
(2003) 03 AP CK 0151
In the Andhra Pradesh High Court
Case No : CRP No. 4571 of 2002

S.V.B.N.R. English Medium High School	APPELLANT
Vs	
Commissioner of Endowments and Another	RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 121, 83
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 227

Citation : (2003) 4 ALD 173 : (2003) 4 ALT 802

Hon'ble Judges : G. Bikshapahty, J

Bench : Single Bench

Advocate : M. Krishna Mohan Rao, for the Appellant; M. Adinarayana Raju, SC for TTD, for the Respondent

Final Decision : Allowed

Judgement

G. Bikshapahty, J.—This Civil Revision Petition is filed challenging the Order passed by the 1st respondent-Commissioner, Endowments in I.A. No. 1 of 2002 in O.A. No. 1 of 1988, dated 31.8.2002.

2. Originally Civil Revision Petition was filed u/s 91 of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 read with Section 115 of Civil Procedure Code. But, however, an application was filed to convert the Civil Revision Petition under Article 227 of Constitution of India. The said petition was allowed.

3. The relevant facts leading to the filing of the revision petition briefly stated are as follows:

2nd respondent- Tirumala Tirupati Devasthanams (hereinafter called "T.T.D") filed an application before the 1st respondent-Commissioner, Endowments in O.A.No. 1 of 1988 under Sub-section (1) of Section 83 Read with Section 118 of

Act 30 of 1987 (A.P. Charitable and Endowments Act) to pass orders for removal of encroachment by the petitioner/respondent in O.P. No. 1 of 1988 and to deliver the vacant possession of the premises annexed to the schedule mentioned infra.

4. It is the case of the T.T.D. that it is the absolute owner of the premises described in the schedule indicated in colour sketch. It is a non-residential premises and a school is being run with a pucca building thereon. The site measuring 0.57 cents was allotted to the petitioner herein, who is the respondent before the Commissioner for the purpose of running the school on a nominal rent of Rs. 25/- per annum, in addition to the rent of Rs. 10/- for 27 cents for a period of six years for the first instance, co-terminating with 19.7.1993. Accordingly, the petitioner was inducted into possession and the period of lease expired on 18.7.1993. It was again extended for a period of three years at enhanced rent of Rs. 10/-. Even extended period expired on 19.7.1996. But, however, since he failed to vacate the premises, he is an encroacher within the meaning of explanation to Section 83(1). Therefore, he is liable to be evicted. It is also stated that the premises was being misused by giving shelter to unsocial elements. Therefore, the application was made for ordering removal of the encroachments and to deliver the vacant possession. The schedule to the petition reads as follows:

"Chittoor District Tirupati Urban Mandal Tirupati village R.S. No. 642 measuring an extent of Ac.0-57 cents fully bounded on

North- RS.No. 641 private land of R.Y. Venkataramana Reddy known as Pulla Reddy Thota.

East- RS.No, 643 T.T.D. Land (known as Perindevi thota).

South- RS.No. 592 part of T.T.D.

West- Land leased out previously to Sri SVBNR School and encroached."

5. The petitioner herein filed various objections. However, the matter continues to be pending before the Commissioner for varied reasons for nearly 14 years. While so, the T.T.D. filed I.A. No. 1 of 2002 seeking deletion of the previous schedule and to insert the following schedule:

Chittoor District Tirupathi Urban Mandal, Tirumala village Accounts:-

S.No. Town Survey No. R.S.No. Extent

1. 1/Part 3-B 592 part A.0.14 cents
2. 5-Road 3-B 592 part A.0.10 cents
3. 6 Part 3-B 592 part A.0.16 cents
4. 4/2 Part 3-B 592 part A.0.20 cents

5. 4/2 Part 3-B 642 Full A.0.59 cents

Total A.1.19 cents

The said application was filed under Order 6 Rule 17 read with Section 151 Civil Procedure Code. The learned Commissioner by an Order dated: 31.8.2002 allowed the application against which the present Civil Revision Petition has been filed.

6. The learned Counsel for the petitioner Mr. M. Krishna Mohan Rao submits that the Order of the Commissioner is wholly illegal and contrary to law and it is without jurisdiction. He submits that without seeking amendment in the main petition, the schedule cannot be amended. He further submits that the cause of action is completely changed by virtue of the amendment. He also submits that in the schedule altogether new premises were included. Therefore, the Commissioner ought not to have allowed the application. He also submits that there are many number of inconsistencies in the stand taken in the petition filed by the T.T.D. and the stand taken in the application filed seeking amendment of the schedule. Therefore, he submits that the Order is wholly without jurisdiction and the same is liable to be rejected. He relied on certain decisions, which will be referred hereinafter.

7. On the other hand, the learned Standing Counsel for the T.T.D. vehemently submits that this is nothing but an act of prolonging litigation. He submits that the petitioner herein is continuing in the premises even though the lease had expired long back. Therefore, he has to be treated as encroacher and he is liable to be evicted. He further submits that the Civil Revision Petition is filed under article 227 of Constitution of India is not maintainable inasmuch as, the applicant has an effective and alternative remedy of filing a revision before the Government u/s 121 of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 of the Act. Having not availed the said revisional remedy, it is not open for the petitioner to approach this Court under Article 227 of Constitution of India. Even on merits also, he submits that T.T.D. in an application filed for removal of encroachments has categorically indicated that apart from 57 cents of land, he was already in occupation of 27 cents, from which he is liable to be evicted. The petitioner was in unauthorized occupation of both the premises having 57 cents and 27 cents in the same survey number and this is only an omission and therefore, the amendment as ordered is just, legal and valid. He also submits that when the petitioner had encroached upon some other land during the pendency of the proceedings in order to avoid initiation of the multiple proceedings, the schedule was amended and therefore, the Order of the Commissioner is quite legal and valid and the same is unassailable.

8. Before going into the merits of the case, it has to be seen whether the application filed under Order 6 Rule 17 C.P.C. is in order. It is contended by the learned Counsel for both the parties that the provisions of CPC as far as they are applicable can be made applicable to the proceedings under the Act. Therefore,

there is no dispute that an application could be filed under Order 6 Rule 17 seeking amendment.

9. The question that calls for consideration is whether the petitioner has effective and alternative remedy by way of revision before the Government?

10. Admittedly, this is an interlocutory application filed by the T.T.D. after a lapse of nearly 14 years. More over, any Order passed by the authorities including an interlocutory Order, the revision is maintainable as per the judgment of this Court reported in *C. Kannaiah Chetty v. Government of Andhra Pradesh* 1979 (1) An,W.R. 473. But, however, the question that calls for consideration is whether the revision can be said to be an effective and alternative remedy and it is a substitute for the statutory remedy by way of appeal. The statute did not provide an appeal filed against such interlocutory oirders passed by the authorities. The learned Counsel for the petitioner relied on the decision of the Supreme Court reported in *Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava*, , wherein the Supreme Court held that the existence of the remedy by way of revision does not bar the jurisdiction of the High Court to entertain the application under Article 226 of Constitution of India. More over, petitioner had alleged that the Collector has no jurisdiction or duty pending the appeal as the notification was bad in so far as it applied u/s 129 of Customs Act. Further it is stated that when a question of jurisdiction is raised, the revision cannot be said to be an effective and alternative remedy.

11. The learned Single Judge of this Court in *Managing Member Nirmal Industries, Khairatabad, Hyderabad Vs. Naseemudding and Others*, , held that while interpreting the provisions of *Hyderabad Shops and Establishments Act* and the *Payment of Wages Act*, that though a revision lies u/s 115 Civil Procedure Code, it is not as a matter of right, the order can also be challenged in the writ petition.

12. The learned Counsel also relied on the decision of learned Single Judge reported in *Brundavan Besoi Vs. Smt. Annapurna Besoi*, , wherein it was held that when the proposed amendment totally changes the nature of the suit giving scope to new cause of action resulting in substantial prejudice to the party, rejection of amendment was justified.

13. The Division Bench of this High Court in *Jaleel Khan Vs. M. Kamalamma*, , held that against an interlocutory order passed by the Rent Controller refusing to set aside the order forfeiting the right of tenant to cross-examine a witness examined on behalf of the landlord for his and his Counsel's failure to attend Court for number of adjournments filed u/s 115 CPC was not maintainable in view of the revisional jurisdiction provided u/s 22 of the Act. Even revision u/s 22 is not maintainable as against the interlocutory order passed pending the main proceedings. The Division Bench held that, a tenant can approach the High Court under Article 227 of Constitution of India, when he has no remedy u/s 20 or 22, who has assailed the interlocutory order.

14. On the other hand, the learned Counsel for the T.T.D relies on the decision of the Supreme Court reported in *A. Venkatasubbiahnaidu v. S. Challappan* 2000 (5) ALT 44 (S.C.), wherein the Supreme Court held that an application under Order 39 Rule 3-A Civil Procedure Code, to evict the party has a right of appeal notwithstanding pendency of an application for grant of temporary injunction and he cannot be allowed to challenge the petition under Article 227 of Constitution of India. The Supreme Court observed in para 17 as follows:

"It is the acknowledged position of law that no party can be forced to suffer for the inaction of the Court or its omissions to act according to the procedure established by law. Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2-A, 4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code. He cannot approach the appellate or revisional Court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party who does not get justice due to the inaction of the Court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39 Rule 3-A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant of vacation of a temporary injunction against the order remaining in force. In such appeal, if preferred, the appellate Court shall be obliged to entertain the appeal and further to take note of the omission of the Subordinate Court in complying with the provisions of Rule 3-A. In appropriate cases the appellate Court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule."

15. Yet, in another case relied on by the learned Counsel is *Sampath Kumar v. Ayyakannu* 2002 (6) ALD 63 (S.C.), wherein the Supreme Court held as follows:

"The basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the Plaintiff. In the opinion of the trial Court, it was open to the Plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiffs revision. The Court fails to understand, if it is permissible for the Plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.

However, the Defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be

allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the Defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the Defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed."

16. Even on merits also, the learned Counsel would submit that no prejudice is caused to the petitioner by allowing the amendment as admittedly he is in unauthorized premises in question. Even though the application was filed after 14 years, still, inasmuch as, no prejudice is caused, the application cannot be said to be illegal or without jurisdiction. He submits that when once the applicant has encroached further land during the pendency of the petition, the doctrine of lis pendence would apply and the same can be adjudicated by the Commissioner. He relies on the decision of the Supreme Court reported in Reddi Ramaiah v. S. Laxmana 1983 (2) APLJ 424.

17. The learned Counsel would submit that no report is necessary as contemplated u/s 83 by virtue of Section 95 read with Section 118. He refers to the decision of this Court in Writ Petition No. 9070 of 1989, dated: 10.3.1989 reported in Mohd. Iqbal Vs. K. Narasimha Rao and Another,

18. He also refers to the decision of this Court reported in Kannaiah Chetty's case (supra), wherein the learned Single Judge observed as follows:

"A perusal of Sub-section (1) of Section 83 of the Andhra Pradesh Charitable and Hindu Religious Endowment Act, 1966 would show that the Government can call for and examine the record of the Commissioner "in respect of any proceeding"- of course not being a proceeding in respect of which a suit or an appeal or application or revision to a Court is provided by the Act - to satisfy themselves as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein. It can pass appropriate orders thereon. There is no reason to give a restricted meaning to the words "any proceeding", which are words of wide import, more so when the power is to examine not only the regularity of such proceeding but also the correctness, legality or propriety of "any decision or order" passed therein. It may be that qualitatively both mean the same, but in the context it is obvious that they are used to denote different types of Orders. A decision ordinarily connotes a final decision while an order may not carry that meaning. Reading Sub-section (3) and Sub-section (1) together, it is clear that while it is open to the Government to suo motu call for and examine the record of the Commissioner or Deputy Commissioner or Assistant Commissioner or Executive Officer or trustee as the case may be, an application for revision by a private party against the orders of Deputy Commissioner, Assistant Commissioner etc. cannot be directly preferred to it and

that such party has to first approach the Commissioner before approaching the Government. Sub-section (3) of Section 83 of the Act says not only the party must approach the Commissioner but that the Commissioner must also have disposed of the "matter". There are no reasons to read the word "matter" as referring only to the revision, before the Commissioner. The word "matter" has not been defined nor is it a term of art. Therefore, it must take its colour from the context. A perusal of Section 82 of the Act shows that the Commissioner is empowered to entertain a revision under Sub-section (1) thereof, while Sub-section (3) of Section 82 of the Act empowers him to pass interim Orders ending such revision. The language of Sub-section (1) of Section 83 of the Act is quite wide and there are no valid reasons for curtailing its ordinary and natural meaning. Sub-section (3) of Section 83 of the Act does not warrant such a restricted construction. Therefore, the Government has power to entertain a revision u/s 83 of the Act against an interlocutory order passed by the Commissioner pending a revision before him."

The learned Counsel would rely on this decision to buttress his contention that even in respect of the orders in I.As. passed by the Commissioner, the revision lies to the Government.

19. In *Dikshatulu Suryanarayana v. Pentakota Tatayya* 1962 (1) An.WR 215, the learned Single Judge held that the proceedings before the Deputy Tahsildar under the Andhra Tenancy Act, 1956 are governed by Order 9, Civil Procedure Code, and therefore, the Deputy Tahsildar has jurisdiction to restore any proceeding dismissed for default under Order 9, Rule 9, Civil Procedure Code,

20. The learned Counsel also relies on another decision reported in *Puvvada Chengayya v. Sub-Collector, Ongole* 1965 (11) An.WR 197, wherein this Court held that the provisions of CPC both u/s 144 and Order. 21 read with Rule 106 of CPC are available to the Tahsildar and the Revenue Divisional Officer by virtue of Section 19(2) Read with Rule 14 and if the Order passed by them is varied or rescinded, the status quo ante of the petitioner can be restored. This case arose under the provisions of Andhra Tenancy Act, 1956.

22. Let us consider the question whether the revisional remedy provided in Section 121 of the Act bars the jurisdiction of the High Court under Article 227 of Constitution of India Section 121 reads thus:

"121. Revision :--(1) The Government may, either suo motu or on an application call for and examine the records from the Board or Committee or the Commissioner in respect of any administrative or quasi-judicial decision taken or order passed under this chapter to satisfy themselves as to the correctness, legality or propriety of such decision or order taken or passed and if in any case it appears to the Government that such decision or order should be modified, annulled, reversed or remitted for consideration, they may pass orders accordingly:

Provided that every application to the Government for the exercise of the powers

under this section shall be preferred within ninety days from the date on which the decision or order to which an application relates was communicated to the applicant;

Provided further that the Government shall not pass any order adversely affecting any person unless such person has been given an opportunity of making his representation.

(2) The Government may stay the execution of any such decision or order pending the exercise of their powers under Sub-section (1) in respect thereof."

23. Indisputably the revision petition has been filed against an interlocutory Order passed by the Commissioner purporting to be one under Order 6 Rule 17 of Code of Civil Procedure. It is also admitted by the learned Counsel for the Parties that Provisions of CPC as nearly as possible, are applicable to the enquiries/ appeals as stipulated u/s 149 of the Act. The Division Bench of this Court in Kanniah Chetty's case (supra) ruled that a revision to the Government u/s 83 (of 1966 Act) is maintainable against the interlocutory Orders passed by the Commissioner under revisional powers u/s 82 of the Act. The Division Bench was considering the maintainability of revision before the Government. But, whether a revisional remedy was so effective as to bar application under Article 227 of Constitution of India was not considered. It is to be noted that an appeal is a substantive right and its deprivation causes serious prejudice. As can be perused, no appeal has been provided under the Act against an interlocutory order passed by the Commissioner in an application u/s 83 of the Act. The revisional remedy is only a procedural remedy and hence it cannot be a substitute for an appellate remedy nor can it debar constitutional remedy under Article 227 of Constitution of India. As early as 1955, the Supreme Court in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, observed that the High Court in supervisory jurisdiction under Article 227 of Constitution of India cannot only annul the decision of the Tribunal, but can also issue further direction in the matter. In Aniyoth Kunhamina Umma v. Ministry of Rehabilitation, Government of India, New Delhi (AIR 1966 S.C. 1616), the Supreme Court while dealing with Section 28 of Administration of Evacuee Property which ordains that the Orders of the Custodian General u/s 28, cannot be questioned in any Court by way of appeal, revision, suit, appeal or execution proceedings, held that such a power cannot affect the power of High Court under Article 226/227 of Constitution of India or to Supreme Court under Articles 136/32 of Constitution of India. In State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc., , the Supreme Court observed:

"Article 227 of the Constitution gives the High Court the power of superintendence over all Courts and tribunals - throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. It was the duty of the Revenue tribunal to award

compensation to the Taluqdars in accordance with the provisions of Sections 7 and 14 of the Act. The High Court had jurisdiction to revise the decision of the tribunal where the tribunal on a misreading of the provisions of Sections 7 and 14 declined to do what was by those provisions of law incumbent on it to do. Tested in this light it does not appear that the High Court exceeded its jurisdiction under Article 227 in revising the decision of the tribunal in respect of the solatium and irrigational bunds, tanks and wells."

24. Dealing with similar revisional powers u/s 154 of Maharashtra Co-operative Societies Act, the Supreme Court in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, , observed:

"In our opinion, the High Court has jurisdiction to go into the disputed questions of fact and to quash an interlocutory order even though some sort of alternative remedy exists u/s 154 of the Act. Section 154 of the Act inter alia enables the State Government to call for and examine the record of any inquiry or the proceedings of any other matter of any officer subordinate to them. Tin's remedy can hardly be treated as an alternative remedy for the purposes of deciding the questions raised by the petitioners."

25. On the other hand, the decision relied on by Mr. Adinarayana Raju in Venkatasubbaiah Naidu's case (supra) has no application. When a substantive right of appeal is available, application under Article 227 of Constitution of India was not maintainable. Admittedly, in the instant case, no statutory appeal is provided.

26. Yet, in another case reported in Chandrasekhar Singh and Others Vs. Siya Ram Singh and Others, , the Supreme Court Said :

"The only other question that remains to be considered is whether an order u/s 146(1-B) can be interfered with by the High Court in the exercise of its powers under Article 227 of the Constitution. It is admitted that the powers conferred on the High Court under Article 227 of the Constitution cannot in any way be curtailed by the provisions of the Criminal Procedure Code. Therefore, the powers of the High Court under Article 227 of the Constitution can be invoked in spite of the restrictions placed u/s 146(1-D) of the Criminal Procedure Code. But the scope of interference by the High Court under Article 227 is restricted. This Court has repeatedly held that "the power of superintendence conferred by Article 227 is to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors vide Waryam Singh v. Amarnath. In a later decision, Nagendra Nath Bore v. Commissioner of Hills Division and Appeals, Assam", the view was reiterated and it was held that the power of judicial interference under Article 227 of the Constitution is not greater than the power under Article 226 of the Constitution, and that under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority. In a recent decision, Babhutmal Raichand Oswal v. Laxmibai R, Tarta,

this Court reiterated the view stated in the earlier decisions referred to and held that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as the Court of appeal and that the High Court cannot in exercise of its jurisdiction under Article 227 convert itself into a Court of appeal."

Therefore, considering the dicta laid down by the Supreme Court in cases referred to supra, I have no hesitation in holding that the availability of revision u/s 121 cannot be said to be total bar for approaching the High Court under Article 227 of Constitution of India.

27. I need not elaborate the grounds of interference by the High Court under Article 227 of Constitution of India, suffice it referring to the decision of the Supreme Court reported in *Achutananda Baidya Vs. Prafulla Kumar Gayen and others*, wherein the Supreme Court observed thus:

"The power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the Courts and Tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior Court, the High Court should not quash the judgment of the Subordinate Court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the Subordinate Court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse."

28. On the merits of the case, it is to be noted that originally the application was filed by the T.T.D. in 1988 for eviction of the petitioner from an extent of 57 cents in R.S. No. 642. However, after 14 years, amendment application was filed to substitute the schedule. The T.T.D. did not seek any amendment to the pleadings. The schedule of property is correlatable to the pleadings in the suit. It is not in dispute that the amendment to the pleadings can be permitted at any stage of the suit subject to certain conditions. Even the amendment can be considered at appellate stage. But, the question is, as rightly contended by Mr. M. Krishna Mohan Rao, the learned Counsel for the petitioner, can the schedule be substituted without proper amendment in the pleadings. The learned Senior Counsel Mr. Adinarayana Raju, however, submits that even though it was stated

in the original application filed in 1988 that the petitioner was also in unauthorized possession of 27 cents, but on account of clerical omission correct schedule was not mentioned and inasmuch as the amendment did not cause any prejudice to the petitioner, the order of the Commissioner cannot be assailed. I am unable to agree with the learned Senior Counsel for the T.T.D. Firstly the application was filed after 14 years and the delay was not at all explained except taking shelter under "inadvertence omission". Further, in the original schedule, the T.T.D. was aware that some more portion was in the possession of the petitioner as in the boundary on west, it is stated-land leased out previously to Sri S.V.B.N.R. School and encroached. Thus, the T.T.D. was aware that the petitioner had encroached the land on west, but did not include the same. Therefore, it is not an accidental omission. Again the proposed schedule except 57 cents is completely a new schedule. It is vaguely stated in the affidavit that during the pendency of the proceedings, the petitioner had encroached some more area highhandedly. The date or period of such encroachment is totally absent. More over, whether the land alleged to have been encroached is already an existing leased land or otherwise is not mentioned. Thus, altogether a new schedule is sought to be made as annexure by substitution. Such a type of amendment is not permissible and defeats the object of Section 83 of the Act. Subsequent encroachments of altogether different land gives rise to a separate cause of action depending on its own facts. But, it cannot be permitted by way of additions to the schedule of the properties as it not only mixes the different cause of actions, but completely changes the nature of the suit. If such a course of action is permitted, the application once filed can never be disposed of leave alone within a reasonable time. Further, replacing the existing schedule simplicitor without amending the pleadings in the main application is alien to the provisions of the Civil Procedure Code. Under Order 6 Rule 17 of Code of Civil Procedure, the amendment to the pleadings are permitted at any stage provided that such amendments may be necessary for the purpose of determining the real questions controversy between the parties. The judgment of the Supreme Court reported in Sampath Kumar's case (supra), cannot be said to assist the T.T.D. In the said case, suit was originally filed for permanent prohibitory injunction. When the Plaintiff was forcibly dispossessed from the suit schedule property, the pleadings were amended seeking relief for declaration of title to the property and consequential relief of delivery of possession. Therefore, the amendment was confined in respect of the very same schedule of the property and the determination of the real question in controversy relates to that schedule. But, in the instant case the schedule as already observed is a totally different schedule containing different properties. Thus it is not only a case of patent error in procedure, but a capricious exercise of discretion resulting in manifest injustice. Thus, viewed from any angle, the impugned order cannot be salvaged.

29. Accordingly, the Civil Revision Petition is allowed setting aside the impugned orders. No orders as to costs.