripathi and daughter of Late Subrata Kumar Roy,
5.Sri Tapas Kumar Mitra, aged about 75 years, son of Late B.K. Mitra,
6.Sri Palash Kumar Ghosh, aged about 52 years, son of Late Manu Ghosh (wrongly mentioned as T.S. Ghosh in the plaint and impugned order), Proprietor of M/s Gupta Enterprises

All are residents of Holding No. 107, SNP Area, Sakchi Highway, Sakchi, P.O. Sakchi, P.S. Sakchi, Town Jamshedpur, District Singhbhum.

... ... Petitioners/Defendants

Versus

1.Sri Subir Kumar Roy, son of Late Sitish Chandra Roy, resident of Holding No. 107, SNP Area, Sakchi Highway, Sakchi, Post Office Sakchi, Police Station Sakchi, Town Jamshedpur, District East Singhbhum.

... ... Respondent/Plaintiff

2.Sri Anup Chatterjee, son of Late K.C. Chatterjee, resident of Holding No. 104, SNP Area, Sakchi Highway, Sakchi, Post Office Sakchi, Police Station Sakchi, Town Jamshedpur, District East Singhbhum.
3.M/S Tata Steel Limited (formerly known as M/S Tata Iron and Steel Company Limited) having its registered office at Homi Modi Street, Fort, Post Office Mumbai (G.P.O), Police Station Fort, Mumbai, Maharashtra-400001.

..**Proforma Defendants/ Proforma Respondents**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Mr. Indrajit Sinha, Advocate
Mr. Ankit Vishal, Advocate
For the Respondents : Mr. Atanu Banerjee, Amicus Curiae
Mr. Aditee Dongrawat, Advocate
[For Res. no. 2 & 3]

CAV on 21/06/2024 **Pronounced on 28/06/2024**

Prayer:

1. The instant petition has been filed under Article 227 of the Constitution of India assailing order dated 19.12.2022 passed by learned Civil Judge (Sr. Division)-IV, Jamshedpur in Original (P) Suit No. 72 of 2019 whereby and whereunder the petition dated 19.11.2022 filed on behalf of respondent-plaintiff under Order VI Rule 17, seeking therein the amendment to make addition in the prayer for challenging the gift deed dated 16.01.2008 by which the land which is the subject matter of partition suit has been disclosed to be gifted by the father of the defendant, has been allowed.

Brief Facts of the Case:

2. The plaintiff-respondent has filed a suit for partition being Original (Partition) Suit No. 72 of 2019 for a decree of partition claiming 1/3rd share in a 'multi-storied building consisting of a basement along with ground +7 floors situated over a lease hold land measuring 40 feet X 60 feet situated on Holding No. 107, S.N.P. Area, Sakchi Highway, Sakchi Post Office Sakchi, Town Jamshedpur, District Singhbhum East and has also prayed for appointment of a Survey knowing pleader commissioner for demarcation and allocation of the suit property as per Preliminary Decree along with a prayer

for a Final Decree embodying the report of the Survey knowing pleader Commissioner.

3. The petitioners-defendants filed their written statement denying the averments made in the plaint stating therein that description of suit property, as mentioned in the Schedule of the plaint, is incorrect as the multi-storied building consists of a semi basement along with five upper floors standing over land situated at Company's Holding No. 107 SNP Area, Sakchi, Jamshedpur. It has further been submitted that Holding No. 107 SNP Area, Sakchi, Jamshedpur was originally leased out by Tata Iron and Steel Company in favour of Khitish Chandra Roy, the grandfather of petitioner no. 1. The said Khitish Chandra Roy during his lifetime had constructed a single storied building over the said Holding and started residing therein with his family.

4. The said Khitish Chandra Roy died leaving behind his widow Manorama Devi and two sons, namely, Sitish Chandra Roy (father of petitioner no. 1) and Jyotish Chandra Roy.

5. It has further been stated that said Jyotish Chandra Roy, without the consent of Sitish Chandra Roy, sold the southernmost portion of land measuring 20 feet X 60 feet by virtue of registered sale deed to one Ram Sagar Gupta and similarly Manorma Devi had also sold the northernmost

portion measuring 20 feet X 60 feet in faovur of one Ram Sagar Gupta by virtue of registered sale deed.

6. Aggrieved thereof, said Sitish Chandra Roy filed two separate suits for pre-emption, which were decreed on contest, against which, said Ram Sagar Gupta preferred first appeal, which was dismissed. Since no appeal has been preferred against the order passed in first appeal, as such judgment and order passed by the learned Court attained finality.

7. Thereafter, said Sitish Chandra Roy (father of petitioner no. 1) executed a Deed of Gift with respect to entire Holding No. 107 SNP Area, Sakchi, Jamshedpur measuring 40 feet X 60 feet along with super structures in favour of his daughter by virtue of registered deed of gift being Deed No. 577 dated 16.01.2008.

8. It has further been stated that said Sitish Chandra Roy died leaving behind his two sons, namely, Subrata Kumar Roy and Subir Kumar Roy and one daughter, namely, Miss Susmita Roy (petitioner no. 1). Subrata Kumar Roy died on 20.10.2010.

9. It has been stated that petitioner no. 1 entered in a development agreement with petitioner no. 7 and sold different portions of the suit property to petitioner nos. 5, 6 and 7.

10. After filing of said written statement by the defendant-respondent herein, the petitioners during pendency of the suit filed a petition dated 19.11.2022 under Order VI Rule 17 for amendment of the plaint with a prayer for an additional relief for a decree declaring that the Deed of Gift being Deed No. 577 dated 16.01.2008 is null and void and not binding upon the plaintiff. In the said petition, it has further been stated that the plaintiff came to know about the gift deed only after filing of the written statement.

11. The petitioners filed rejoinder dated 03.12.2022 by way of objection to the petition filed by the respondent/plaintiff.

12. The learned trial court, considering the submissions advanced by the parties, allowed the amendment petition vide order dated 19.12.2022 holding that for the proposed amendment the nature of the suit will not change and the proposed amendment is necessary for deciding the real controversy i.e., the partition of the suit property between the parties, which is the subject matter of instant civil miscellaneous petition.

13. Thus, it is evident that the plaintiff-respondent, who claims to be the title holder of the scheduled property filed a suit for partition being Original (Partition) Suit No. 72 of 2019 for a decree of partition claiming 1/3rd share in a multi-storied building. The defendants, have been noticed,

whereupon they appeared and filed written statement wherein disclosure has been made that partition suit is not maintainable since the property in question has been gifted to her by her father vide Gift Deed No. 577 dated 16.01.2008.

14. Thereafter, the petitioner-plaintiff made an application under Order VI Rule 17 seeking amendment of the plaint with a prayer for an additional relief for a decree declaring that the Deed of Gift being Deed No. 577 dated 16.01.2008 is null and void and not binding upon the plaintiff.

15. The learned trial Court called upon the petitioners/defendants to file reply. The reply in opposition was filed stating that the proposed amendment is neither maintainable on fact nor in law. By raising the issue that amendment cannot be allowed, it has been submitted that by seeking leave to challenge the gift deed reason being that the nature of suit will completely change for that partition suit to that of declaratory suit. It has further been argued that the plaintiff had full knowledge about the gift deed executed in her favour, therefore, prayer has been made to reject the proposed amendment.

16. The learned trial Court has appreciated the averment made by the plaintiff at paragraph 6 of his petition wherein he has stated that he got knowledge on 06.06.22 from the written statement of defendant no. 1 that defendant no. 1 has

claimed the suit property as absolute owner on the basis of gift deed.

17. The learned trial court, on considering the details of the property furnished in schedule B of the said gift deed, has found that the said property is related with the property mentioned in the schedule of the plaint of Original Partition Suit No. 72 of 2019. Plaintiff based upon the aforesaid knowledge made an application for decree of declaration that gift deed dated 16.01.2008, executed by Sitesh Ch. Roy to the defendant no. 1 is void, collusive, fraudulent, paper transaction, never acted upon and not binding upon the plaintiff.

18. The learned trial court has come to the conclusion that for determining the real question in controversy between the parties, it is necessary to decide the validity of the gift deed dated 16.01.2008 executed by the Late Sitish Chandra Roy, father of the plaintiff and defendant no. 1.

19. Learned trial court has also considered the issue raised by the defendants that this amendment is barred by limitation but the learned trial court after discussing the issue of limitation has come to the finding on the basis of analysis of averments made in the written statement filed by defendant no. 1 on 22.11.2019 and submission of the plaintiff that he got knowledge about the gift deed dated

16.01.2008 from the written statement of defendant no. 1 and held that the period of limitation is to be calculated from the date 22.11.2019 when defendant no. 1 had filed W.S, as per Limitation Act, since the limitation period is 3 years for the cancellation of instrument from the date of knowledge of instrument. In the case at hand, the defendant has filed written statement on 22.11.2019 and plaintiff has submitted that he has got knowledge about gift deed from the written statement of defendant no. 1 and has filed amendment petition on 19.11.2022, as such it will be said to be well within limitation period.

20. Further, ground was taken that the amendment has been filed at belated stage. The learned trial court on perusal of the case record has found that the case is pending for the evidence of plaintiff and not a single witness has been examined in this case on the day when order impugned was passed. As such conclusion has been arrived that no prejudiced will be caused to the defendants, if the petition of amendment is allowed. The learned trial court has further held that if the proposed amendment will be allowed even then the nature of the suit will still be a partition suit.

21. The learned trial court, based on the aforesaid discussion, allowed the amendment petition holding that nature of the suit will not change and no prejudice will be

caused to the defendant. This proposed amendment is necessary for deciding the real controversy i.e. partition of the suit property between the parties of the suit. However, the petition of the plaintiff was allowed with cost of Rs. 1000/- to be paid to the defendants and petitioner/plaintiff was directed to amend the plaint as per proposed schedule, which is mentioned in the petition within 14 days from the date of the order. The defendants were also given liberty to file reply/additional written statement. The aforesaid order is under challenge by filing petition under Article 227 of the Constitution of India.

Argument on behalf of the counsel for the petitioner:

22. Mr. Indrajit Sinha, learned counsel appearing for the petitioner has taken the following ground in assailing the impugned order:

I. The underlying principle in allowing the amendment petition is that nature of suit cannot be allowed to be changed. It has been submitted by referring to the factual aspect of the present case that the suit is for partition of the schedule property and the same was filed for partition of the schedule property amongst the share-holder but herein the father of the defendant namely late Sitish Chandra Roy has transferred the ownership of the scheduled property to her daughter

vide gift deed dated 16.01.2008. The plaintiff has filed a petition for amendment in the partition suit seeking a declaration of gift deed void, collusive, fraudulent, paper transaction and never acted upon and not binding upon the plaintiff, and if the same will be allowed to make a part of the plaint in the partition suit then the partition suit will become a declaratory suit and thereby the nature of suit will change from that of partition suit to that of declaratory suit.

II. Mr. Sinha, in support of his submission has relied upon the judgment rendered by Hon'ble Apex Court in the case of ***Basavaraj Vs. Indira & Ors [(2024) 3 SCC 705]*** and the order passed by this Court in the case of ***Biren Ghosh Vs. Ratan Ghosh & Anr. [CMP No. 721 of 2023].***

Argument on behalf of the counsel for respondents:

23. While on the other hand, Mr. Atanu Banerjee, learned counsel for the respondents, who is plaintiff in the suit, has submitted that there is no error in the order passed by the learned trial Court since the learned trial Court has considered the fact that unless the propriety of gift deed would be considered then only the partition suit can be decided otherwise the gift deed would come in the way of adjudication of the partition suit.

24. The learned Court has considered the aforesaid aspect of the matter that the title is not in dispute of the plaintiff and in that capacity the share cannot be disputed but it is the gift deed which is relevant document for consideration of legality and propriety in order to have a proper adjudication of the *lis.*

25. The ground has been taken that the learned court also in order to avoid the multiplicity of the proceeding has allowed the amendment petition filed under Order VI Rule 17 CPC after taking into consideration the fact that no prejudice is being caused to defendant no. 1.

26. The learned trial Court has further considered the issue of prejudice that the trial is at its inception since no evidence has yet been adduced. The trial court has further considered that even after allowing the amendment the nature of suit will remain the same, because the nature of suit will be partition of the suit property ultimately.

27. The learned counsel has further submitted that if the amendment would not be allowed then it is the plaintiff who will be said to be prejudiced for all time to come due to the reason there will be no adjudication of the partition suit.

28. To buttress this limb of argument the learned counsel has put his reliance on the judgment rendered by the Madras High Court rendered in the case of ***N.K. Mahesh Vs. Mrs.***

29. The learned counsel based upon the aforesaid ground has submitted that the impugned order therefore suffers from no error and requires no interference by this Court.

Analysis

30. Heard learned counsel for the parties, gone across the material available on record as also the finding recorded by the learned trial court in the impugned order.

31. The subject matter of the present petition which is under consideration is the order passed on petition dated 19.11.2022 filed on behalf of respondent-plaintiff under Order VI Rule 17 seeking therein the amendment to make addition in the prayer for challenging the gift deed dated 16.01.2008 by which the land which is the subject matter of partition suit has been disclosed to be gifted by the father of the defendant in her favour.

32. For ready reference, the proposed amendment as mentioned in the impugned order dated 19.12.2022 is quoted as under:

> ***Schedule of proposed amendment*** *:-*
> *i. In para 1 of the plaint after words "suit for partition in metes and bound" may be written "declaration".*
> *ii. In page 1 after words "suit valued at Rs. 3 10,01,000/-" may be written "and Rs.1000/-" for declaration.*
> *iii. In para 12 of the plaint after words " Rs. 1000/- for account" may be written "and Rs. 1000/- for declaration".*

iv. In prayer portion of the plaint after prayer "a" may be written as prayer "(aa)" for decree of declaration that the deed of gift dated 16.01.2008 being no. …… , pages from ……..to ……..at Jamshedpur by Sitesh Ch. Roy and the defendant no. 1 is void, collusive, fraudulent, paper transaction, never acted upon and not binding upon the plaintiff.

v. That after paragraph 6 of the plaint may be written following sentences as para 6A – That after filing of the suit and as per W.S. to filed by the defendants it came to know that the defendant no. 1 claimed to be absolute owner of land and suit property by virtue of alleged gift deed dated 16.01.2008 from her father Sitesh Chandra Roy who died in 2017. But the said Gift deed is void fraudulent, manufactured, back dated without consent and knowledge of their father Sitesh Ch. Roy and there was no valid reasons for such gift deed only to the defendant no. 1 who always avoided and neglected to her parents during their life time. Moreover there was good relation with the plaintiff and always help to his parents and on behalf of his father the plaintiff all along looked after several suit against Ram Sagar Gupta relating part of the suit Property but subsequent when financial crisis arisen then as per advices of his father went outside Jamshedpur for employment of Bombay and Delhi. However, the parents of the plaintiff during their lifetime separately resided and the defendant no. 1 never looked after them and spent her life beyond control. The defendant no. 1 after death of mother when their father took very much shock and taking undue 4 advantage about lonelyness and suffering from various illness the defendant no. 1 with the help of her men and agent and beyond the knowledge and consent of other legal heirs took such registration alleged gifted deed and the signature of the said gift deed is not genuine. The alleged development agreement if any made by the defendant no. 1 and the defendant no. 7 also collusive and not binding upon the plaintiff and subsequently alleged sale deeds executed by the defendant no. 1 in favour of the defendant no. 5, 6 and 7 in respect of 3rd floor, 2nd floor and 1st floor are invalid whereas the defendant no. 1 had/has absolute right title and possession in the suit property and as such no title acquired by these defendants by their alleged sale deeds and not binding upon the plaintiff"

33. The said amendment was allowed vide order dated 19.12.2022 by allowing the plaintiff to also challenge the gift deed of the scheduled property which is the subject matter of partition suit.

34. The learned trial court has given the finding that even though the gift deed has been allowed to be made part of the plaint by way of insertion in the relief portion even then it will not be converted into declaratory suit rather it will be remain the partition suit.

35. This Court in order to appreciate the ground as has been taken on behalf of petitioner deems it fit and proper to refer provision of Order VI Rule 17 CPC, which reads as under:

> ***"Order VI Rule 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."*

36. It is evident from the provision of Order VI Rule 17 CPC that amendment is normally to be allowed but subject to certain conditions i.e., 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.

37. Consideration of the scope of Order VI Rule 17 has been taken into consideration by the Hon'ble Apex Court in the case of ***J.J. Lal Private Limited & Ors Vs. M.R. Murali & Anr. [(2002) 3 SCC 98].*** In the aforesaid judgment the Hon'ble Apex Court has been pleased to consider the judgment rendered in case of ***Majalti Subbarao Vs. P.V.K. Krishna Rao [(1989) 4 SCC 732]*** wherein the eviction case was filed under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 on the ground of *bona fide* requirement of the landlord. In the written statement, the tenant denied the title of landlord which was sought to be made a ground for eviction submitting that such denial made out a ground for eviction under Section 10(2)(*vi*) of the Andhra Act. The Hon'ble Apex Court has rejected the argument on the ground that the denial of title must be anterior to the proceedings for eviction and held that even a denial of a landlord's title by the tenant in the written statement in an eviction petition under the Rent Act furnishes a ground for eviction and can be relied upon in the very proceedings in which the written statement containing the denial has been filed. The reasoning which was considered by the Hon'ble Apex Court in the case of ***J.J. Lal***

Private Ltd. (supra) is that to insist that a denial of title in the written statement cannot be taken advantage of in that suit but can be taken advantage of only in a subsequent suit to be filed by the landlord, would only lead to unnecessary multiplicity of legal proceedings as the landlord would be obliged to file a second suit for ejectment of the tenant on the ground of forfeiture entailed by the tenant's denial of character as a tenant in the written statement.

38. The submission of the learned counsel for the tenant, which was made is that in any event the landlord had failed to apply for amendment of his plaint and incorporate the ground of denial of title therein as he was bound to do in order to get relief on that ground which had arisen after the eviction petition was filed.

39. The Hon'ble Apex Court dealt with the aforesaid ground of denial by holding that normally this would have been so but, in the present case, the Hon'ble Apex Court finds that the trial court, namely, the Rent Controller, framed an issue as to whether the tenant's denial of the landlord's title to the schedule property including the said premises was bona fide. The parties went to trial on this clear issue and the appellant had full knowledge of the ground alleged against him. It was open to him to have objected to the framing of this issue on the ground that it was not alleged in the eviction

petition that the appellant had denied the title of the respondent and that the denial of title was *bona fide*. If he had done that the respondent could have well applied for an amendment of the eviction petition to incorporate that ground. Having failed to raise that contention at that stage it is not open now to the appellant to say that the eviction decree could not be passed against him as the ground of denial of title was not pleaded in the eviction petition.

40. For ready reference paragraph 12 of the judgment is quoted as under:

> *"**12**.We may straightaway refer to a decision of this Court in Majati Subbarao v. P.V.K. Krishna Rao [(1989) 4 SCC 732] which was a case under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. Eviction petition was filed on the ground of bona fide requirement of the landlord. In the written statement, the tenant denied the title of landlord which was sought to be made a ground for eviction submitting that such denial made out a ground for eviction under Section 10(2)(vi) of the Andhra Act. This Court, rejecting the argument that the denial of title must be anterior to the proceedings for eviction, held that even a denial of a landlord's title by the tenant in the written statement in an eviction petition under the Rent Act furnishes a ground for eviction and can be relied upon in the very proceedings in which the written statement containing the denial has been filed. The reasoning which appealed to this Court was that to insist that a denial of title in the written statement cannot be taken advantage of in that suit but can be taken advantage of only in a subsequent suit to be filed by the landlord, would only lead to unnecessary multiplicity of legal proceedings as the landlord would be obliged to file a second suit for ejectment of the tenant on the ground of*

forfeiture entailed by the tenant's denial of character as a tenant in the written statement. The submission of the learned counsel for the tenant was that in any event the landlord had failed to apply for amendment of his plaint and incorporate the ground of denial of title therein as he was bound to do in order to get relief on that ground which had arisen after the eviction petition was filed. This Court held: (SCC p. 738, para 6)

"We agree that normally this would have been so but, in the present case, we find that the trial court, namely, the Rent Controller, framed an issue as to whether the tenant's denial of the landlord's title to the schedule property including the said premises was bona fide. The parties went to trial on this clear issue and the appellant had full knowledge of the ground alleged against him. It was open to him to have objected to the framing of this issue on the ground that it was not alleged in the eviction petition that the appellant had denied the title of the respondent and that the denial of title was bona fide. If he had done that the respondent could have well applied for an amendment of the eviction petition to incorporate that ground. Having failed to raise that contention at that stage it is not open now to the appellant to say that the eviction decree could not be passed against him as the ground of denial of title was not pleaded in the eviction petition."

41. The Hon'ble Apex Court in the aforesaid judgment has further considered the issue involved in the ***Om Prakash Gupta Vs. Ranbir B. Goyal [(2002) 2 SCC 256]***, wherein it has been pleased to hold that the ordinary rule of civil law is that the rights of the parties stand crystallized on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the *lis*. However, the Court has power

to take note of subsequent events and mould the relief subject to the following conditions being satisfied:

(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.

42. Such subsequent event may be one purely of law or founded on facts.

43. In the former case, the court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law.

44. In the later case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule

17 CPC. Such subsequent event, the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties

45. For ready reference, paragraph 13 of the judgment is quoted as under:

> ***"13.*** *Recently in Om Prakash Gupta v. Ranbir B. Goyal [(2002) 2 SCC 256] while dealing with power of the court to take note of subsequent events and then to grant, deny or modify the relief sought for in the plaint, this Court has held: (See pp. 262-63, paras 11-12)*
>
> *"11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.*
>
> ***
>
> *12. Such subsequent event may be one purely of law or founded on facts. In the former case, the court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their*

impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 CPC. Such subsequent event, the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties."

46. It is, thus, evident that the Hon'ble Apex Court has emphasized that the need for amendment and the basic parameters for allowing such amendment is that there must be complete justice to the parties and if the subsequent event will not be brought to the part of the pleading and if there is likelihood of not getting complete justice to the parties then the amendment is to be allowed.

47. The Hon'ble Apex Court in the case ***Raj Kumar Guramara (dead) through its LRs vs. S.K. Sarwagi and Company Private Limited & Anr. [(2008) 14 SCC 364]*** has laid down the proposition for the purpose of allowing the petition filed under Order VI Rule 17 in case certain conditions namely,

(i) when the nature of it is changed by permitting amendment;

(ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party;

(iii) when allowing amendment application defeats the law of limitation.

48. For ready reference, paragraph 18 of the judgment is quoted as under:

> ***"18.*** *Further, it is relevant to point out that in the original suit, the plaintiff prayed for declaration of his exclusive right to do mining operations and to use and sell the suit schedule property and in the petition filed during the course of the arguments, he prayed for recovery of possession and damages from the second defendant. It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation. The plaintiff not only failed to satisfy the conditions prescribed in proviso to Order 6 Rule 17 but even on merits his claim is liable to be rejected. All these relevant aspects have been duly considered by the High Court and rightly set aside the order dated 10-3-2004 of the Additional District Judge."*

49. The similar view has been reiterated by Hon'ble Apex Court in the judgment rendered in ***Revajeetu Builders and Developers vs. Narayanaswamy and sons and Ors., (2009) 10 SCC 84***. Relevant paragraph -63 reads as under:

> *"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;*
>
> *(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."

50. Thus, it is evident that the Hon'ble Apex Court has laid down the conditions of amendment: (i) when the nature of the suit is not changed; (ii) when the amendment would not result in introducing new cause of action and intends to prejudice the other party; (iii) when defeats the law of limitation, if fresh suit of amendment plaint would be passed; (iv) when there is a general rule it would be rejected but to avoid multiplicity it can be allowed.

51. Adverting to the factual aspect of the present case, admitted fact herein is that the gift deed is of the 2008. But the said gift deed was brought to the notice of the trial court by way of filing written statement by the defendant.

52. The plaintiff, after coming to know about the said gift deed executed by one Sitish Chandra Roy, the father of the defendant no. 1, filed petition under Order VI Rule 17 for amendment in the plaint.

53. The plaintiff had taken the ground that he had no knowledge about the gift deed and only after filing of the

written statement by the defendants he came to know that said Sitish Chandra Roy had executed a gift deed in favour of his daughter i.e., defendant no.1, as such the period of limitation will be counted from the date of knowledge of the plaintiff and not from the date of execution of gift deed. The date of knowledge is the date of filing of the written statement i.e., 22.11.2019 hence the date of limitation is to be counted from 22.11.2019. Therefore, the amendment petition will be said to be well within the period of limitation of 3 years as per mandate of the Limitation Act, 1963 providing a statutory period to file a suit.

54. Further ground has been taken that the nature of suit will change.

55. It is settle principle of law that the question of change of the nature of suit is to be considered on the basis of the principle as to:

I. Whether not allowing the amendment will prejudice the case of the petitioner?

II. Whether not allowing the amendment petition will lead to multiplicity of proceeding?

III. Whether allowing the amendment petition will change the nature of the suit from the partition suit to that of declaratory suit?

56. The Hon'ble Apex Court has dealt with the the issue of causing prejudice in the case of ***Radhika Devi Vs. Bajrangi Singh & Ors [(1996) 7 SCC 486]***. The Hon'ble Apex although disagreed with the view taken by the High Court in refusing to grant permission to amend the plaint but that was in the factual background that the suit was instituted for partition. The written statement was filed on 15.06.1988 wherein pleading was made that the Ramdeo Singh had executed and registered a gift deed in their favour on 28-7-1978 bequeathing the properties covered thereunder. They became owners of those lands and the appellant is bound by the same. Pending the suit, the appellant filed an application under Order VI Rule 17 CPC on 11.11.1992 seeking declaration that the gift deed was obtained by the respondents illegally and fraudulently. Therefore, it was ineffective and does not bind the appellant. The trial court by order dated 24.11.1992 allowed the petition, the High Court in Revision No. 1657 of 1992 by order dated 13.08.1993 allowed the petition and set aside the order directing amendment of the plaint. Thus, the appeal by special leave was filed before the Hon'ble Apex Court.

57. The Hon'ble Apex Court has considered the issue of the petition filed under Order VI Rule 17 by putting reliance upon the judgment rendered in the case of ***Laxmidas Dahyabhai***

Kabarwala v. Nanabhai Chunilal Kabarwala [(1964) 2 SCR 567] wherein the amendment was sought after expiry of the period of limitation and as such it was held in the said case that Order VI Rule 17 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a party a legal right which had accrued to him by lapse of time. The Hon'ble Apex Court adverting to the facts of the case wherein the gift deed was executed and registered on 28.07.1998 was known to everyone. In that case, after filing of the written statement three years no steps were taken to file the application for amendment of the plaint. Thereby the Hon'ble Apex Court has come to the conclusion that the accrued right in favour of the respondents would be defeated by permitting amendment of the plaint.

58. For ready reference, paragraph 3, 5 and 6 of the said judgment is quoted as under:

> ***3.*** *The appellant has instituted Partition Suit No. 24 of 1988 in the Court of Subordinate Judge, Aurangabad for partition of certain properties. Respondents 16 to 20 herein filed written statement on 15-6-1988 wherein they pleaded that Ramdeo Singh had executed and registered a gift deed in their favour on 28-7-1978 bequeathing the properties covered thereunder. They became owners of those lands and the appellant is bound by the same. Pending the suit, the appellant filed an application under Order 6 Rule 17 CPC on 11-11-1992 seeking declaration that the gift deed was obtained by the respondents illegally and fraudulently and, therefore, it was ineffective and does not bind the appellant. Though the trial court by order dated 24-11-1992 allowed the petition, the High Court in Revision No. 1657 of 1992 by order dated 13-8-1993 allowed the*

petition and set aside the order directing amendment of the plaint. Thus, this appeal by special leave.

5. *We find no force in the contention of the appellant. No doubt, the amendment of the plaint is normally granted and only in exceptional cases where the accrued rights are taken away by amendment of the pleading, the Court would refuse the amendment. This Court in Laxmidas Dahyabhai Kabarwala v. Nanabhai Chunilal Kabarwala [(1964) 2 SCR 567 : AIR 1964 SC 11] (SCR at p. 582) held thus:*

"It is, no doubt, true that, save in exceptional cases, leave to amend under Order 6, Rule 17 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a party a legal right which had accrued to him by lapse of time. But this rule can apply only when either fresh allegations are added or fresh reliefs sought by way of amendment. Where, for instance, an amendment is sought which merely clarifies an existing pleading and does not in substance add to or alter it, it has never been held that the question of a bar of limitation is one of the questions to be considered in allowing such clarification of a matter already contained in the original pleading. The present is a fortiori so. The defendants here were not seeking to add any allegation nor to claim any fresh relief which they had prayed for in the pleading already filed."

6. *In that case this Court considered the cross-objections to be treated as a cross-suit since no alteration was being made in the written statement to treat it as a plaint originally instituted. The amendment which was sought to be made was treated to be clarificatory and, therefore, this Court had upheld the amendment of the written statement and treated it to be a cross-suit. The ratio therein squarely applies to a fact situation where the party acquires right by bar of limitation and if the same is sought to be taken away by amendment of the pleading, amendment in such circumstances would be refused. In the present case, the gift deed was executed and registered as early as 28-7-1978 which is a notice to everyone. Even after filing of the written statement, for 3 years no steps were taken to file the application for amendment of the plaint. Thereby the accrued right in favour of the respondents*

would be defeated by permitting amendment of the plaint. The High Court, therefore, was right in refusing to grant permission to amend the plaint.

59. The Hon'ble Apex Court in the case of ***Usha Baleshaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors. [(2007) 5 SCC 602]*** observed at paragraph 17 that it is evident from bare perusal of Order VI Rule 17 CPC that the court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The proviso to Order VI Rule 17 of the Code, however, provides that no application for amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. At paragraph 18 of the said judgment, it has been held that courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bona fide one.

60. For ready reference, paragraph 17 and 18 of the judgment is quoted as under:

"17. *From a bare perusal of Order 6 Rule 17 of the Code of Civil Procedure, it is clear that the court is conferred with power, at any*

stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The proviso to Order 6 Rule 17 of the Code, however, provides that no application for amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. However, proviso to Order 6 Rule 17 of the Code would not be applicable in the present case, as the trial of the suit has not yet commenced.

18. *It is now well settled by various decisions of this Court as well as those by the High Courts that the courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bona fide one. In this connection, the observation of the Privy Council in Ma Shwe Mya v. Maung Mo Hnaung [(1920-21) 48 IA 214 : AIR 1922 PC 249] may be taken note of. The Privy Council observed: (IA pp. 216-17)*

> *"All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit."*

61. At paragraph 19 of the judgment rendered in ***Usha Baleshaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors (supra)*** it has been held that the general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. For ready reference, paragraph 19 of the judgment is quoted as under:

> ***"19.*** *It is equally well-settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable."*

62. The Hon'ble Apex Court in the case of ***Ganesh Prasad Vs. Rajeshwar Prasad & Ors [2023 SCC OnLine SC 256]*** has observed at paragraph 47 that in the event, if the pleas sought to be introduced by plaintiff by way of an amendment is also the plea, which the defendant has set up in his written statement and such a plea of the plaintiff is an alternative plea, even though it is inconsistent with the original plea, since there is no prejudice caused to the defendant, the Court is not precluded from allowing the amendment.

63. For ready reference, paragraph 47 of the judgment is quoted as under:

> ***47.*** *In the event, if the pleas sought to be introduced by plaintiff by way of an amendment is also the plea, which the defendant has set up in his written statement and such a plea of the plaintiff is an alternative plea, even though it is inconsistent with the original plea, since there is no prejudice caused to the defendant, the Court is not precluded from allowing the amendment.*

64. The judgment passed by Hon'ble Apex Court in the case of ***Basavraj Vs. Indira & Ors (surpa)*** to which the learned

counsel the petitioner has also relied upon wherein the factual aspect is that Respondent nos. 1 and 2 filed a suit [Original Suit No. 151 of 2005] for partition of the ancestral property belonging to their grandfather with the pleading that no actual partition of the property has ever taken place. When the suit was at the fag end, an application was filed by Respondent nos. 1 and 2 seeking amendment of the plaint. The amendment sought was to add prayer in the suit for a declaration that an earlier compromise decree dated 14.10.2004 was null and void. As prayer was not made earlier, the court fee required thereon was also sought to be affixed.

65. It is evident from the said judgment that the compromise decree passed was declined to be allowed by way of amendment on the ground of limitation since the compromise decree was of the date beyond of period of three years the amendment petition was filed. However, in the said judgment it was also observed by putting reliance upon the case of ***Revajeetu Builders & Developers vs. Narayanswamy & Sons (supra),*** that while allowing the amendment the important factor which is to be seen is as to whether the amendment would cause prejudice to the other side and it fundamentally changes the nature and character

of case or a fresh suit on amended claim would be barred on the date of filing the application.

66. On the basis of factual aspect and discussions made herein above as also the case laws discussed herein above, the issues which require consideration by this Court for adjudication of the lis is as to:

I. *Whether the period of limitation would be said to be a ground to reject the prayer sought for amendment?*

II. *Whether the period of limitation will be counted from the date of filing of the suit or from the date of knowledge of the party concerned?*

III. *Whether allowing the amendment by assailing the gift deed dated 16.01.2008 will prejudice the right of the party and give an accrued right taking the limitation to be counted from the date of filing of the written statement?*

IV. *Whether not allowing the amendment will cause prejudice to the interest of the plaintiff?*

V. *Whether allowing the amendment by inserting the prayer for cancellation of gift deed amounts to change in cause of action of nature of suit*?

67. Since all the issues are based upon the conditions, which is to be taken into consideration by the Court of law

while allowing the petition filed under Order VI Rule 17 CPC, therefore they are taken up together.

68. The learned trial court, after hearing learned counsel for the parties and on the basis of pleadings available on record has considered the date for counting limitation from the date of filing of written statement and as such has found that the filing of the petition under Order VI Rule 17 CPC is well within the period of limitation i.e., within the period of three years.

69. This Court is of the view that reliance upon which learned counsel for the petitioner is placing i.e., the case rendered in the case of ***Basavraj Vs. Indira & Ors (surpa)*** so far it relates to the issue of limitation is not applicable herein reason being that in the case of ***Basavraj Vs. Indira & Ors (surpa)*** the decree was passed on the basis of compromise hence on that pretext the Hon'ble Apex Court has passed the judgment that the decree passed on the basis of compromise arrived between the parties concerned and hence considered the said right to be accrued right which cannot be allowed to be snatched away after considerable delay of time.

70. But herein it is not the factual aspect so far as the issue of limitation is concerned since the fact about the gift deed

said to have come to knowledge of the plaintiff when the written statement was filed.

71. Further, the fact about the title of the plaintiff has not been disputed at least prior to the execution of gift deed dated 16.01.2008. The plaintiff, on the impression, is also equally entitled for the part of the share in the capacity of co-sharer, hence he filed a partition suit being Original (P) Suit No. 72 of 2019 but in the written statement it was brought to the notice that no partition can be claimed over the scheduled property since the schedule property has already been settled in favour of defendant no. 1 by way of gift deed dated 16.01.2008 and when it comes to the notice of the petitioner that partition suit cannot be adjudicated so long as the gift deed is there. The respondent (plaintiff) filed petition under Order VI Rule 17 for the purpose of amendment in the plaint.

72. If the gift deed would not be allowed to be questioned in the present suit then the question would be how the partition suit be dealt with.

73. In such circumstance, this Court is of the view that if the amendment would not be allowed by making it part of the plaint, then it will cause prejudice to the plaintiff.

74. The issue of change in the nature of suit or cause of action has also been raised in the instant case.

75. This Court, in order to answer that issue deems it fit and proper to refer the interpretation of phrase "cause of action". The expression "cause of action" has not been defined in the Code; however, it is settled law that every suit presupposes the existence of a cause of action and if there is no cause of action, the plaint has to be rejected as per mandate of Rule 11(a) of Order 7 of the Civil Procedure Code (CPC). Stated simply, "cause of action" means a right to sue and it consists of material facts which are imperative for the plaintiff to allege and prove to succeed in the suit.

76. The Hon'ble Apex Court in the case of ***Laxman Prasad v. Prodigy Electronics Ltd., (2008) 1 SCC 618 has*** elaborately dealt with the phrase "cause of action" and has observed as under:

> "*30. We find considerable force in the submission of the learned counsel for the respondent Company. In our view, "cause of action" and "applicability of law" are two distinct, different and independent things and one cannot be confused with the other. The expression "cause of action" has not been defined in the Code. It is, however, settled law that every suit presupposes the existence of a cause of action. If there is no cause of action, the plaint has to be rejected [Rule 11(a) of Order 7]. Stated simply, "cause of action" means a right to sue. It consists of material facts which are imperative for the plaintiff to allege and prove to succeed in the suit. The classic definition of the expression ("cause of action") is found in the observations of Lord Brett in Cooke v. Gill [1873 LR 8 CP 107 : 42 LJCP 98] . His Lordship stated:*
>
> *"Cause of action means every fact which it would be*

necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court."

31. In A.B.C. Laminart (P) Ltd. v. A.P. Agencies [(1989) 2 SCC 163] this Court said : (SCC p. 170, para 12)

"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

77. Similarly in the case of ***State of Goa v. Summit Online Trade Solutions (P) Ltd.*, (2023) 7 SCC 791 the** Hon'ble Apex Court has observed as under:

"16. *The expression "cause of action" has not been defined in the Constitution. However, the classic definition of "cause of action" given by Lord Brett in Cooke v. Gill [Cooke v. Gill, (1873) LR 8 CP 107] that "cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court", has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. However, in the context of a writ petition, what would constitute such "cause of action" is the material facts which are imperative for the writ petitioner to plead*

and prove to obtain relief as claimed."

78. This Court is now proceeding to examine as to whether by allowing the amendment, to assail the gift deed dated 16.01.2008, can be said to be change in the nature of suit or the cause of action.

79. The learned trial court has given the finding that allowing the gift deed cannot be said to change in the nature of suit since the gift deed will be alternative prayer upon which the partition of the schedule property will depend and this Court in no way is in disagreement with the said finding reason being that the suit is for partition of the schedule property but the suit property has been transferred by way of gift deed dated 16.01.2008 as such the question is that how right and interest of the plaintiff will be taken care of.

80. The learned trial court in the aforesaid pretext has come to the conclusion that the main prayer made in the original suit is for partition and after allowing the amendment assailing the gift deed will only be said to be prayer which is coming in the way of the decree to be passed or partition of the property in question. Unless the propriety of the gift deed will be adjudicated there will be no adjudication of the partition suit.

81. This Court, after having discussed the factual aspect along with the legal positions and coming back to the order

impugned has found that following reasons have led the learned trial court in allowing the amendment petition:

I. The petitioner/plaintiff has filed the suit for partition of the same property which is mentioned in the gift deed dated 16.01.2008 executed by Sitish Chandra Roy father of the plaintiff and defendant No. 1. Therefore, for determining the real question in controversy between the parties, it is necessary to decide the validity of the gift deed dated 16.01.2008 executed by the Late Sitish Chandra Roy father of the plaintiff and defendant No. 1.

II. As per Article 59 of Indian Limitation Act the period of limitation is of 3 years for the cancellation of instrument from the date of knowledge of instrument. The defendant has filed written statement on 22.11.2019 and petitioner has submitted that he has got knowledge about said gift deed dated 16.01.2008 from the written statement of defendant No. 1 and he has filed amendment petition on 19.11.2022, which is within time and as per the mandate of limitation Act.

III. No prejudice will be caused to the defendants, if the petition of amendment is allowed because the trial

of the case has been started but not a single witness has been examined in this case till today.

IV. From aforesaid amendment the nature of the suit will not change and no prejudice will be caused to the defendant and the proposed amendment is necessary for deciding the real controversy i.e. partition of the suit property between the parties of the suit.

82. This Court, considering the proposition propounded by Hon'ble Apex Court as discussed above and taking into consideration the reason as assigned by learned trail court while allowing the amendment petition, is of the view that if any interference will be made in the impugned order there will no meaning of partition suit at this stage reason being that if the gift deed would not be allowed to be questioned in the suit then how the partition suit be dealt with.

83. This Court, therefore, is of the view that disallowing the amendment petition will cause prejudice to the case of the petitioner for all time to come.

84. Further the question of prejudice has also been taken note of by learned trial court giving a finding to that effect that the trial is at its inception and none of the witnesses have been examined on behalf of any of the parties and in

that view of the matter if amendment is allowed no prejudice will be caused on that count also.

85. Further the learned trial court has taken into consideration the issue of prejudice by granting liberty to defendant no. 1 to file reply/ additional written statement.

86. Since the instant petition has been filed under Article 227 of the Constitution of India thus this Court also intends to go through the scope of Article 227 of the Constitution of India.

87. Dealing with the scope of Article 227 of the Constitution of India, Hon'ble Apex Court in the case of ***Shalini Shyam Shetty Vrs. Rajendra Shankar Patii***, reported in ***(2010) 8 SCC 329*** has been pleased to laid down therein regarding the scope of Article 227 which relates to the supervisory powers of the High Courts and by taking aid of the judgment rendered by the Hon'ble Full Bench of Calcutta High Court in the case of ***Dalmia Jain Airways Ltd. Vrs. Sukumar Mukherjee***, reported in ***AIR 1951 Calcutta 193***, wherein it has been laid down that Article 227 of the Constitution of India does not vest the High Court with limitless power which may be exercised at the court's discretion to remove the hardship of particular decisions. The power of superintendence confers power of a known and well recognized character and should be exercised on those

judicial principles which give it its character. In general words, the High Court's power of superintendence is a power to keep the subordinate courts within the bounds of the authority, to see that they do what their duty requires and that they do it in a legal manner.

88. The power of superintendence is not to be exercised unless there has been; (a) An unwarranted assumption of jurisdiction, not vested in a court or tribunal; or (b) gross abuse of jurisdiction; or (c) an unjustifiable refusal to exercise jurisdiction vested in courts or tribunals.

89. Further, in the aforesaid judgment the Hon'ble Apex Court has taken aid of a judgment rendered in the case of ***Mani Nariman Daruwala Vrs. Phiroz N. Bhatena***, reported in ***(1991) 3 SCC 141*** wherein it has been laid down that in exercise of jurisdiction under Article 227, the High Court can set aside or reverse finding of an inferior court or tribunal only in a case where there is no evidence or where no reasonable person could possibly have come to the conclusion which the court or tribunal has come to. The Hon'ble Apex Court has made it clear that except to this limited extent the High court has no jurisdiction to interfere with the finding of facts.

90. Further, the judgment rendered by the Hon'ble Apex Court in the case of ***Laxmikant Revchand Bhojwani Vrs.***

Pratapsing Mohansingh Pardeshi, reported in ***(1995) 6 SCC 576*** it has been laid down that the High Court under Article 227 cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. Its exercise must be restricted to grave dereliction of duty and flagrant abuse of fundamental principles of law and justice.

91. This Court, on the basis of the discussion made herein above and taking in to consideration of settled connotation of law, is of the considered view that the learned trial court has not committed any error in passing the impugned order dated 19.12.2022 warranting interference by this Court under Article 227 of the Constitution of India.

92. Accordingly, the Civil Miscellaneous Petition, being devoid of any merit, is hereby dismissed.

93. Mr. Atanu Banerjee, learned counsel has appeared by way of amicus curiae.

94. The learned Member Secretary, JHALSA is directed to ensure reimbursement of the fee to the Amicus as admissible.

(Sujit Narayan Prasad, J.)

Alankar/-
A.F.R.