



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

R.P. NO.444 OF 2023

IN

R.F.A. NO.1711 OF 2011

BETWEEN:

1. SRI.C.N.CHANDRASHEKAR
S/O LATE SUBBA RAO
SINCE DEAD BY LRS.
- 1(A) NAGAPRASAD C.
S/O LATE C.S.CHANDRASHEKAR
AGED ABOUT 48 YEARS
NO.143/1, 13TH CROSS, 10TH MAIN
SARASWATHIPURAM
MYSORE - 570 009
- 1(B) NAGARAJ C.
S/O LATE C.S.CHANDRASHEKAR
AGED ABOUT 44 YEARS
NO.143/1, 13TH CROSS, 10TH MAIN
SARASWATHIPURAM
MYSORE - 570 009

...PETITIONERS

(BY SRI.AJAY GOVINDRAJ, ADV.)

AND:

1. SMT. SHIVAMMA
D/O LATE SRI.PUTTASWAMIAH
AGED ABOUT 63 YEARS
R/AT 184, POURAKARMIKARA COLONY
JYOTHINAGAR, GAYATHRIPURAM II STAGE
MYSORE- 570 019
2. SMT.GOWRAMMA
W/O SRI.CHIKKANNA

Digitally signed by
MALA K N
Location: HIGH COURT
OF KARNATAKA



AGED ABOUT 61 YEARS
R/AT IMMAVU VILLAGE
CHATHRA HOBLI
NANJANGUD TALUK - 571 302
SINCE DEAD BY LRS.

2(A) CHIKKANNA
S/O NOT KNOWN
AGED ABOUT 75 YEARS
R/AT IMMAVU VILLAGE
CHATRA HOBLI
NANJANGUD TALUK - 571 302

2(B) MAHADEVAMMA
D/O CHIKKANNA
AGED ABOUT 44 YEARS
R/AT IMMAVU VILLAGE
CHATRA HOBLI
NANJANGUD TALUK - 571 302

2(C) CHELUVARAJU
S/O CHIKKANNA
AGED ABOUT 41 YEARS
R/AT IMMAVU VILLAGE
CHATRA HOBLI
NANJANGUD TALUK - 571 302

2(D) SUSHEELA
D/O CHIKKANNA
AGED ABOUT 39 YEARS
R/AT IMMAVU VILLAGE
CHATRA HOBLI
NANJANGUD TALUK - 571 302

2(E) PARVATHI
D/O CHIKKANNA
AGED ABOUT 37 YEARS
R/AT IMMAVU VILLAGE
CHATRA HOBLI
NANJANGUD TALUK - 571 302

3. SRI.P.DODDAIAH
S/O LATE PUTTASWAMIAH
AGED ABOUT 67 YEARS

4. SMT.BHAGYAMMA
D/O P.DODDAIAH



AGED ABOUT 42 YEARS

5. SRI.D.NAGARAJ
S/O P. DODDAIAH
AGED ABOUT 40 YEARS
6. SRI.D.MANJUNATH
S/O P.DODDAIAH
AGED ABOUT 38 YEARS
7. SRI.D.SHANKAR
S/O P.DODDAIAH
AGED ABOUT 36 YEARS
8. SMT.PUTTAJAVARAMMA
W/O LATE KEMPAIAH
AGED ABOUT 32 YEARS
9. SRI.K.SHIVALINGU
S/O LATE KEMPAIAH
AGED ABOUT 32 YEARS
10. SRI.VIJAYALAKSHMI
D/O LATE KEMPAIAH
AGED ABOUT 32 YEARS
11. INDIRAMMA
D/O LATE KEMPAIAH
AGED ABOUT 31 YEARS

RESPONDENT NOS.3 TO 11 ARE
R/AT NO.24, 3RD CROSS
GAYATHRIPURAM, FIRST STAGE
NAZARABAD, MYSORE - 570 010 ...RESPONDENTS

(BY SRI.LAKSHMIKANTH K., ADV. FOR
R1 AND R2[A TO E])

THIS REVIEW PETITION IS FILED UNDER ORDER 47 RULE 1 OF THE CODE OF CIVIL PROCEDURE PRAYING TO REVIEW THE JUDGMENT DATED 29.08.2023 MADE IN RFA NO.1711/2011 PASSED BY THIS HON'BLE COURT AND ALLOW THE APPEAL IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION HAVING BEEN RESERVED FOR ORDERS COMING ON FOR PRONOUNCEMENT THIS DAY,
T.G.SHIVASHANKARE GOWDA, J., MADE THE FOLLOWING:



CORAM: HON'BLE MRS. JUSTICE K.S.MUDAGAL
AND
HON'BLE MR. JUSTICE T.G. SHIVASHANKARE GOWDA

CAV ORDER

(PER: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA)

Appellants 1(a) and 1(b) in RFA.1711/2011 have filed this petition seeking review of the judgment dated 29.08.2023 passed in the said case.

2. The father of the appellants 1(a) and 1(b) was the defendant No.10 in O.S.No.409/2009 on the file of the IV Additional Senior Civil Judge, Mysore. The suit was filed by the plaintiffs against the defendants seeking partition and separate possession of 2/4th share in the land in Sy.No.91/2 of Gohalli village, Yelwala Hobli, Mysore Taluk, measuring to an extent of 3 acres 7 guntas. The suit was contested. The Trial Court framed six issues and answered issue Nos.3 and 4 against defendant No.10 the transferee show records and decreed the suit in favour of the plaintiffs granting 2/4th share in the suit schedule properties. Aggrieved



by the same, defendant No.10 filed RFA.1711/2011 before this Court.

3. After hearing both the parties, this Court had formulated the following points for consideration.

"(i) Whether the plaintiffs are entitled to share in the suit schedule property?

(ii) Whether the suit is bad for partial partition?

(iii) Whether the impugned judgment calls for our interference?"

4. The above points were answered against defendant No.10 and ultimately the appeal came to be dismissed. The petitioners are seeking review of the judgment on the ground that the judgment suffers from grave errors on the face of the record that defendant No.10 has taken a clear contention that suit is not maintainable for partial partition, the Appellate Court has not taken note of the several properties that were given to the daughters and they were in possession of the same. This Court has not seen that the daughters were set up for enriching themselves.



The pleadings of the parties are not construed strictly. Defendant No.10 has purchased the properties 18 years ago and made improvements and it is potentially a urban land and same has not been considered.

5. We have heard the arguments of Sri Ajay Govindraj, learned counsel appearing for the review petitioners.

6. It is the contention of the learned counsel for the review petitioners that during the pendency of the appeal it is brought to the notice of the Court that plaintiff No.1 had executed Registered Release Deed in favour of defendant No.10 and the copy of the Release Deed has also placed before the Court but while dismissing the appeal, the Court has not made any observation about right of plaintiff No.1 being released in favour of defendant No.10 and appeal ought to have been partially allowed excluding the share of plaintiff No.1.



7. It is further stated that, in spite of specific plea taken regarding partial partition in paras 4 and 5 of the written statement, in the judgment there is an observation that there is no pleading regarding partial partition. It is also observed that the Release Deed dated 29.04.2015 was during the pendency of the appeal, but it is stated in para 20 of the judgment that it was during the pendency of the suit. The Court has not considered the pleadings strictly and evidence is not properly appreciated. In spite of the Released Deed executed during the pendency of the appeal on 29.04.2015, the first plaintiff has filed an application seeking share in the properties in the FDP proceedings which has been affected the right of the appellants as in the operative portion, the Release Deed dated 29.04.2015 is not mentioned, appeal ought to have been disposed of instead of dismissal and he sought for review.

8. It is the contention of Sri Lakshmikanth K. learned counsel appearing for respondent No.1 and



legal representatives of respondent No.2 that Omnibus allegations are made in the written statement that there are properties belonging to the family and same were not brought on record. Such omnibus statement will not create a defence, the defendant has to plead specifically what are the properties that were available to the family and how the suit is bad for partial partition. Copy of the Release Deed dated 29.04.2015 is produced and same is noted in the order sheet. The said document is nothing to do with the merits of the appeal. This Court has specifically observed at para 20 of the judgment and same cannot be brought in operative portion as the Release Deed was not placed in appeal in the form of additional evidence and it cannot be a ground for review. Learned counsel contended that the review petition is nothing but hearing of the appeal on merits, same is not permissible and he sought for dismissal of the review petition.



9. We have given our anxious consideration to the arguments addressed on behalf of both the parties and perused the materials on records.

10. The point that arises for our consideration is:

"Whether the petitioners have made out any ground to review the judgment of this Court?"

11. At the outset, we have carefully perused the written statement. There is a statement that some properties belonging to the family is available and same was not brought on record. During the course of cross-examination of the plaintiffs, it was elicited that some house property is available in the village, same were brought in the suit. The details of the alleged house property or any other properties allegedly available to the family or the property given to the female members were stated in the written statement or in the form of evidence. As rightly argued by the learned counsel for the plaintiffs that the plea taken in



the written statement is omnibus and the such statement does not constitute a specific defence.

12. During the course of the argument it was canvassed that during the pendency of the appeal, the first plaintiff has executed a Release Deed on 29.04.2015 and the copy of the same is made available in the record. The said document is not placed before this Court in the form of additional evidence. Hence, the validity and legality of the said document was not considered by this court and for this reason there is a specific observation in the para 20 of the judgment. The appeal is continuity of the suit, therefore observation that during the pendency of the suit, the production of Release Deed mentioned in para 20 can be read as during the pendency of the appeal. That clarification could be read accordingly by both the parties to the appeal.

13. It is the specific case of the defendants that the suit is bad for partial partition. The allegations



made in the written statement is omnibus, there is no specific plea that which are those properties which are not brought into the partition in the suit. In this regard, the Division Bench of this Court in **M.N. Venkateshaiah v. G.N. Krishnappa**¹ at para-24, it is held as under:

"24. Before we consider Point No. 6 we may also refer to one another contention of Sri Seshagiri Rao, learned Counsel for respondents 1(a) and 1(b). It is contended by him that as the plaintiff, while in the witness box has admitted that he has heard that there is a land belonging to the family near Lalbagh near Hombegowda Nagar and as he has failed to include the same, the suit for partial partition is not maintainable. There is no plea raised by the defendants in their written statement that apart from the suit schedule properties there is any other property which has not been included. However, during the course of cross examination they have tried to extract from the plaintiff as follows:

"I have heard that there is a land belonging to the family near Lalbagh. I do not know its details but, I have seen the land. It is near Hombegowda Nagar."

On the basis of this, it is contended that the suit is for partial partition. It is not possible to accept this contention. The plaintiff has stated that he does not know its details. He has only heard about it. No doubt he says that he has seen the land. If really there exists any such property belonging to the joint family, as long as it is not the case of the defendants that, that property is in the possession of the plaintiff nothing prevented the defendants to give the particulars of the property. In that event, the plaintiff would have

¹ **ILR 1991 Kar 3128**



included that property. Further, nothing also prevented the defendants to include that property. This contention, as already pointed out is not raised in the written statement nor sufficient evidence is placed on record to hold that there is another property belonging to the joint family which is not included, cannot, therefore be accepted. As long as particulars of the property are not furnished and no evidence is produced to show that there is another property which belongs to the joint family, it is not possible to hold that the suit is for partial partition. Therefore, the contention is rejected. However, during the course of final decree proceedings, it is open to the defendants to produce necessary evidence to show that there exists the property referred to in para 42 of the deposition of P.W. 1 alleged to have been situated near Lalbagh and near Hombegowda Nagar and it is a joint family property, and to have that property included in the suit and partitioned according to the shares of the parties."

The person, who pleads the partial partition, is required to furnish particulars of the properties, which are not brought into the suit which belonging to the joint family. Under such circumstances, it is not possible to hold that suit is for partial partition. Having regard to the principles so laid down and also the omnibus allegations made in the written statement, we do not find any force in the argument that this Court has not considered the pleadings and the evidence of the portion.



14. As regarding the Release Deed is concerned, the copy of the document is produced during the appeal, same was noted in the order sheet and this Court has considered the said document. The observation made in para 20 is suffice and it cannot be made as part of the operative portion of the judgment.

15. The argument canvassed by the learned counsel for the petitioners is re-hearing the appeal on merits, such provision is not available as the scope of the review is very limited as laid down by the Hon'ble Apex Court in **S. Madhusudhan Reddy vs. V.Narayana Reddy and Others**². Wherein it is held that while exercising the review powers, Court can correct only a mistake but not substantive view taken earlier merely because there is a possibility of taking two views in a matter.

16. The Hon'ble Apex Court also made a distinction about erroneous decision and an error apparent on the face of the record. An erroneous error

² 2022 (17) SCC 255



can be corrected by the superior Court, however error apparent on the face of the record can only be corrected by exercising the review jurisdiction. In view of the same, the argument canvassed touching the merits of the case is amounting to re-hearing of the appeal. Same is not permissible within the ambit of review. We are not persuaded to accept the contentions urged by the review petitioners. In the result, we pass the following:

ORDER

Review Petition is dismissed.

In view of disposal of the appeal, I.A.No.1/2023 and I.A.No.1/2024 do not survive for consideration. Hence, they stand disposed of.

SD/-
(K.S.MUDAGAL)
JUDGE

SD/-
(T.G. SHIVASHANKARE GOWDA)
JUDGE

MKM
List No.: 1 SI No.: 2