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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 438/2016, I.A. 16302/2022, & I.A. 31378/2025**

SH. SURENDRA KUMAR GUPTA

.....Plaintiff

Through: Mr. Manoj Harit, Mr. Pranjal Kishore
and Mr. Nagarajun Sahu, Advs.

versus

SH. ASHOK KUMAR GUPTA AND ORS

.....Defendants

Through: Mr. Sanjay Relan and Mr. Sushant,
Advs.

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

ORDER

17.02.2026

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I.A. 16949/2025

1. This application is filed under Order XVIII Rule 17 read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC') seeking recalling of the plaintiff witness for further cross-examination and to confront the contents of audio recordings and the transcript of telephonic conversations.
2. The brief facts are that the plaintiff/non-applicant on 31.10.2016 instituted a suit for partition on the basis of a Family Settlement dated 26.09.2015. The issues framed on 11.12.2017 included issues related to immovable property and cash left by deceased Mr. Prem Kumar Gupta, father of the parties. The plaintiff evidence was closed on 10.08.2018. On 27.10.2022, during the course of the evidence of defendant no. 1 and 2, audio recording of a telephonic conversation and a part of its transcript were



confronted to the witness and these were taken on record. In October, 2022 defendant evidence was closed. The court vide order dated 03.04.2024 directed the production of the complete transcript of the audio recording and the needful was done in March, 2025.

3. Learned counsel for the non-applicant raises a preliminary objection to the maintainability of the application under Order XVIII Rule 17 of CPC, 1908.

4. Learned counsel for the applicant fairly concedes that the application under Order XVIII Rule 17 of CPC, 1908 is not maintainable, however, this court possesses inherent powers under Section 151 of CPC, 1908 to order the recalling of evidence and relies upon the decision of the Supreme Court in **K.K. Velusamy Vs. Palanisamy (2011) 11 SCC 275**.

5. There is no serious objection raised by the learned counsel for the non-applicant to the alternative prayer.

6. Learned counsel for the applicant submits that the audio recording and the transcript were produced after the closure of plaintiff evidence thereby depriving the applicant of an opportunity to confront the plaintiff witness with this material. It is argued that prejudice has been caused to the applicant by production of the audio recording and transcript after closing of the plaintiff evidence as under Section 148 of Bharatiya Sakshya Adhiniyam, 2023 without putting the evidence to the plaintiff, it cannot be read against.

7. Per contra, the learned counsel for the non-applicant contends that the relevance of the evidence being necessary for the adjudication of the issue involved in the suit has not been pleaded. It is submitted that the inherent powers under Section 151 of the CPC, 1908 ought not to be exercised in a



routine manner. Contention is that the grounds mentioned in the application justifying the recalling are inconsistent with the defence set out in the written statement by the defendant.

8. The suit is filed based upon an alleged Family Settlement which itself is a bone of controversy. To prove the Family Settlement, the audio recording was relied upon by the plaintiff during the course of evidence of defendant nos. 1 and 2. The suit itself is based upon the Family Settlement, the issue gains relevance for deciding the suit. The evidence was introduced after closure of plaintiff evidence, denying an opportunity to test its authenticity through cross-examination thereby causing prejudice.

9. The objection of the learned counsel for the non-applicant that the pleadings in the application are inconsistent with the defence taken in the written statement need not be dilated upon at this stage. Suffice to say that the audio recording and transcript were not filed with the plaint but were produced at a later stage.

10. In the facts and circumstances of the case, it is a fit case where for proper adjudication of the suit, the recalling of the plaintiff witnesses is necessitated.

11. The Supreme Court in **K.K. Velusamy Vs. Palanisamy (2011) 11 SCC 275** held as under:

“19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist



in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

20. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”

12. Accordingly, the application is allowed. It is ordered that the plaintiff witnesses shall be recalled for the limited purpose of cross-examination with regard to the audio recording and the transcript.

13. Considering that the suit pertains to the year 2016, the parties shall ensure expeditious completion of the cross-examination without any unnecessary delay.



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14. Put up before the Joint Registrar on 24.03.2026 for cross-examination of the witnesses.

AVNEESH JHINGAN, J

FEBRUARY 17, 2026/Pa