HIGH COURT OF ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION No.314 of 2025

Between:

Daggubati Yeeswara Krishna Mohan

..... PETITIONER

AND

M. V. Satyanarayana Rao and 5 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **09.05.2025**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

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RAVI NATH TILHARI, J

* THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

+ CIVIL REVISION PETITION No.314 of 2025

% 09.05.2025

Daggubati Yeeswara Krishna Mohan

....Petitioner

Versus

$ M. V. Satyanarayana Rao and 5 others

....Respondents

! Counsel for the Petitioner: Sri M. R. S. Srinivas

^ Counsel for respondents : Sri Ch. Markondaiah

< Gist :

> Head Note:

? Cases Referred:

1. (2010) 8 SCC 1
2. 1993 (2) APLJ 435 (HC)
3. AIR 1965 SC 871
4. 1988 SCC OnLine Ker 335
5. (2011) 2 SCC 705
6. (2022) 19 SCC 806

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION No. 314 of 2025

JUDGMENT:

Heard Sri M. R. S. Srinivas, learned counsel for the petitioner and Sri Ch. Markondaiah, learned counsel for the respondents, and perused the material on record.

2. This civil revision petition under Article 227 of the Constitution of India has been filed by the 1st defendant in O.S.No.104 of 1995 (in short 'suit') pending in the Court of the V Additional Senior Civil Judge (Senior Division), Vijayawada (in short 'learned Court'). Muggula Ganga Ratnam, the mother of the present respondents No.1 to 6, filed O.S.No.104 of 1995 against Dhaggupati Yeeswara Krishna Mohan, 1st defendant in the suit/present petitioner for possession of the plaint schedule property and for future profits from the date of the suit till the date of delivery of possession after ejecting the 1st defendant and his tenants, with other consequential reliefs.

3. The plaintiff Muggula Ganga Ratnam died. The case of the 1st defendant in the suit/present petitioner was that the husband of the plaintiff Muggula Ganga Ratnam had entered into an agreement of sale with him.

4. Learned counsel for the petitioner submitted that the 2nd defendant in the suit/1st respondent herein filed I.A.No.539 of 2011 under Order 22 Rule 3 CPC to substitute the legal representatives in the place of the deceased plaintiff, I.A.No.540 of 2011 to set aside the abatement of the suit and I.A.No.541 of 2011 to transpose the 2nd defendant/1st respondent herein as plaintiff No.2 in

the suit. On the aforesaid I.As, notices were issued to the 1st defendant. He *inter alia* filed a memo in I.A.No.541 of 2011 and requested the Court for examination of the 2nd defendant/1st respondent herein, *inter alia,* on the point of the Will based on which the case of the 2nd defendant was for transposition as plaintiff No.2, that the plaintiff, the mother had executed a Will in favour of the 2nd defendant. The alleged Will in favour of the 2nd defendant was also disputed by some of the other defendants, the sisters. That memo was rejected by the learned Court.

5. Being aggrieved from the rejection of such memo, as also the notices issued in I.A.Nos.539 and 540 of 2011, the 1st defendant in the suit/the present petitioner filed three civil revision petitions, viz., CRP Nos.3697, 3893 and 4049 of 2012. Those three civil revision petitions were disposed of by the common Order dated 28.12.2017 by this Court, observing that since the legal representatives of the deceased plaintiff Muggula Ganga Ratnam were already on record as defendants No.2 to 7, there was no question of filing application under the Limitation Act or for substitution under Order 22 or for setting aside the abatement under Order 22 Rule 9 CPC and therefore, there was nothing to adjudicate upon those applications by the learned Court.

6. However, with respect to the application for transposition of the 2nd defendant as 2nd plaintiff is concerned, it was observed that, that was a dispute between the 2nd defendant and the other legal representatives. In fact, the suit for possession was practically between the 1st defendant and the late plaintiff's legal heirs so all were to be transposed, unless the 2nd defendant proved the

Will as contemplated by Section 63 of the Indian Succession Act; wherein, the 1st defendant had got a stake to oppose the Will, if at all, but for that there was nothing to entertain those revision petitions. Consequently, all those civil revision petitions were closed to pursue their remedies before the trial Court. It was observed that the revision petitions were closed for the trial Court only to adjudicate the *lis* covered by I.A.No.539 of 2012 while for transposing 2nd defendant or all the other defendants, the legal representatives of deceased plaintiff, as plaintiffs.

7. Learned counsel for the petitioner submitted that in fact I.A.No.539 of 2012 was a clerical mistake, it should have been I.A.No.541 of 2012, which was for transposition of the 2nd defendant as 2nd plaintiff.

8. The 1st defendant had also taken a plea that based on the agreement of sale, alleged to have been executed by the deceased husband of the plaintiff Muggula Ganga Ratnam, a suit for specific performance of contract being O.S.No.260 of 1994 was also filed. This Court in the aforesaid 3 revisions' order, observed that if the suit for specific performance was also in the same Court, the learned trial Judge shall conduct joint trial, as the whole contest of the 1st defendant in opposing the suit for possession was depending upon his entitlement to the relief for specific performance or not to record the evidence in the suit for specific performance. The trial Court was also directed to make every endeavor for early disposal of the application of transposition.

9. By the impugned Order dated 20.01.2025, now under challenge the I.A.No.541 of 2011 i.e., for transposition of the 2nd defendant as the 2nd

plaintiff, has been allowed, permitting to transpose the 2nd defendant as 2nd plaintiff and to carry out the necessary consequential amendments.

10. The learned trial Court has observed that so far as the dispute with respect to the Will is concerned, amongst the legal heirs, as also the petitioner, the 1st defendant in the suit that could be during the course of trial, considering the Order passed by this Court in previous 3 revision petitions. During trial, the petitioner/1st defendant shall also get chance to oppose the said Will, although it was further observed that the dispute of Will was among the legal heirs of the deceased plaintiff and the defendant No.1/petitioner was in no way related. The learned trial Court further observed that it was only the 2nd defendant who had filed application to transpose him as 2nd plaintiff though the defendants No.2 to 7 were the legal heirs of the deceased plaintiff. Those other legal representatives on record did not choose to file any application seeking their transposition as plaintiffs. The 2nd defendant who filed the application seeking his transposition as 2nd plaintiff, was basing his claim on the Will, said to be executed by the original plaintiff, the mother. The objection of the respondents was regarding legality and maintainability of the Will which was only with respect to the 2nd defendant and the other legal representatives. The learned Court further observed that since the validity or otherwise of the Will would be decided at the appropriate stage, transposing the 2nd defendant as 2nd plaintiff would not cause any prejudice to the other defendants. Moreover, transposing the 2nd defendant as 2nd plaintiff would be helpful to the

Court to come to a just conclusion in the suit in view of the death of the sole plaintiff Muggula Ganga Ratnam.

11. Learned counsel for the petitioner while challenging the impugned Order, submitted that for the transposition of the 2nd defendant as 2nd plaintiff, he was required to prove the Will as per the provisions of Section 63 of the Indian Succession Act read with Section 68 of the Indian Evidence Act. He submitted that in the previous round of litigation, by the common Order dated 28.12.2017 in CRP Nos.3697, 3893 and 4049 of 2012 also it was observed by this Court that all the legal representatives of the deceased plaintiff were to be transposed unless the 2nd defendant proved the Will. Consequently, he submitted that without the proof of the Will, the 2nd defendant alone could not be transposed as 2nd plaintiff and all the defendants, the legal representatives of the deceased plaintiff ought to have been transposed as plaintiffs in the place of the deceased plaintiff.

12. Learned counsel for the petitioner further submitted that the application for transposition was filed under Section 151 CPC, whereas there was specific provision for transposition under Order 23 Rule 1A of CPC, but the application was not filed therein, consequently, the application was not maintainable under Section 151 CPC and that it should have been rejected. He has placed reliance on the cases of ***Vinod Seth v. Devinder Bajaj***[1] and ***S. Anjaneyulu v. Soorampally Venkata Ramana Gupa***[2].

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[1] (2010) 8 SCC 1
[2] 1993 (2) APLJ 435 (HC)

13. Learned counsel for the respondents contended that the impugned Order does not suffer from any illegality. He submitted that the 2nd defendant was entitled to be transposed not only based on the Will in his favoiur by the plaintiff, but also being one of the legal representatives, being the son. He supported the impugned order. So far as the proof and the validity of the Will is concerned, he submitted that the same is subject matter of the trial, as has been rightly observed by the learned trial Court.

14. I have considered the aforesaid submissions and perused the material on record.

15. The point that arises for consideration is; Whether the impugned Order of transposition suffers from any illegality and calls for any interference?

16. It is undisputed that the 2nd defendant is also one of the legal representatives of the deceased plaintiff being her son though he is claiming his transposition based on the Will of the plaintiff in his favour. But, even if for the time being for the purposes of transposition to continue the suit, the Will is not taken into consideration, as the learned trial Court has rightly observed that the validity of the Will and its proof is to be considered during the course of trial, this Court is of the view that the 2nd defendant in his capacity even as one of the legal representatives being the son could be arrayed as 2nd plaintiff by transposition, to continue the suit in the place of the deceased plaintiff mother. The suit was filed only against the 1st defendant seeking relief and not against the other defendants, the legal representatives of the deceased plaintiff. The suit was not against defendants No.2 to 7. So, so far as the validity of the

Order impugned is concerned, for the purpose of transposition, in the absence of any dispute being raised by the 1st defendant, the petitioner herein, that the 2nd defendant is the son, there cannot be any illegality in the impugned order. It is not the case of the petitioner that the 2nd defendant is not the son of the plaintiff and therefore not her legal representative. So, further, proof of Will for transposition at this stage of the application for transposition was not required at all. For the purpose of transposition, to continue the suit, on the death of the sole plaintiff, the defendant No.2, son, one of the legal representatives, could be transposed, independent of the proof of Will.

17. So far as the submission of the learned counsel for the petitioner, based on Order 23 Rule 1A CPC is concerned and thereon, that Section 151 CPC could not be invoked to pass the impugned order, the same deserves rejection.

18. Order 23 Rule 1A CPC reads as under:

> **"1A. When transposition of defendants as plaintiffs may be permitted.**
> Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants."

19. Order 23 Rule 1A CPC gets attracts in two contingencies. When the plaintiff withdraws the suit and/or if the plaintiff abandons the suit. Then, the defendants or any of them who want to pursue the suit they have to proceed under Order 23 Rule 1A CPC for their transposition for the purpose of continuing the suit.

20. The word 'abandonment' means to give up with intent of never again to resume, ones right or interest.

21. As per "Black's Law Dictionary", the word 'abandonment' means, the **surrender**, **relinquishment**, disclaimer, or cession of property or of rights. **Voluntary relinquishment** of all right, title, claim and possession with the intention of not reclaiming it.

22. In ***Kanwar Singh v. Delhi Administration***[3] the contention raised was that to impound, under Section 418 of the Delhi Municipal Corporation Act 1957, an 'abandoned' cattle, abandoned implied the complete leaving of a thing as a final rejection of one's responsibilities so that the thing becomes ownerless. The Hon'ble Apex Court held that the meaning to be attached to the word 'abandoned' would depend upon the context in which it was used. It was further observed that it is the duty of the Court in construing a statute to give effect to the intention of the legislature. Paragraphs 11 and 12 of ***Kanwar Singh*** (supra) read as under:

> "**11.** A more serious contention of Mr Kohli, however is that under Section 418 cattle which the Corporation can impound, must be ownerless or tethered on any street or public place or land belonging to the Corporation. Admittedly the cattle in question were not tethered on any such place and, therefore, Mr Kohli contends that their seizure was not permissible. In support of his contention that "abandoned" implies the complete leaving of a thing as a final rejection of one's responsibilities so that the thing becomes "ownerless", Mr Kohli has referred us to the *Law Lexicon and Oxford Dictionary*. The meanings relied on by him are as follows:

[3] AIR 1965 SC 871

"A thing banned or denounced as forfeited or lost, whence to abandon, desert, or forsake as lost and gone."

Wharton's Law Lexicon.

"To let go, give up, renounce, leave off; to cease to hold, use or practise." *The Oxford English Dictionary*, Vol. I.

In the *Oxford Dictionary* the word is also said to mean "to let loose; to set free; to liberate". Several other meanings of the word have been given both in that dictionary as well as in *Wharton's Law Lexicon*. In the latter as also in Jowitt's *The Dictionary of English law* under "abandonment" are given cases from which it would appear that different meanings have been given to "abandonment" in different statutes.

12. It will thus be seen that the meaning to be attached to the word abandoned would depend upon the context in which it is used. In the context in which it occurs in Section 418(1), the meaning which can reasonably be attached to the word "abandoned" is 'let loose' in the sense of being 'left unattended' and certainly not 'ownerless'. It is the duty of the Court in construing a statute to give effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by the draftsman, particularly in a penal statute would defeat the object of the legislature, which is to suppress a mischief the Court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief, (see *Maxwell on Interpretation of Statutes*, 11th Edn. pp. 221-24 and 266). In the Act before us when the legislature used the word 'abandoned' it did not intend to say that the cattle must be ownerless. This is implicit in the proviso to sub-section (1) of Section 418 which says that anyone 'claiming' an animal which has been impounded under that sub-section can, within 7 days of seizure, get it released on fulfilling certain conditions. Such a claim could only be made by a person who is the owner of the animal impounded or who has at least the custody of the animal. We cannot, therefore, accept the first point raised by Mr Kohli."

23. In ***Madhavi Amma v. P. M. Sailaja***[4] the plaintiff therein was not conducting the suit properly and so defendant No.20 therein applied for transposition which was allowed by the trial Court. In that context, the Kerala High Court considered if that could be said an abandonment of the suit by plaintiff and observed as under:

> "**7.** Could it then be said that the plaintiff has abandoned the suit. The word 'abandoned', is not defired. It has therefore become necessary to define the word. The words "withdrawn" and "abandoned" are used alternatively. **That means the word 'abandoned' takes colour from the expression 'withdrawn'. 'Withdrawn' means to remove from the files of the court and thus prevent the cause being tried. If that be so, the word 'abandoned' means to give up with intent of never again resuming one's right or interest. Going by the pleadings in the petition**, it cannot be said that the 20th defendant has a case that the plaintiff has abandoned the suit. On the other hand the inference irresistable from the circumstances is that the plaintiff is not conducting the cases in the way in which it should be conducted from the point of view of the 20th defendant. That in my view is not a ground for transposition on the ground that the plaintiff has abandoned the suit."

24. The intention of the legislature in using the expressions 'abandoned' or and 'withdrawn' in Order 23 Rule 1A CPC is clear that it should be a voluntary act of the plaintiff. If the suit cannot be proceeded on account of death of plaintiff that cannot be voluntary act of the plaintiff so as to attract Order 23 Rule 1A CPC. For such a case, the legislature has specifically provided under Order 22 CPC.

25. On the death of the plaintiff, it cannot be said that the plaintiff abandoned the suit, nor that the suit was withdrawn. Ordinarily, on the death

[4] 1988 SCC OnLine Ker 335

of the plaintiff, the legal representatives, if the right to sue survives, shall apply for their substitution in place of the deceased plaintiff. However, in the present case, all those legal representatives were already on record as Defendants No.2 to 7. The plaintiff's suit, in fact, was not against those legal representatives, but only against the 1st defendant for whose eviction the suit was filed. If the defendants/legal representatives of the deceased plaintiff, seek their transposition, as plaintiff in the place of the deceased or anyone of them, it would not be a case of transposition under Order 23 Rule 1A CPC. They were already on record so, any application for substitution was also not required and the same had already been held in the previous CRP(s). The only thing was to continue the suit against the 1st defendant and for that, some of the legal representatives of the deceased on record as defendants No.2 to 7 had to be transposed as plaintiffs.

26. In ***S. Anjaneyulu*** (supra), upon which reliance has been placed by the petitioner's counsel, it was held that the defendant who wanted to continue the suit, like in the case of a suit for partition or a suit for dissolution of a partnership and for rendering of accounts, had no remedy under any of the Rules under Order 22 for setting aside of abatement so far as the deceased plaintiff was concerned. Therefore, the only recourse available to him was for continuing the suit, he had to apply for transposition as a plaintiff.

27. In the aforesaid case, the plaintiff died and the legal representatives were not coming forward being not interested. They did not make any application to bring them on record, in such circumstances, it was held that the

defendant who was interested in continuing the suit, had the remedy to apply for transposition. So, in case of death of the plaintiff if the legal representatives do not come forward to prosecute the suit, that might have been considered as abandonment of the suit by the legal representatives of the plaintiff, and so the remedy of the defendant to apply for transposition under Order 23 Rule 1A CPC. But, in the present case, defendant No.2, son of the deceased plaintiff has come forward for this transposition as plaintiff.

28. Section 151 CPC is as under:

> "**Section 151: Saving of inherent powers of Court.**
>
> Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

29. In ***Rajendra Prasad Gupta vs Prakash Chnadra Mishra***[5], the plaintiff filed an application to withdraw the suit. Afterwards he changed his mind and before an order could be passed he filed an application for withdrawal of the earlier application. The second application was dismissed and the order was upheld by the High Court taking the view that once the application for withdrawal of the suit was filed the suit stood dismissed as withdrawn even without any order on withdrawal application. The Hon'ble Apex Court did not agree with the said view of the High Court and set aside its order. The Hon'ble Apex Court held that the rules of procedure are handmaids of justice and every procedure was permitted to the court for doing justice unless expressly

[5] (2011) 2 SCC 705

prohibited and not that every procedure is prohibited unless expressly permitted. There was no express bar in filing an application for withdrawal of the withdrawal application. It is relevant to refer to paras 4 to 6 of ***Rajendra Prasad Gupta*** (supra), which are reproduced as under:

> "4. We do not agree. Rules of procedure are handmaids of justice. Section 151 of the Code of Civil Procedure gives inherent powers to the court to do justice. **That provision has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited, and not that every procedure is prohibited unless expressly permitted.** There is no express bar in filing an application for withdrawal of the withdrawal application.
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> 5. In Narsingh Das v. Mangal Dubey (ILR (1883) 5All 163), Mahmood, J. the celebrated Judge of the Allahabad High Court, observed:
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> **"Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed."**
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> 6. The above view was followed by a Full Bench of the Allahabad High Court in Raj Narain Saxena v. Bhim Sen and we agree with this view. Accordingly, we are of the opinion that the application praying for withdrawal of the withdrawal application was maintainable. We order accordingly."

30. In ***My Palace Mutually Aided Co-operative Society vs B. Mahesh***[6] on the scope of Section 151, CPC the Hon'ble Apex Court clearly observed that Section 151 CPC can only be applicable if there is no alternative remedy available in accordance with the existing provisions of law. Then it

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[6] (2022) 19 SCC 806

provides for civil courts to invoke their inherent jurisdiction and utilise the same to meet the ends of justice or to prevent abuse of process. Paras 25 to 28 are reproduced as under:

> "25. Section 151 CPC provides for civil courts to invoke their inherent jurisdiction and utilise the same to meet the ends of justice or to prevent abuse of process. Although such a provision is worded broadly, this Court has tempered the provision to limit its ambit to only those circumstances where certain procedural gaps exist, to ensure that substantive justice is not obliterated by hypertechnicalities.
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> 26. As far back as in 1961, this Court in Padam Sen v. State of U.P., observed as under: (SCC OnLine SC para 8)
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> "8.... The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore **it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature**. It is also well recognised that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code."
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> (emphasis supplied)
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> 27. In exercising powers under Section 151 CPC, it cannot be said that the civil courts can exercise substantive jurisdiction to unsettle already decided issues. A court having jurisdiction over the relevant subject-matter has the power to decide and may come either to a right or a wrong conclusion. Even if a wrong conclusion is arrived at or an incorrect decree is passed by the jurisdictional court, the same is binding on the parties until it is set aside by an appellate court or through other remedies provided in law.

> 28. Section 151 CPC can only be applicable if there is no alternative remedy available in accordance with the existing provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the Code. Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews. A party cannot find solace in Section 151 to allege and rectify historic wrongs and bypass procedural safeguards inbuilt in CPC."

31. In ***Vinod Seth*** (supra), upon which the learned counsel for the petitioner placed reliance, the Hon'ble Apex Court held that as there were specific provisions in the Code, relating to costs, security for costs and damages, the Court could not invoke Section 151 CPC on the ground that the same was necessary for the ends of justice.

32. Based on the said judgment, the contention of the petitioner's counsel was that as there was specific remedy under Order 23 Rule1A CPC, the Court could not have invoked its inherent power to allow the application for transposition.

33. In ***Vinod Seth*** (supra) on the scope of Section 151 CPC the Hon'ble Apex Court examined the issue as under in paragraphs No.27, 28, 29, 30, 31, 32 and 33.

> "**27.** We will next examine whether the power to make such an order can be traced to Section 151 of the Code, which reads:
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> "151. *Saving of inherent powers of court*.—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."
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> **28. As the provisions of the Code are not exhaustive, Section 151 is intended to apply where the Code does not cover any particular procedural**

aspect, and interests of justice require the exercise of power to cover a particular situation. Section 151 is not a provision of law conferring power to grant any kind of substantive relief. It is a procedural provision saving the inherent power of the court to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the court. It cannot be invoked with reference to a matter which is covered by a specific provision in the Code. It cannot be exercised in conflict with the general scheme and intent of the Code. It cannot be used either to create or recognise rights, or to create liabilities and obligations not contemplated by any law.

29. Considering the scope of Section 151, in *Padam Sen* v. *State of U.P.* [AIR 1961 SC 218 : (1961) 1 Cri LJ 322] , this Court observed: (AIR p. 219, paras 8-9)

"*8.* … The inherent powers of the court are in addition to the powers specifically conferred on the court by the Code. They are complementary to those powers and therefore it must be held that *the court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the legislature*. …

9. … The inherent powers saved by Section 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. *These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the courts for passing such orders which would affect such rights of a party*."

(emphasis supplied)

30. In *Manohar Lal Chopra* v. *Seth Hiralal* [AIR 1962 SC 527] this Court held: (AIR p. 533, para 21)

"*21.* … that the inherent powers are not in any way controlled by the provisions of the Code as has been specifically stated in Section 151 itself. But those powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the Code or against the intentions of the legislature."

31. In *Ram Chand and Sons Sugar Mills (P) Ltd.* v. *Kanhayalal Bhargava* [AIR 1966 SC 1899] this Court reiterated that the inherent power of the court is in addition to and complementary to the powers expressly conferred under the Code but that power will not be exercised if its exercise is inconsistent with, or comes into conflict with any of the powers expressly or by necessary implication conferred by the other provisions of the Code. Section 151 however is not intended to create a new procedure or any new right or obligation.

32. In *Nain Singh* v. *Koonwarjee* [(1970) 1 SCC 732 : AIR 1970 SC 997] this Court observed: (SCC p. 735, para 4)

"*4.* … Under the inherent power of courts recognised by Section 151 CPC, a court has no power to do that which is prohibited by the Code. Inherent jurisdiction of the court must be exercised subject to the rule that if the Code does contain specific provisions which would meet the necessities of the case, such provisions should be followed and inherent jurisdiction should not be invoked. In other words the court cannot make use of the special provisions of Section 151 of the Code where a party had his remedy provided elsewhere in the Code…."

33. A suit or proceeding initiated in accordance with law, cannot be considered as an abuse of the process of court, only on the ground that such suit or proceeding is likely to cause hardship or is likely to be rejected ultimately. As there are specific provisions in the Code, relating to costs, security for costs and damages, the court cannot invoke Section 151 on the ground that the same is necessary for the ends of justice. Therefore, we are of the view that a court trying a civil suit, cannot, in exercise of inherent power under Section 151 of the Code, make an interim order directing the plaintiff to file an undertaking that he will pay a sum directed by the court to the defendant as damages in case he fails in the suit."

34. In ***Vinod Seth*** (Supra) the Hon'ble Apex Court clearly held that as the provisions of the Code are not exhaustive, Section 151 was intended to apply where the Code does not cover any particular procedural aspect, and

interests of justice require the exercise of power to cover a particular situation. Section 151 was not a provision of law conferring power to grant any kind of substantive relief. It was a procedural provision saving the inherent power of the Court to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the Court. It cannot be invoked with reference to a matter which is covered by a specific provision in the Code. It cannot be exercised in conflict with the general scheme and intent of the Code. It cannot be used either to create or recognize rights, or to create liabilities and obligations not contemplated by any law.

35. The scope of Section 151 CPC is well settled. The inherent powers cannot be invoked by the Court when there is specific provision under the Code. It can also not be invoked if there is a contrary provision. But when there is no provision or no specific provision applicable to meet special situation, and there is also no prohibition, and the ends of justice require or to prevent the abuse of the process of the Court, it is so necessary, the Court can invoke the inherent power to achieve that end, saved by Section 151 CPC.

36. Since it is not a case of abandonment or withdrawn or substitution, this Court is certainly of the view that the learned trial Court, had the power to allow the application for transposition of the 2nd defendants as plaintiff, under its inherent power saved by Section 151 CPC. The contention of the learned counsel for the petitioner that in view of the specific provision under Order 23 Rule1A CPC the inherent powers could not be invoked under Section 151 CPC is unacceptable. This Court has already held that Order 23 Rule 1 A CPC is not

applicable. Any other specific provision for transposition in such circumstances could not be pointed out. Section 151 CPC, saves the inherent powers of the Court to make such order, as may be necessary for the ends of justice and to prevent the abuse of process of the Court.

37. In the fact situation of the present case, the learned trial Court has rightly invoked its inherent powers in the interests of justice and to prevent the abuse of the process of the Court, there being no specific provision to meet the situation and there being no prohibition as well.

38. This Court is of the view that for the purposes of transposition, the petitioner has no case to oppose. The entire endeavour of the petitioner appears to be not to transpose the 2nd defendant so that the suit may not proceed in the absence of plaintiff, as the sole plaintiff is already dead and the suit is for recovery of possession of the plaint schedule property after ejecting the 1st defendant and his tenants. The petitioner in such a way cannot be permitted to hamper and install the proceedings of the suit filed in the year 1995.

39. Thus, considered. I do not find any force in the civil revision petition which deserves to be dismissed.

40. The Civil Revision Petition is dismissed.

41. The learned trial Court shall make endeavour to decide the O.S.No.104 of 1995 expeditiously, as was also previously directed in CRP Nos. 3697, 3893 and 4049 of 2012, vide judgment dated 28.12.2017, preferably within a period of one year from the date of receipt of copy of this judgment.

42. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Date: 09.05.2025
Dsr

Note:
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