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SLP(C)No. 17225 OF 2000
ITEM No.6

Court No. 9

SECTION XIV
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.17225/2000

(From the judgement and order dated 07/09/2000 in CR 98/2000
of The HIGH COURT OF H.P AT SHIMLA)

RAMESH KUMAR BHALLA

Petitioner (s)

VERSUS

PARAMPYARI BHALLA & ORS.

Respondent (s)

(With Appln(s). for permission to place addl. documents on record &
with prayer for interim relief & office report)
(For Final Disposal)

Date : 17/07/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.B. SHAH
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Petitioner (s) Mr. J.S. Attri,Adv.

For Respondent (s)

UPON hearing counsel the Court made the following
O R D E R

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Despite service of notice no one appears for the respondents.

Heard learned counsel for the appellant.

Leave granted.

The appeal is allowed in terms of the signed order and the orders passed by the High Court and the trial court are set aside. There will be no order as to costs.

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(D.L. Chugh)
Court Master

(K.K. Chadha)
Court Master

Signed order is placed on the file

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.....L.....I.....T.....T.....T.....T.....T.....T.....J
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4326 OF 2001@@
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(Arising out of SLP(C) No.17225 of 2000)

Ramesh Kumar Bhalla

....Appellant

VERSUS

Parampyari Bhalla & Ors.

....Respondents

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Despite service of notice no one appears for the respondents.

Heard learned counsel for the appellant.
Leave granted.

Appellant filed application for amending the plaint in Civil Suit No.485/1 of 1999/95. The Sub Judge, Shimla by order dated 5.1.2000 rejected the said amendment application on the ground that it introduces entirely a new case and new cause of action. Against that order, the appellant preferred Civil Revision Application No.98 of 2000 before the High Court of Himachal Pradesh. By judgment and order dated 7th September, 2000, the High Court partly allowed the revision application by permitting the appellant to amend paragraph No.8 of the plaint as prayed for. With regard to the rest of the amendment application the High Court observed that the amendment sought for was the substitution of paragraph nos.3 and 4 and addition to paragraphs 6 and 9 and it would introduce new subject matter and new cause of action.

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From the facts stated in the plaint, it is apparent that the suit of the appellant is for partition of land admeasuring 25 bighas jointly owned by the plaintiff and the defendants and the description of it is also mentioned in the plaint. The only mistake which was committed by the plaintiff was instead of mentioning the 'khasra' number he has mentioned 'khatauni' number. The rest of the amendment sought for by the plaintiff is for the prayer that so-called partition affected by the defendant is fraudulent. By this amendment, there is no question of change of the subject matter of the suit as described in the plaint, which is land allegedly jointly owned by the parties.

In this view of the matter, this appeal is allowed. The impugned orders passed by the High Court and the trial court are set aside and the amendment application filed by the appellant is allowed. Four weeks time from today is granted to carry out the amendment. There will be no order as to costs.

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.....J.@@
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(M.B. SHAH)@@
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.....J.@@
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(DORAISWAMY RAJU)@@
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New Delhi,
July 17, 2001