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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI****BEFORE****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**+ **CS(OS) 556/2008****MR. JANAK DATWANI**69, RUE DE LUCHLIEU,  
75002, PARIS.

....Plaintiff No.1

Also at.

6, Friends Colony (West)  
New Delhi.**CNA Exports Pvt. Ltd.**

Registered Office

D-1/25, Vasant Vihar,  
New Delhi

....Plaintiff No.2

*(Through: Mr. Anand Datwani, Director at P-2.)*

versus

**SH. ANAND DATWANI**32, SHIVAJI MARG,  
WESTEND GREENS  
RANGPURI  
New Delhi

.....Defendant No.1

**MR. KISHIN DATWANI**P/O BOX NO. 198  
MIDTOWN STATION  
NEW YORK  
NY 10018  
USA

.....Defendant No.2

**MRS. JAMNA DATWANI**

6, FRIENDS COLONY (WEST)



2025:DHC:7661



NEW DELHI.

.....Defendant No.3

**MRS. NITYA BHARANEY**  
71, GOLF LINKS  
NEW DELHI

.....Defendant No.4

**MRS. SUSHMA RAVIDASS**  
9, BROOKSIDE LANE  
MOUNT ARLINGTON  
NEW JERSEY 07856  
USA

.....Defendant No.5

**MRS. ASHA DEVI MOOLCHANDANI**  
E- 177, NARAINA VIHAR  
NEW DELHI

.....Defendant No.6

**M/S J.B. OVERSEAS PVT. LTD.**  
A-31 NARAINA INDUSTRIAL AREA  
PHASE 3  
NEW DELHI

.....Defendant No.7

**MR. KISHORE DATWANI**  
243, SECTOR 9,  
VIJAY NAGAR  
GHAZIABAD U.P.

.....Defendant No.8

**MR. C.S. BATRA**  
F-252 ANTRISH APARTMENTS  
SECTOR 4 EXTENSION  
ROHINI  
NEW DELHI

.....Defendant No.9

**MR. HIRA DATWANI**  
D-35 AVANTIKA,



2025:DHC:7661



ROHINI  
NEW DELHI

.....Defendant No.10

**PACIFICA INFRASTRUCTURE COMPANY PVT. LTD.**  
308, TOWER-A, KRISHNA APRA BUSINESS SQUARE,  
D-4,5, &6, NETAJI SUBASH PLACE  
DIST. CENTRE, WAZIRPUR,  
DELHI – I00034

.....Defendant No.11

*(Through: Mr. Abhinav Sharma, Adv for D-1.; Mr. Vivek Sharma,  
Ms. Mamta Gautam, Mr. Aditya Jain, Advs for Defendant/ Kishin  
Datwani)*

+ CM(M) 1376/2018

**JANAK DATWANI**  
69, RUE RICHELIEU,  
PARIS-75002, FRANCE

..... Petitioner

*(Through: Mr. Vinit Trehan, Advocate.)*

versus

**JAMNA DATWANI**  
6, FRIENDS COLONY (WEST)  
NEW DELHI

..... Respondent No.1

**C.N.A. EXPORTS PVT. LTD.**  
HAVING ITS REGISTERED OFFICE AT  
D - 1/25, VASANT VIHAR,  
NEW DELHI

..... Respondent No.2

**ANAND DATWANI**  
32, WESTAND GREEN-II,  
SHIVAJI MARG, RANGPURI,  
NEW DELHI

..... Respondent No.3



2025:DHC:7661



**KISHIN DATWANI**  
P/O BOX NO. 198,  
MIDTOWN STATION,  
NEW YORIC, NY 10018

..... Respondent No.4

**NITYA DATWANI NEE BHARNEY**  
71, GOLF LINKS,  
NEW DELHI

..... Respondent No.5

**SUSHMA RAVIDASS**  
502, PUSHPA KUNJ,  
'A' ROAD, CHURCHGATE  
MUMBAI  
9 BROOK SIDE LANE  
MOUNT ARLINGTON  
NEW JERSEY-07856  
U.S.A.

..... Respondent No.6

**ASHA DEVI MOOLCHANDANI**  
E-177, NARAINA VIHAR  
NEW DELHI

..... Respondent No.7

**JB OVERSEAS**  
HAVING ITS REGISTERED OFFICE AT:  
A-31, NARAINA INDUSTRIAL AREA,  
PHASE 3, NEW DELFII

..... Respondent No.8

**KISHORE DATWANI**  
243, SECTOR 9,  
VIJAYNAGAR,  
GHAZIABAD, U.P

..... Respondent No.9

**C.S BATRA**  
F-252, ANTRIKSH APARTMENT  
SECTOR 4 EXTENSION, ROHINI



2025:DHC:7661



NEW DELHI- 110085

..... Respondent No.10

**HIRA DATWANI**

D-35, AVANTIKA,

ROHINI, NEW DELHI

..... Respondent No.11

**PACIFICA INFRASTRUCTURE PVT. LTD.**

308, TOWER - A, KRISHNA APRA BUSINESS CENTRE,

D-4, 5 AND 6, NETAJI SUBHASH PALACE,

DISTRICT CENTRE, WAZIRPUR,

DELHI – 110034

..... Respondent No.12

(Through: Mr. Vivek Sharma, Ms. Mamta Gautam, Mr. Aditya Jain,  
Adv for Defendant/ Kishin Datwani. ; Mr. Abhinav Sharma, Adv for  
Mr. Anand Datwani, Adocate.)

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Reserved on: 05.08.2025

Pronounced on: 28.08.2025  
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### **JUDGMENT**

**I.A. 5453/2025 (by defendant no.1/Anand Datwani – for dismissal of the suit) in CS(OS)-556/2008 and CM(M)-1376/2018 (for transposition of defendant no.3/Janak Datwani as plaintiff in the instant suit)**

1. Heard learned counsel appearing for the parties on I.A. 5453/2025, which is an application under Section 151 of the Code of Civil Procedure, 1908 (CPC), filed on behalf of the defendant no.1 seeking dismissal of the suit. The parties have also been heard on CM(M)-1376/2018, which is a petition under Article 227 of the Constitution of India, filed by the defendant no.3 therein, against the order of the Trial Court, whereby his application for transposition as plaintiff was rejected.



2. Mr. Anand Datwani (Defendant no.1), party appearing in person, has advanced the following broad submissions:-

- a. The original Plaintiff No.1, i.e., late Mrs. Jamna Datwani, passed away on 30.01.2025, and that late Mrs. Jamna Datwani during her lifetime had executed a Registered Will dated 06.12.2018, duly registered vide Registration No. 1233 in Book No.3, Vol. No.61 on pages 140 to 143 dated 06.12.2018, before the concerned Sub-Registrar;
- b. By way of the said Registered Will dated 06.12.2018, the original Plaintiff No.1 had nominated Defendant No.1 to be the sole legal representative of the original Plaintiff No.1 before any and all legal forums and Courts of law, including the present suit;
- c. The original Plaintiffs (his late mother and the family company) had initially filed the above-captioned suit for declaration and injunction against all the Defendants and in particular against Defendant No.1;
- d. That the suit had been filed at the behest and under the misguidance of Defendant No.3, i.e., Janak Datwani, who had orchestrated the filing of several false and frivolous suits against Defendant No.1 and Plaintiff No.2;
- e. By way of the present suit, the Plaintiffs had *inter alia* sought to declare the gift deed and transfer deeds executed by the original Plaintiff No.1 in favour of Defendant No.1, transferring the shareholding in Plaintiff No.2-company, to be null and void.
- f. After the original Plaintiff No.1, when she was alive, learnt about the mischievous deeds of Defendant No.3, and accordingly sought to withdraw the instant suit, the same was objected to by defendant no.3



through various frivolous objections, and therefore, for the said reason, she decided to continue with the suit to take it to its logical conclusion;

- g. It is submitted that Defendant No.3/Janak Datwani, by poisoning the mind of Plaintiff No.1, late mother of Defendants Nos.1 to 4, had succeeded in having the present suit instituted against Defendant No.1, where her signature was affixed, without having explicit knowledge of the false and frivolous contents of the Plaint, or that she was affixing her signature on a suit wherein she was also representing Plaintiff No.2;
- h. Mr. Anshu Mahajan, Advocate for Plaintiff No.1, was also appointed by Defendant No.3, Janak Datwani, through his own Advocate, Mr. Vikas Agarwal, whose practice is closely associated with Mr. Anshu Mahajan, Advocate, and to the best of the knowledge of Defendant No.1, the fees of the said counsel were also solely borne by Defendant No.3.
- i. Pursuant to the filing of the suit, Plaintiff No.1 appeared in person on 24.09.2011 for carrying out admission/denial of the documents filed by Defendant No.1. Plaintiff No.1 admitted 108 documents filed by Defendant No.1, which were exhibited as D-1 to D-108. Pertinently, Plaintiff No.1 admitted the Gift Deeds and Share Transfer Form, which had been sought to be declared as null and void in the suit. Admittedly, Plaintiff No.1 was the author/executor of the said documents, viz. Gift Deeds and Transfer Forms dated 10.01.1998 and 23.03.1998, which were duly witnessed by her husband and family patriarch, late Sh. Jamnadas Datwani.



- j. Thus, the entire edifice of the suit stood nullified once the said documents of share transfers made in favour of Defendant No.1 were admitted by Plaintiff No.1. This is because the suit had been instituted with the allegations that Defendant No.1 had forged, fabricated, and manipulated the signatures of Plaintiff No.1.
- k. That apart, Plaintiff No.1 was examined under Order 10 of CPC read with Section 151 and 165 of the Evidence Act before the Ld. Additional District Judge on 01.06.2018, wherein Plaintiff No.1 again affirmed the fact that the Share Transfer Forms and Gift Deeds bore her signature. Plaintiff No.1 also stated that the suit had been filed at the instance of Mr. Janak Datwani and that Mr. Janak Datwani had misguided her.
- l. That thereafter, during the course of the proceedings in all the connected suits, on 01.11.2023, Plaintiff No.1 herein, Late Mrs. Jamna Datwani, had herself appeared in Court and categorically stated that she did not wish to adduce any evidence in the present suit and prayed that the evidence of the Plaintiff be closed. The said statement of Plaintiff No.1 was taken on record and is also reflected in the order dated 06.11.2023, passed by the Ld. Jt. Registrar.
- m. That Plaintiff No.1 had made non-rebuttable admissions which warrant the dismissal of the suit, and therefore, the pendency of the present suit is nothing but a gross abuse of the process of law.
- n. Notwithstanding the fact that the Plaintiffs have made categorical and unambiguous admissions in the present proceedings, it is reiterated that in light of the Registered Will dated 06.12.2018, the right to sue does not survive since the primary relief has been claimed against





Defendant No.1. Since Defendant No. 1 has been nominated by Original Plaintiff No.1 as her sole legal representative, the suit has become infructuous and thus, liable to be dismissed.

- o. Moreover, Defendant No.3 has already instituted separate suits, viz. CS(OS) No.1113 of 2007, CS(OS) No.1798 of 2011, and CS(OS) No.244 of 2013 for safeguarding his interest in the shareholding of Plaintiff No.2 company. Therefore, no prejudice shall be caused to Defendant No.3 or any other Defendants if the present suit is dismissed.

3. Vehemently rejecting the submissions advanced on behalf of Defendant No.1, Mr. Vinit Trehan, learned counsel appearing on behalf of Defendant No.3, has advanced the following broad submissions:-

- a. The instant suit is representative in nature, and cannot be dismissed on account of the death of the Plaintiff (late Mrs. Jamna Datwani), while petitions and applications filed by the Defendant(s) seeking transposition as the Plaintiff are still pending adjudication;
- b. A bare perusal of the instant suit reflects that the said suit has been instituted primarily in the representative capacity of all family members/shareholders of CNA Exports Pvt. Ltd, whose shareholding was attempted to be usurped by Defendant No.1/Anand Datwani by creating forged and fabricated documentation;
- c. The suit is a comprehensive civil action, wherein the Original Plaintiff not only sought a declaration concerning her shareholding but also sought relief in respect of the shareholding of the other shareholders, including Defendant No.3 herein;
- d. Therefore, being a Representative Suit, it affects the rights of all other



- shareholders, and not only the Original Plaintiff;
- e. Thus, this representative suit may not be dismissed on account of death of the Original Plaintiff, since it concerns not only her but also the shareholding of other shareholders;
  - f. On merits, it is submitted that a report from the Central Forensic Science Laboratory (CFSL) dated 17.09.2009 was brought on record, which unequivocally concluded that the signatures of Ms. Nitya Bharany had been forged and fabricated;
  - g. Pursuant to the same, Defendant No.1/Anand Datwani approached the Original Plaintiff, manipulated her, and made her enter into a compromise agreement based on false promises. Owing to this compromise, the Original Plaintiff filed two withdrawal applications bearing I.A. No. 16086/2009 and 1231/2010. Upon learning about the alleged compromise between the Original Plaintiff (now deceased) and Defendant No.1/Anand Datwani, the Defendant No.3 moved an I.A. bearing No. 732/2011 seeking transposition as the Plaintiff in the said suit, which was accordingly allowed *vide* order dated 03.01.2013;
  - h. As the Defendant No.3 was seeking transposition, the Plaintiff, under the influence of Defendant No.1/Anand Datwani, retracted her withdrawal applications and made a statement on oath, in her Rejoinder, that she would bring the true facts before the Court;
  - i. Simultaneously, an appeal was preferred against the aforesaid order dated 03.01.2013, and the Division Bench, based on the statement given by the Original Plaintiff (now deceased) to diligently pursue the suit and place true facts, modified the order and reversed the transposition *vide* order dated 30.07.2013;



- j. However, despite making such a statement on oath and undertaking to pursue the suit and place true facts, the Original Plaintiff abandoned her suit. Therefore, Defendant No.3, being left with no other option, filed another transposition application before the Ld. ADJ, Patiala House Courts (hereinafter referred as “the Ld. Trial Judge”). Pertinently, the said application was dismissed. Therefore, the Defendant immediately preferred C.M. (MAIN) 1376/2018 before this Court.
- k. That a Plaintiff in a representative suit cannot unilaterally enter into a compromise to the detriment of other beneficiaries without obtaining their express consent;
- l. Therefore, the Original Plaintiff could not have legally conferred such exclusive rights upon Defendant No.1 without the concurrence of the other beneficiary parties to the suit;
- m. The Registered Will dated 06.12.2018, duly registered at No.1233 in Book 3, Vol. No.61 on pages 140 to 143 dated 06.12.2018 nominating the Defendant No.1 (Mr. Anand Datwani) to be the sole legal representative of the Plaintiff (now deceased) before any and all legal forums and Courts of law, is fraudulent and has been obtained via coercion and illegal means and ought to be declared *non-est*.
- n. The assertions made by Defendant no.1, based on the will, are wholly inconsistent with the admitted fact that the said suit was filed by the Original Plaintiff in a representative capacity against Defendant No.1, a person who is now seeking substitution as Plaintiff based on the alleged Will.
- o. This, therefore, demonstrates that the alleged Will does not represent



the true intent of the Original Plaintiff, and is rather a calculated attempt by Defendant No.1 to exert undue control over all legal proceedings, in furtherance of his intention of acquiring wrongful gains, an intention that is patently clear from his past conduct.

- p. In the absence of compliance with the mandatory requirements for substitution of legal heirs, or the probate of the alleged Will, the present assertion that the main Defendant/Defendant No.1 is the sole legal heir is not maintainable and cannot be entertained. Various other contentions as to the mental and physical capacity of the plaintiff since 2018 were also advanced;
  - q. That the Original Plaintiff was subjected to intimidation by Defendant No.1, as evident from her coerced withdrawal application, followed by her subsequent retraction of the said withdrawal;
  - r. Reference was also made to the Letter dated 25.01.2000 written by Late Mr. Jamnadas Datwani to Kumar Datwani and the Email dated 08.04.2008 by Mrs. Geeti Bhagat Datwani to Defendant No.3, for the purpose of establishing the conduct of the parties;
  - s. The conduct of the Defendant No.1/Anand Datwani is driven by *malafide* intention to abuse the process of law and frustrate the rights of other shareholders, and to prevent them from assuming the position of the Plaintiff (now deceased);
  - t. The Original Plaintiff has, at no point on record, clearly or unequivocally expressed any intent to seek dismissal of the said suit. Moreover, she had given a categorical assurance that she would diligently pursue the said suit.
4. I have heard learned counsel for the parties, and have perused the



record.

5. The present application, I.A. No. 5453/2025, filed by Defendant No.1 seeking dismissal of the suit in CS(OS) No. 556/2008, and the petition, CM(M) No. 1376/2018, filed by Defendant No.3 seeking transposition as Plaintiff in the same suit, are heard and being disposed of together, as their subject matters are inter-connected, and acceding to the prayer made in one would necessitate the dismissal of the other.

6. The case of the applicant/Defendant No. 1 in I.A. No. 5453/2025 is that he holds a registered will dated 06.12.2018, registered *vide* Registration No. 1233 in Book No. 3, Vol. No. 61 on pages 140 to 143 before the concerned Sub-Registrar, and as per the said Will, Plaintiff No. 1 nominated Defendant No. 1 as her sole legal representative before any and all legal forums and Courts of law, including the present suit. The relevant portion of the Will is culled out hereunder: -

*“3. I nominate my son Mr. Anand (Anu) Datwani who has assisted me in all my Legal affairs since December 2009 to be my Sole Legal Representative, before any and all Legal Forums and Courts of Law. My son Mr. Anand (Anu) Datwani and no other person shall be my Sole Legal representative wherever I am the Plaintiff (including Suit No. 556 of 2008, re-numbered as 57827 of 2016 currently pending at Patiala House Court, New Delhi), wherever I am the Defendant (including Suit Nos. 118 of 2007 & 1113 of 2007 re-numbered in 2016 at Patiala House Court, New Delhi) & where I am the Complainant (against my son Mr. Janak Datwani in domestic violence complaint lodged in 2010 at Saket Court, New Delhi). My son Mr. Anand (Anu) Datwani shall be my sole Legal Representative in any litigation before any and all Courts of Law, either in the past or in future which may be filed by me or against me.”*

7. Against the same, Defendant No.3, who is the contesting defendant, seeks the dismissal of the application as well as his impleadment as the plaintiff in the instant matter. For the said purpose, the contesting defendant



appears to have filed an application before the Id. Trial Court, which was rejected *vide* order dated 01.06.2018, against which the instant CM(M) No. 1376/2018 has been filed.

8. The issue warranting adjudication is whether the present suit is liable to be dismissed on the ground that the Defendant No. 1 stood as the duly nominated legal representative of the deceased Plaintiff, thereby vesting in him the authority to act in her stead. Conversely, the issue that requires adjudication is whether the suit, by virtue of it being a representative suit, permits the transposition of parties in a manner that would enable Defendant No. 3 to be impleaded as the Plaintiff therein.

9. The case advanced by Defendant No. 1 is premised upon two principal grounds:-

- a. *Firstly*, that a registered Will executed in his favour by the deceased Plaintiff confers upon him the authority to withdraw the suit; and
- b. *Secondly*, that the deceased Plaintiff, during her lifetime, had accepted certain documents, including the documents sought to be declared null and void, and had endeavoured to withdraw the suit as no cause of action survived for adjudication.

10. Accordingly, on this footing, dismissal of the suit is sought under the provisions of Order XII Rule 6 of the CPC.

11. With respect to the first limb of the contention advanced by Defendant No. 1, predicated upon the existence of a registered Will executed in his favour, it is trite law that mere registration of Will engenders no more than a presumption as to its genuineness, which is rebuttable. In the absence of a decree from a competent Court granting Letters of Administration or



Probate, or both, as may be requisite, the contents of the Will could confer no enforceable rights upon Defendant No. 1 to act thereunder or to seek any relief premised thereon. On this aspect, reference can be made to the decision of the Supreme Court in the case of ***Dhani Ram (died) through LRs & Ors vs Shiv Singh***<sup>1</sup>.

12. Accordingly, in the absence of a decree from a competent Court granting probate or letters of administration in respect of the Will dated 06.12.2018 to Defendant No. 1, the bequeathment therein shall not confer any enforceable indefeasible legal right, more so when the other legal heirs of the testatrix are vigorously contesting the authenticity and validity of the said Will, thereby casting upon Defendant No. 1 the burden to prove the genuineness of the same by obtaining such a decree. It would be wholly impermissible to render the entire suit as infructuous on the basis of the Will, which has not been proved in accordance with the law.

13. I may now come to the second limb of the contention advanced by Defendant No. 1, that the deceased Plaintiff had admitted certain documents and expressed an intent to withdraw the suit, thereby warranting dismissal of the instant civil suit under Order XII Rule 6 of CPC. The contention appears to be premised upon the Plaintiff's admission of specific documents during the process of admission/denial of documents. According to Defendant No. 1, these documents were initially impugned by the Plaintiff on grounds of forgery and manipulation, and thus, the admission of the contested documents would render any examination or adjudication as unnecessary.

14. However, it is pertinent to note that the original plaintiff had varied her stance multiple times, as pointed out by the learned counsel for the

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<sup>1</sup> 2023 SCC OnLine SC 1263



defendant no.3. The attention of this Court has been drawn to her Written Statement to the Amended Complaint filed in CS(OS) 4061/1991 on 24.01.1998, wherein she unequivocally admitted that Defendant No. 3 held a 13.33% shareholding in CNA Exports Pvt. Ltd., and this Written Statement was filed just 14 days after the alleged gift deed dated 10.01.1998. Evidently, the bequeathment under the Will and the averments made in the Written Statement are at variance, and thus, it could not be termed as a case of consistent stand.

15. Although the Original Plaintiff initially filed an application seeking withdrawal of the suit, she, for various reasons, later retracted the said application and made a conscious and voluntary statement before the Court expressing her intent to bring the true facts on record. She never made any subsequent attempt to withdraw the suit again.

16. Notably, while on one hand, she is alleged to have admitted the Gift Deed dated 10.01.1998, purportedly transferring her shareholding in favour of Defendant No. 1; on the other hand, she is stated to have deposed before the Learned Magistrate at the Saket Mahila Court that the said gift was made to Defendant No. 1 in the year 2009. This contradiction demonstrates that her position remained unclear and unstable throughout the pendency of the suit. Thus, there are various ambiguous positions taken by the deceased plaintiff. The law on Order XII Rule 6 of CPC has been elaborated in various decisions, including the decision of the Supreme Court in *Himani Alloys Ltd. v. Tata Steel Ltd*<sup>2</sup>, wherein the Court noted that the nature of an admission made under Order XII Rule 6 of CPC has to be categorical, conscious and deliberate act of the party making it, showing an intention to





be bound by it. Based on the material placed on record and the contentions advanced, the intention of the plaintiff, at best, was fluctuating, and thus, on the same, the application under Order XII Rule 6 cannot be allowed. The relevant portion of ***Himani Alloys Ltd.*** reads as under:-

*“11. It is true that a judgment can be given on an “admission” contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear “admission” which can be acted upon. (See also Uttam Singh Duggal & Co. Ltd. v. United Bank of India [(2000) 7 SCC 120] , Karam Kapahi v. Lal Chand Public Charitable Trust [(2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262] and Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha [(2010) 6 SCC 601 : (2010) 2 SCC (Civ) 745] .) There is no such admission in this case.”*

17. Furthermore, the Court cannot lose sight of the fact that both parties have alleged the exercise of undue influence on the deceased plaintiff and have contended that her acts were driven by such influence. Without expressing any opinion on this aspect, suffice to note that the positions taken by the parties raise a doubt regarding the voluntary nature of the admissions made by the plaintiff, in addition to the concerns expressed above.

18. As regards the contention advanced by Defendant No. 1 that multiple other suits are pending against him, instituted by Defendant No. 3, and that the continuance of the present suit serves no efficacious purpose, it is

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<sup>2</sup> (2011) 15 SCC 273



apposite to observe that the mere pendency of legal proceedings *inter se* the same or similar parties does not constitute a valid ground for dismissal of a suit unless specific statutory prerequisites or legal ingredients warranting such dismissal are duly demonstrated. For instance, under Section 11 of CPC, the doctrine of *res judicata* operates as a bar only where a previous suit has been finally adjudicated on merits by a competent Court, involving the same parties and cause of action. Similarly, Section 10 CPC provides solely for a stay of proceedings in cases of previously instituted suits on identical issues, but not outright dismissal, as emphasized in *Aspi Jal v. Khushroo Rustom Dadyburjor*<sup>3</sup>. Absent any demonstration of such bars, such as identity of cause of action, finality of prior adjudication, or abuse of process under inherent powers per Section 151 CPC, this ground cannot be acceded to, as multiplicity of suits on distinct or overlapping claims does not *per se* vitiate maintainability.

19. Furthermore, there inheres an intrinsic conflict in the stance adopted by Defendant No. 1, who seeks dismissal of the suit predicated upon such admissions, while simultaneously endeavouring to substitute himself in the Plaintiff's stead on the basis of a Will that has not been subjected to probate or the grant of Letters of Administration. Evidently, the effort to step into the shoes of the original plaintiff is a fallback option, to be utilized for effecting withdrawal of the suit in case the prayer for the dismissal of the suit is rejected. It is clearly an endeavour to achieve indirectly what could not be achieved directly. Be that as it may, the entire basis of seeking such substitution is a document which has not been proved in accordance with the law and whose genuineness itself is a matter of dispute between the parties.

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<sup>3</sup> (2013) 4 SCC 333



Accordingly, the substitution cannot be allowed either.

20. Thus, in view of the aforesaid, the Court deems it appropriate to let the suit continue in the present form.

21. Therefore, the instant application, being I.A. 5453/2025, stands dismissed.

22. With respect to the contention advanced by Defendant No. 3/Janak Datwani in CM(M) No. 1376/2018<sup>4</sup>, seeking transposition as Plaintiff in the instant suit on the pretext that the Original Plaintiff had instituted the suit for the benefit of the defendants (being her children), thereby rendering it a representative suit, the Court is not inclined to accede to the same.

23. A perusal of the impugned order dated 01.06.2018 reveals that a similar application for transposition, filed by Defendant No. 3, had previously been dismissed by this Court *vide* its decision in **CNA Exports Pvt. Ltd. v. Dayal D. Shahdadpuri**<sup>5</sup>. The Court noted that the application lacked merit, as it failed to establish any new or compelling grounds warranting transposition, particularly in light of the prior adjudication on the same issue. The relevant portion of the order dated 01.06.2018 reads as under:-

*“10. Defendant no.3 has moved an application u/o 23 Rule 1A and Order 1 Rule 10 r/w Section 151 CPC for his transposition as a plaintiff.*

*11. No notice of this application has been issued to the other parties.*

*12. I have heard arguments on this application. I have gone through the file. Earlier also defendant no.3 filed an application for his transposition as a plaintiff which was dismissed vide order dated 30.07.2013 passed by High Court of Delhi in FAO (OS) 60/2013 titled as Anand Datwani Vs. Janak Datwani. I find no merit in the application. The same is dismissed in limine with costs of Rs.20,000/- to*

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<sup>4</sup> For clarity, Mr. Janak Datwani is the petitioner in CM(M) No. 1376/2018 and Defendant No. 3 in the original Suit.

<sup>5</sup> 2013 SCC OnLine Del 2895



*be deposited in PMRF.”*

24. Referring to the decision rendered by this Court in **CNA Exports Pvt. Ltd. v. Dayal D. Shahdarpuri**, more particularly paragraph 11 thereof, it would appear that Smt. Jamna Datwani had preferred two applications seeking withdrawal of the suit, which were subsequently retracted. The Court in **CNA Exports Pvt. Ltd.** noted that the counsel for Smt. Jamna Datwani had made a statement on 23.02.2012, clarifying that she did not wish to withdraw the suit. In light of these facts, the Court therein opined that the direction to transpose Janak Datwani as the plaintiff in Suit No. 556/2008 was not warranted. The relevant portion of the said decision reads as under:-

*“11. So far as the submission of the appellant, vis-a-vis the order pertaining to the carriage of Suit No.556/2008 is concerned, the previous narrative would disclose that Jamna Datwani preferred two applications seeking to withdraw the suit, which were later withdrawn. Counsel had made a statement on 23rd February, 2012 clarifying that the plaintiff – Smt. Jamna Datwani - did not wish to withdraw the suit. The impugned order discusses the other parties’ submissions with regard to the plaintiff’s (Jamuna Datwani’s) abandonment of the suit, but does not attach much importance to her withdrawal of the two applications. In the light of these facts, this Court feels that the impugned order directed to transpose of Janak Datwani as the plaintiff in suit No.556/2008 was not called for.”*

25. Thus, as on the date the impugned order dated 01.06.2018 was rendered, the order suffers from no infirmity which warrants interference under the supervisory jurisdiction conferred by Article 227 of the Constitution of India. The scope of Article 227 is well-settled as one of superintendence over subordinate Courts and Tribunals, exercisable sparingly and only in cases of grave dereliction of duty, jurisdictional error, perversity, or patent illegality resulting in manifest injustice or flagrant



violation of natural justice principles. On this aspect, reference may be made to the decision of the Supreme Court in *Surya Dev Rai v. Ram Chander Rai*<sup>6</sup>.

26. It is settled law that under Article 227, the Court does not function as an appellate forum to re-appreciate evidence or substitute the view of the subordinate Court merely because a different conclusion is possible. Rather, it is envisaged to be a corrective mechanism to prevent abuse of process or miscarriage of justice. In the instant case, the impugned order rightly dismissed the application for transposition under Order XXIII Rule 1A and Order I Rule 10 read with Section 151 of CPC, noting that a similar plea had been previously rejected by this Court in *CNA Exports Pvt. Ltd. v. Dayal D. Shahdarpuri*.

27. The impugned order indicates appreciation of the earlier directions and has rejected the application for transposition in the absence of new grounds justifying the same. Thus, the Court is of the considered opinion that the impugned order is without any procedural irregularity or substantive error apparent on the face of the record.

28. Absent any demonstrable jurisdictional overreach, arbitrariness, or failure to exercise jurisdiction vested in the Court, no valid ground exists under Article 227 to interfere with the impugned order, and the petition is accordingly dismissed.

29. Even on merits, the contention that the instant suit qualifies as a representative suit, and therefore, warrants the transposition as plaintiff, does not withstand the test as prescribed under Order I Rule 8 of CPC.

30. The Code prescribes stringent conditions precedent for a suit to

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<sup>6</sup> (2003) 6 SCC 675



proceed in a representative capacity, including an express application or prayer seeking permission to sue or defend on behalf of others, the grant of leave by the Court, and the mandatory issuance of notice to all interested persons under Sub-rule (2) to enable their participation, if desired.

31. In the present case, the record is bereft of any indication that such a prayer was advanced or that the requisite permission was obtained, rendering the suit incapable of being treated as representative in nature and precluding the requested transposition. The character of the suit cannot be changed without due compliance with the statutory requirements. On this aspect, reference may be drawn to the decision of this Court in **Anang Pal v. Union of India**<sup>7</sup>, which reads as under:-

*“19. Under Rule 8(1)(a) the grant of permission to an applicant to sue in a representative capacity is the first step in a representative suit. The next step after grant of the permission is to give notice of the institution of the suit to all the persons who may be interested in the subject matter of the suit. That is the mandatory requirement of Rule 8(2) which in the present case has not been complied with. The purpose of giving such a public notice is to invite the attention of all the persons, who may be equally interested in the outcome of the litigation as the parties already on record, to the fact that some person had been permitted to sue in a representative capacity on their behalf, so that they can also come forward to participate in the proceedings, if they so desire, since under Rule 8(6) of Order 1, CPC the decree passed in a representative suit binds not only the parties on record but all others on whose behalf and for whose benefit the suit was instituted. In this regard reference can be made to a Division Bench judgment of this Court in Subhash Market Association v. Municipal Corporation of Delhi, AIR 2005 Delhi 209, wherein also the requirement of issuance of public notice under Rule 8(2) came to be considered and this is what the Bench had observed:*

*“.....Sub-rule (2) of Rule 8 of Order 1 of the Code of Civil Procedure mandates that the Court in all cases where permission or direction is given under Sub-rule (1) to allow one more such persons to sue or be sued, or may defend such suit, on behalf of or for the benefit of all persons so interested, to give notice of*

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<sup>7</sup> 2009 SCC OnLine Del 3104



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*institution of the suit to all persons so interested either by personal service or by public advertisement.”*

32. In light of the foregoing, the CM(M) No. 1376/2018 is also liable to be dismissed. Consequently, the prayer to transpose the defendant as plaintiff, premised on the contention that the suit is representative in nature, is held to be misguided and thus rejected. The date already fixed before the concerned Joint Registrar on 01.09.2025 in CM(M) No. 1376/2018, stands cancelled.

33. However, the defendant(s) are at liberty to take appropriate steps in accordance with law, in the event they seek to transpose themselves as plaintiff(s).

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34. Let the matter to continue before the concerned Joint Registrar on the date already fixed, i.e., 01.09.2025.

**PURUSHAINdra KUMAR KAURAV, J**

**AUGUST 28, 2025**

aks/sp