

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT GWALIOR**

(SB : SHEEL NAGU, J.)

**WP No.1872/2016**

**Kishori Lal and Ors.**  
**Vs.**  
**Shivcharan and Ors.**

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**For petitioner**

Shri Amit Lahoti, Advocate for the petitioner.

**For Respondents**

Shri B.S. Bhadoria, counsel for the respondent No.1.

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**WHETHER REPORTABLE :**            Yes     No

**Law Laid Down:**

Recalling of witness under Order 18 Rule 17 C.P.C. for correction in the mention of survey number in the plaintiff deposition, is impermissible if deposition discloses that plaintiff had stuck to his stand when confronted about the wrong mention of survey number.

**Significant Paragraph Numbers:** Para 5 & 6.

**O R D E R**

**(18. 04 .2018)**

1. The supervisory power of this court u. Art. 227 of the Constitution of India is invoked to assail the impugned order dated 23.02.2016 passed in Civil Suit No.2A/2014 by Civil Judge Class-2

Raghogarh, Distt. Guna where an application made under Order 18 Rule 17 read with Sec. 151 C.P.C. for recalling and re-examination of PW-1 (petitioner himself) for rectifying an alleged inadvertent mistake of mentioning the wrong survey number, has been allowed subject to payment of cost of Rs. 200/-.

2. Pertinently, the impugned order herein was stayed by this Court on 15.03.2016 which order continued to subsist till date.

3. Learned counsel for the petitioners / all defendants except defendant No. 4 and 10 submits that the application of the plaintiff under Order 18 Rule 17 C.P.C. was camouflaged to fill up the lacuna left in the deposition of plaintiff (PW-1) who had earlier been cross-examined on 05.02.2016. It is submitted by the petitioner drawing attention of this Court to the cross-examination of the plaintiff that the mentioning of the wrong survey number as pointed out by the counsel for the plaintiff / respondent is incorrect since the plaintiff was confronted not once but thrice in his cross-examination about the correct survey number from which cause in the suit had arisen. In respond to every such confrontation the plaintiff in his cross-examination on 05.02.2016 has specifically testified that suit in question relates to survey No. 52/2 and not survey number 52/1.

4. Learned counsel for the plaintiff / respondent seeks dismissal of this petition by supporting the impugned order by contending that the order is passed in the interest of justice to correct the inadvertent mistake in the testimony of plaintiff of mention of wrong survey number 52/2 and thus is of formal nature which does not change the nature of suit in any manner.

5. A bare perusal of the cross-examination of the plaintiff which was conducted on 05.02.2016 reveals that in para 10 and 14 there were three occasions when the plaintiff was confronted as regards correct survey number being the suit property. The plaintiff has

emphatically and categorically stated that suit property relates to survey No. 52 /2 which he has purchased from Laxmichand and not survey No. 52/01. The tenor of the said cross-examination of the plaintiff gives a clear and unambiguous stand of the plaintiff that the suit property is contained in survey No. 52/02 and not survey No. 52/01. With this categorical stand taken by the plaintiff in regard to identity of the suit property, there was no occasion for the trial court to have passed the impugned order allowing recalling the plaintiff for re-examination the especially when there was no inadvertent mistake or clerical mistake reflected from the said testimony. The attempt on the part of the plaintiff in filing application under Order 18 Rule 17 C.P.C. appears to be, filling up of lacuna in deposition of plaintiff.

6. This Court is bolstered in its view by the decision of the Apex Court in the case of **Vadiraj Naggappa Vernekar Vs. Sharadchandra Prabhakar Gogate** reported in **(2009) 4 SCC 410** in regard to scope of Order 18 Rule 17 C.P.C. relevant extract of which is reproduced below :-

*“25. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable this court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined”*

7. Accordingly, the trial court has wrongly exercised the jurisdiction vested in it under Order 18 Rule 17 C.P.C. which calls for interference of this court by exercise of supervisory jurisdiction.

8. Consequently, the impugned order dated 23.02.2016 passed by Civil Judge Class-2 Raghogarh, Distt. Guna in Civil Suit No. 2A/2014 so far as it allows the application under Order 18 Rule 17 read with Sec. 151 C.P.C. of the plaintiff dated 12.02.2016 is set

aside.

**9.** Accordingly, present petition stands allowed to the extent indicated above.

Registry to communicate this order to the trial court. No cost.

**(Sheel Nagu)**  
**Judge**  
**18.04.2018**

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