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

Reserved on: 05.11.2026
Date of Decision: 23.11.2026
Date of Uploading: 23.11.2026

\# **CNR No. DLHC010443662026**

\+ CM(M) 2061/2026, CM APPL. 62420/2026, CM APPL. 62422/2026 & CM APPL. 71466/2026

DR. SUBALAKSHMI PALAYAN .....Petitioner

Through: Ms. Manpreet Kaur and Ms. Jaya Goyal, Advs.

versus

R. RAJALAKSHMI AND ORS .....Respondents

Through: Mr. Amit Bardhan Mohanty, Adv. for R-1
Mr. Anand Yadav and Mr. Y.R. Sharma, Advs. for R-3 & 4

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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1. The present petition impugns an order dated 14.08.2026 passed by learned Civil Judge-07, Central, Tis Hazari Courts, Delhi[1], in CS SCJ No. 1054/2016, titled *"Dr. Subalakshmi Palayan Vs. R. Rajalakshmi & Anr."*, whereby the petitioner's application under Order VI Rule 17 read with Section 151, 152, and 153 of the Code of Civil Procedure, 1908[2], for correction of the details of the suit

[1]Hereinafter 'Trial Court'
[2]Hereinafter 'CPC'

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property in the plaint and in the preliminary decree dated 22.08.2015, was dismissed.

2. The petitioner, who was the original plaintiff before the learned Trial Court, instituted a suit for partition and rendition of accounts against respondent nos. 1 and 2. The petitioner and her deceased brother, late Mr. R. Kumar, along with respondent no. 1, R. Rajalakshmi, and respondent no. 2, Mr. Vasudevan, are the children of late Mr. and Mrs. Ramamurthy, who died intestate on 10.03.1973 and 26.10.1989, respectively, leaving behind movable and immovable properties.

3. The suit was initially instituted before this Court as Suit No. 4271/1992 and was subsequently transferred to the District Courts on 22.07.1993. Respondent no. 1 contested the suit, claiming the property to be her self-acquired asset, while respondent no. 2 was proceeded *ex-parte*. After framing of issues and completion of evidence, the learned Trial Court, *vide* judgment and preliminary decree dated 22.08.2015, declared the petitioner, her deceased brother and respondent nos. 1 and 2 entitled to equal 1/4th shares in the suit property. Further proceedings were directed for partition by metes and bounds and ascertainment of rent. A Local Commissioner was appointed to examine the feasibility of partition, who submitted his report on 04.12.2015.

4. Thereafter, respondent no. 1's application seeking setting aside of the preliminary decree and the *ex-parte* orders were dismissed for non-prosecution on 08.12.2016. In the meantime, respondent no. 1 had executed a registered sale deed dated 26.08.2016 in favour of respondent nos. 3 and 4 in respect of the property. Respondent nos. 3 and 4 subsequently filed objections under Order XXI Rules 54, 98 and

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101 read with Section 151 CPC on 01.10.2018, claiming rights in the property purchased by them. The said objections are pending adjudication.

5. During the pendency of the objections, respondent nos. 3 and 4 filed an application under Order VI Rule 17 read with section 151 CPC seeking amendment of their objections, *inter alia*, raising the issue of the description of the suit property. The application was allowed on 08.08.2022. Thereafter, *vide* order dated 21.01.2023, the learned Trial Court, noticing the dispute regarding the identity of the property, directed the parties to verify the respective descriptions and place supporting affidavits and documents on record. On 01.03.2023, an advocate appeared on behalf of a resident of DDA Flat No. 1393, Sector-C, Pocket-I, Vasant Kunj, pursuant to a courier sent by the objectors. The learned Trial Court recorded that the courier had been delivered at Flat No. 1393 and not Flat No. 393.

6. The dispute concerns the description of the property in the plaint and the preliminary decree. The property was originally described as Flat No. 393, Sector-C, Pocket-I, Vasant Kunj, New Delhi (Property A). By the application in question, the petitioner sought to substitute this description with Flat No. 393, Pocket-C, Sector-A, Vasant Kunj, New Delhi (Property B).

7. Paras 2 to 7 of the application set out the reasons for seeking amendment of the plaint, thus:

> 2. That while drafting the plaint bonafide mistake with regard to description of the suit property occurred on part of the previous counsel. The suit property was described as "Flat No.393, Sector C, Pocket -I, Vasant Kunj, New Delhi" in place of "Flat no. 393, Pocket C, Sector-A, Vasant Kunj, (Kishangarh), New Delhi".
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> 3. That however, during the entire proceedings of the present suit none of the parties to the present suit ever raised any objection qua

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the identity of the suit property for which the suit was filed. The said fact could not be come to notice of the plaintiffs/decree holders during the proceedings of the present suit.

4. That however, when the objectors have filed the application under order 6 rule 17 then only the said fact came to the notice · of the plaintiffs/decree holders that the suit property by mistake and also due to typographical error was wrongly described in the plaint and consequently this Hon'ble Court has passed the preliminary judgment and decree dated 22.08.2015 with respect to property as mentioned in the plaint i.e. "Flat No. 393, Sector C, Pocket -I, Vasant Kunj, New Delhi" in place of "Flat no.393, Pocket C, Sector -A, Vasant Kunj, (Kishangarh), New Delhi".

5. That therefore, the plaintiffs/decree holders are moving the present application for correction and rectification of description of the suit property in plaint as well as preliminary judgment and decree dated 22.08.2015. It is submitted that the plaintiffs/decree holders is seeking the correction of as the bonafide and unintentional mistake crept while mentioning the suit property in the plaint.

6. That in view of the fact that identity of the suit property was never in dispute during the entire trial, the typographical error accrued in plaint and consequently resulted in passing of preliminary judgment and decree dated 22.08.2015 is liable to be rectified and corrected.

7. That having caught on the wrong footing the objectors are now trying to play with the address which has been furnished on the court record arid if one peruses the report of the Local Commissioner who has gone and visited the premises i.e. Flat No. 393, Sector C, Pocket 1, Vasant Kunj, New Delhi was already corrected in the memo of parties way back when the suit was initially filed which fact is also mentioned in the court record and was also in the knowledge of plaintiffs who had taken the LC to the correct address wherein name of the defendant has been inscribed on the flat in question for which the suit stands filed.

8. Respondent nos. 3 and 4 opposed the application, contending that Property A and Property B were distinct properties, that they had purchased Property B from respondent no. 1, and that property B had never formed part of the suit. According to them, the proposed amendment would alter the subject matter of the suit and the

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preliminary decree. The parties placed their respective affidavits and photographs on record and addressed arguments on the application.

9. The learned Trial Court has, by the impugned order, rejected the petitioner's prayer for amendment, to reason thus:

> 7. The law on amendment of pleadings is long settled. All those amendments which are necessary for determining the real question in controversy between the parties and which brings comprehensiveness to the pleadings of the parties are liberally permitted provided there is no malafide on the part of the party seeking such amendment and no prejudice is caused to the other party. All such amendments are to be allowed, which are essential for deciding the controversy between the parties. However, there is one additional caveat to this proposition that there must be due diligence on the part of the party and even with that he/she could not have raised the matter before the trial. Even here, the amendments could be allowed provided there is no prejudice caused to opposite party. It is also settled that under the garb of amendments of pleadings subject matter of the suit itself can not be changed and the rights accrued to the opposite party could also not be wiped out.
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> 8. In the present case, the suit was filed by plaintiff qua property A and everywhere in her pleadings, she has described the property as property A. Even in the evidence led by her, plaintiff has described the property as property A. Therefore, the preliminary decree also came to be passed qua property A. The subject matter of the present suit was always property A and the lis pending was also only qua property A. At no point of time since the filing of the suit on 11.11.1992, the plaintiff ever mentioned that the suit was filed qua property B. So the situation as of now is that the suit was filed for property A and the decree has also come to be passed qua said property. It may be the case that the identity of the property was not in dispute between the plaintiff and defendant and amongst them the description of the property in the pleadings was immaterial given they both were on same page regarding the identity of the property and mistake was only qua address of the property, however, the position would be significantly different when viewed from the prospective of objectors. They have duly purchased property B from defendant and for them this property was never in lis pendence. The record of the Court would also not show that property B was involved in the present suit and was subjudice given the pleadings only mention property A being the suit property.

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> 9. Allowing the prayer of plaintiff/DH/applicant that property A be now retrospectively substituted in pleadings with property B would mean that the suit was always filed for property B and the said property was always in lis pendence. Such an amendment would be extremely detrimental to the objectors and would prejudice them to a great extent given their property would be hit by Section 52 of TPA, which was never the case when they purchased the same. The law on amendments of pleadings as noted above provides that if the other party is in prejudice with the amendment, the same is not to be permitted. Therefore, the present application seeking such an amendment can not be allowed. Besides, the subject matter i.e. the suit property itself can not be changed by way of an amendment as it would go to the root of the suit itself. Further, the incorrect description of property everywhere in the pleadings between plaintiff and defendant can not be called at this stage a mere clerical mistake and be dealt as such. In addition, it is also important to note that there was nothing which prevented the plaintiff from correcting the description of the property in all these years since 1992. There is certainly a lack of due diligence on the part of plaintiff and no such reason has been given for saying that the mistake was bonafide.
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> With above reasons, the application u/o VI rule 17 CPC of plaintiff/ DH/ applicant is hereby dismissed.

10. The petitioner thereafter preferred a Civil Revision Petition under Section 115 CPC. However, *vide* order dated 15.09.2026, upon the issue of maintainability being raised, learned counsel for the petitioner sought indulgence of this Court to have the petition re-numbered and treated as a Civil Miscellaneous (Main) petition. Accordingly, the present petition has been registered as such.

11. Ms. Manpreet Kaur, learned counsel for the petitioner submits that the discrepancy in the description of the suit property was a *bona fide* typographical error, which came to the petitioner's notice only when respondent nos. 3 and 4 raised a dispute regarding its identity. It is contended that the property intended to be the subject matter of the suit was always Flat No. 393, Pocket-C, Sector-A, Vasant Kunj

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(Kishangarh), New Delhi, as is evident from the DDA conveyance deed and the subsequent sale deed relied upon by the objectors.

12. It is submitted that the correct description of the property was duly reflected in the site plan filed along with the plaint, which lends support to the petitioner's contention that the discrepancy was merely a *bona fide* mistake in the description of the property. Learned counsel also relies upon the Local Commissioner's report and the photographs annexed thereto, contending that the Local Commissioner inspected the same property and that the photographs reflect the name plate of respondent no. 1 at the premises. It is, therefore, argued that the surrounding documentary and factual circumstances establish that the error was confined to the description of the property.

13. Learned counsel further submits that the learned Trial Court failed to appreciate that the proposed amendment seeks only to correct the description of the suit property and does not introduce a different property, alter the nature of the suit or give rise to a new cause of action. It is further contended that the principal opposition to the amendment has been raised by respondent nos. 3 and 4, who allegedly purchased the property from respondent no. 1 after passing of the preliminary decree dated 25.08.2016. Being subsequent purchasers, they cannot, according to the petitioner, rely upon the discrepancy in the description to obstruct implementation of the decree.

14. She further argues that the amendment would neither alter the nature of the suit nor introduce a new cause of action, and no prejudice to the respondents has been demonstrated. Reliance is placed on ***Peethani Suryanarayan v. Repaka Venkata Ramana Kishore***[3]***, Niyamat Ali Molla v. Sonargon Housing Co-operative***

[3] **AIR 2009 SC 2141**

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Society Ltd.*[4]*, and Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd.*[5]*.

15. It is further contended that the learned Trial Court failed to distinguish between amendment of the plaint under Order VI Rule 17 CPC and correction of the preliminary decree under Sections 151, 152 and 153 CPC. The rights of respondent nos. 3 and 4 could have been reserved for adjudication in the pending objections, and any inconvenience could have been address by imposing costs or permitting additional evidence. The finding regarding prejudice on account of the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act[6] is, therefore, stated to be premature. On these grounds, setting aside of the impugned order and allowing of the amendment application is sought.

16. On the other hand, learned counsel for respondent no. 1 opposes the petition and submits that the proposed amendment, sought nearly 28 years after institution of the suit and after passing of the preliminary decree, is not a correction of a typographical error but an attempt to substitute an altogether different property. It is contended that the property originally described in the plaint is distinct from the property now sought to be incorporated, being situated approximately 3.8 kilometers away. Reliance is placed upon the affidavit dated 26.04.2023 and the DDA allotment records.

17. It is also the case of respondent no. 1 that the property originally described in the suit belongs to a third party, namely, Mrs. Mridul Sharma, whose registered sale deed was placed before the learned Trial Court. Respondent no. 1 had also raised an objection

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[4]**AIR 2008 SC 225**
[5]**(2022) 16 SCC 1**
[6]Hereinafter 'TPA'

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regarding the incorrect description upon receiving the *ex-parte* preliminary decree in 2016. It is, therefore, contended on behalf of respondent no. 1 that the proposed amendment cannot be characterized as a *bona fide* correction.

18. Learned counsel further submits that Sections 152 CPC cannot be invoked to alter the substantive terms of a decree or substitute its subject matter. Reliance is place upon ***Dwaraka Das v. State of M.P.***[7]and ***Jayalakshmi Coelho v. Oswald Joseph Coelho***[8]**.** It is also contended that a decree passed in favour of or against deceased persons without substituting LRs is a nullity in the eyes of law. Reliance in this regard is placed upon ***State of Punjab v. Nathu Ram***[9]**.**

19. To add to the above submissions, Mr. Anand Yadav, learned counsel for respondent nos. 3 and 4, submits that they purchased Flat No. 393, Sector-A, Pocket-C, Vasant Kunj, New Delhi, from respondent no. 1 *vide* registered sale deed dated 26.08.2016, for valuable consideration and without notice of the pending suit. It is contended that respondent no. 1 was the original allottee of the said flat, which was subsequently converted into freehold by virtue of a conveyance deed executed by the DDA in her favour. Respondent nos. 3 and 4 claim to be *bona fide* purchasers and submit that they had also filed objections in the execution proceedings.

20. Mr. Yadav further submits that application under Order VI Rule 17 CPC was filed only in October 2021, after conclusion of the trial and more than six years after passing of the preliminary decree dated 22.08.2025, without disclosing any circumstances establishing due diligence. It is also pointed out that, as admitted by the petitioner,

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[7] **(1999) 3 SCC 500**
[8] **(2001) 4 SCC 181**
[9] **AIR 1962 SC 89**

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respondent no. 1 had initially mentioned the same property number in her written statement but subsequently clarified the correct address, demonstrating that the discrepancy was within the petitioner's knowledge.

21. Mr. Yadav contends that the proposed amendment would materially alter the description and identity of the property and prejudice the rights of respondent nos. 3 and 4. Reliance is placed upon ***Vidyabhai v. Padmalatha***[10]**.**

22. It is lastly contended on behalf of respondent nos. 3 and 4 that the scope of interference under Article 227 of the Constitution is limited and that in the absence of any patent jurisdictional error, manifest illegality or perversity, the impugned order does not warrant interference. Reliance is placed upon ***Narayan @ Surender v. Jyoti***[11]**,** ***and Budh Prakash v. M/s Indaso Construction Pvt. Ltd.***[12]**.** Accordingly, dismissal of the petition is prayed for.

23. Having heard and perused the material placed on record, the controversy in the present petition is whether the petitioner seeks to correct an erroneous description of the suit property, as claimed, or to substitute an altogether different property, as contended by the respondents. The answer to this question must be considered in the light of the nature of a partition suit and the powers conferred upon the Court under Order VI Rule 17 and Sections 151, 152, and 153 CPC.

24. Order VI Rule 17 CPC empowers the Court to permit either party to alter or amend its pleadings at any stage of the proceedings, on such terms as may be just, provided the amendment is necessary for determining the real questions in controversy. The proviso,

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[10] **(2009) 2 SCC 409**
[11] **CM(M) No. 2010/2025**
[12] **CM(M) No. 1649/2026**

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however, restricts the exercise of this power after commencement of trial unless the Court is satisfied that, despite due diligence, the party could not have raised the matter before commencement of trial.

25. The powers under Sections 151, 152 and 153 CPC are also relevant. Section 152 CPC enables the Court to correct clerical or arithmetical mistakes in judgments, decrees or orders, and errors arising therein from any accidental slip or omission. Such power cannot be exercised to alter the substantive adjudication. Section 153 CPC confers a wider power to amend any defect or error in a proceeding for determining the real question or issue in controversy, while Section 151 CPC preserves the inherent powers of the Court to secure the ends of justice and prevent abuse of process. These provisions, however, cannot be employed to reopen or alter a substantive adjudication under the guise of correcting an error.

26. In ***Peethani Suryanarayana (supra),*** the Hon'ble Supreme Court recognized that an amendment correcting the description of the suit property may be permitted even after the passing of a decree, where the correction is *bona fide,* does not change the identity of the property and does not cause injustice to the opposite party. Similarly, in ***Niyamat Ali Molla (supra),*** the Hon'ble Supreme Court recognized the power of the Court to correct an accidental error in the description of the property, provided the exercise does not result in a substantive alteration of the decree or require adjudication of an entirely new claim. The question, therefore, is whether the correction sought in the present case satisfies these requirements.

27. In the present case, the property was described in the plaint as *'Flat No. 393, Sector-C, Pocket-1, Vasant Kunj, New Delhi'.* By way of the proposed amendment, the petitioner seeks to describe it as *'Flat*

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No. 393, Pocket-C, Sector-A, Vasant Kunj, New Delhi'. The petitioner contends that the discrepancy is a *bona fide* error and that the property intended to be the subject matter of the suit has always been the latter.

28. A perusal of the site plan filed along with the plaint shows that the property is described therein as *'Flat No. 393, Pocket-C, Sector-A, Vasant Kunj, New Delhi'.*The same description is reflected in the report of the Local Commissioner, who inspected the premises and annexed photographs thereof, including a photograph depicting the name plate of respondent no. 1. These documents form part of the original record and were available much before the filing of the amendment application. The description appearing in the site plan and the Local Commissioner's report, therefore, lends support to the petitioner's contention that the property intended to be the subject matter of the suit was the flat situated in Pocket-C, Sector-A, and that the discrepancy occurred in its description in the plaint.

29. The contention of respondent no. 1 that the property originally described in the plaint is situated at a different location and belongs to a third party, namely, Mrs. Mridul Sharma, also does not advance her case. As recorded by the learned Trial Court itself in order dated 01.03.2023, the address of the property occupied by Mrs. Mridul Sharma is Flat No. 1393 and not Flat No. 393, which is the property number in dispute. This distinction assumes significance while examining the plea that the property originally described in the plaint belongs to a third party. In any event, the said contention has to be considered alongside the site plan filed with the plaint and the Local Commissioner's report, both of which identify the property as *'Flat No. 393, Pocket-C, Sector-A, Vasant Kunj, New Delhi'.* These contemporaneous documents lend support to the petitioner's case that

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the discrepancy in the description of the property and that the amendment does not seek to introduce an altogether different property.

30. The proposed amendment also does not alter the nature of the suit. The proceedings are for partition, and the petitioner does not seek any change in the relief claimed or in the share declared under the preliminary decree. The amendment is confined to correction of the description of the property and does not introduce a new cause of action or an altogether different claim. In these circumstances, the decision in ***Dwaraka Das (supra) and Jayalakshmi Coelho (supra)***, relied upon by respondent no. 1, are distinguishable, as the correction sought herein does not involve a substantive alteration of the adjudication.

31. The objection regarding lack of due diligence also does not merit acceptance. Though the amendment was sought after conclusion of the trial and passing of the preliminary decree, the petitioner has explained that the discrepancy assumed significance when respondent nos. 3 and 4 raised their claim under the sale deed dated 26.08.2026 in the execution proceedings. The site plan filed with the plaint and the Local Commissioner's report already reflected the description now sought to be incorporated. Further, the amendment neither changes the nature of the partition suit nor introduces a new cause of action. In these circumstances, the delay, by itself, cannot defeat the proposed correction. The requirement of due diligence under the proviso of Order VI Rule 17 CPC stands satisfied in the peculiar facts of the case. The decision in ***Vidyabai (supra)*** is distinguishable.

32. The claim of respondent nos. 3 and 4 as *bona fide* purchasers under the registered sale deed dated 26.08.2016 raises issues

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concerning the nature and extent of their rights in the property. Such issues cannot be determined in the present proceedings, which are confined to examining the correctness of the order rejecting the amendment application. Permitting the correction of the property description would not, by itself, determine the validity or effect of the sale deed. Respondent nos. 3 and 4 shall remain at liberty to pursue their objections in the execution proceedings, which shall be decided on their own merits and in accordance with law.

33. The objection of respondent no. 1 that the preliminary decree is a nullity for non-impleadment of the legal representatives of plaintiff no. 2 and defendant no. 2 also does not arise for determination in the present petition. The said contention is left open to be urged before the competent Court in accordance with law.

34. The jurisdiction under Article 227 of the Constitution of India is supervisory in nature and is not to be exercised as an appellate jurisdiction. However, interference is warranted where the impugned order suffers from material error in appreciation of the record. In the present case, the learned Trial Court did not accord due consideration to the site plan filed with the plaint and the Local Commissioner's report, which directly bear upon the identity of the suit property. This omission materially affected its conclusion that the proposed amendment would substitute an altogether different property. The impugned order, therefore, cannot be sustained.

35. In view of the foregoing discussion, the petition is allowed, subject to payment of costs of Rs. 50,000/- to the objectors/respondent nos. 3 and 4 within two weeks from today. The impugned order dated 14.08.2026 is set aside and the petitioner's application seeking amendment of the description of the suit property is allowed. The

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consequential correction in the preliminary decree shall be carried out by the learned Trial Court in accordance with law.

36. It is clarified that the rights and contentions of respondent nos. 3 and 4, including but not limited to their claim under the registered sale deed dated 26.08.2016, applicability of Section 52 TPA, shall remain open for adjudication in the present execution objections, and be dealt with in accordance with law. The objection concerning non-impleadment of the legal representatives of plaintiff no. 2 and defendant no. 2 is also left open to be considered by the competent Court in accordance with law. Nothing stated herein shall be construed as an expression of opinion on the merits of the aforesaid objections.

37. The petition stands disposed of in aforesaid terms. Pending application(s) also stands disposed of.

38. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J.

NOVEMBER 23, 2026
gs/dd

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