



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 29<sup>TH</sup> DAY OF JANUARY, 2025**

**PRESENT**

**THE HON'BLE MRS JUSTICE K.S.MUDAGAL**

**AND**

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

**REVIEW PETITION NO. 578 OF 2023**

**BETWEEN:**

1. SRI. BHARATH SUDARSHAN @ VIKKI  
S/O LATE SUDARSHAN BANAPPA  
AGED ABOUT 36 YEARS  
R/AT NO 28, 3<sup>RD</sup> CROSS  
VINAYAKA LAYOUT, BOOPASANDRA  
BANGALORE 560 094
  2. SRI NAGARATHNA B S  
W/O LATE SUDARSHAN BANAPPA  
AGED ABOUT 55 YEARS  
RESIDING AT NO 38, ADHITHI APARTMENTS  
2<sup>ND</sup> FLOOR, FLAT NO 201  
BOOPASADRA, RMV 2<sup>ND</sup> STAGE  
BANGALORE 560 094
- ...PETITIONERS

(BY SRI. SHATHABISH SHIVANNA, ADV.)

**AND:**

1. SMT. SAROJAMMA H  
W/O LATE T S BANAVAPPA  
AGED ABOUT 86 YEARS  
R/A NO 302, 6<sup>TH</sup> CROSS  
VYALAIKAVAL  
BANGALORE 560 003
2. SMT PRAFULLA @ PREMA  
W/O BANAPPA  
AGED ABOUT 68 YEARS  
R/A NO 8, 1<sup>ST</sup> MAIN  
B.S.K V STAGE, VASANTHPURA  
BANGALORE 560 061

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Location: HIGH COURT  
OF KARNATAKA



3. SRI T B GOVARDHAN  
AGED ABOUT 57 YEARS  
R/A NO 302, 6<sup>TH</sup> CROSS  
VYALAIKAVAL  
BANGALORE 560 003
4. SMT MEENA T B  
W/O JAYARAJU  
AGED ABOUT 61 YEARS  
DEPARTMENT OF ANAESTHETICS  
WEST WALES GENERAL  
HOSPITAL DYFED-CARMARTHEN  
SELF ACQUIRED - 31-2AF  
UNITED KINGDOM  
REP. BY HER GPA HOLDER  
SMT SAROJAMMA

...RESPONDENTS

(BY SRI.H.S.DWARAKANATH,A DV. FOR  
SMT.ARCHANA K M., ADV.)

THIS REVIEW PETITION UNDER SECTION 114 R/W ORDER XXXXVII RULE 1 OF CPC, 1908, PRAYING THAT THIS HONBLE COURT BE PLEASED TO REVIEW THE FINAL JUDGMENT DATED 29/09/2023 IN RFA NO. 2200/2010 (PAR) VIDE ANNEXURE-A, TO DISMISS THE SAME AND PASS OTHER SUCH ORDERS AS MAY BE NECESSARY IN THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

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

**ORAL ORDER**

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

In this review petition, petitioner Nos.1 and 2,  
who were respondent Nos.1 and 2 in  
RFA.No.2200/2010 have sought review of the



judgment dated 29.09.2023 passed by this Court in the said appeal.

2. The review petitioners, who were the plaintiffs before the Trial Court, have filed a suit for partition and separate possession of the suit schedule properties against the defendants before XXII Additional City Civil Judge, Bengaluru in O.S.No.10396/2005. After contest, the suit came to be decreed against the defendants as per the judgment and decree dated 29.09.2010. Questioning the same, the defendants have preferred the appeal before this Court. After hearing both parties, this Court allowed the appeal and set aside the judgment and decree passed by the Trial Court and suit came to be dismissed with cost.

3. It was the defense of the defendants that, the propositus T.S.Banvappa had executed a Registered Will on 12.04.1988 bequeathing the suit schedule properties in favour of defendant No.1 and after her death, defendant No.3 sold item No.2 of the suit



properties in favour of defendant no.4 under a Registered Sale Deed dated 28.03.1989. By virtue of the same, defendant Nos.1 and 4 are claiming to be the owners of the properties. The Trial Court has framed issue Nos.4 and 5 regarding the Will dated 12.04.1988 and also the sale of item No.2 in favour of defendant No.4. The Trial Court answered issue No.4 in the negative, issue No.5 in the affirmative and partly decreed the suit on the ground that Will was not proved. The same is questioned in the appeal by the defendants.

4. After hearing the arguments of both parties and considering the evidence on record, this Court came to the conclusion that the findings recorded by the Trial Court that Will was not proved is erroneous and on re-appreciation of the evidence, it was recorded that the Will has been proved. Execution of the Will is accepted by this Court holding that the plaintiff loses the right of the partition and accordingly the suit came to be dismissed.



5. Aggrieved by the same, the plaintiffs have filed this review petition on the ground that this Court came to a misplaced conclusion regarding contradictions of the testimonies of the attesting witnesses. There is an error apparent on the face of the record in the judgment of this Court in interpreting Sections 63 and 68 of the Evidence Act with regard to the evidence on record. Hence, review of the judgment is necessary.

6. We have heard the arguments of Sri Shathabish Shivanna, learned counsel appearing for the review petitioners and Sri H.S.Dwarakanath, learned counsel for Smt.Archana K.M, learned counsel for the defendants.

7. It is the contention of the learned counsel for the plaintiffs / respondents / review petitioners that this Court has wrongly appreciated the evidence of the attesting witnesses and contrary to the findings of the Trial Court. The evidence of the attesting witnesses is not appreciated by this Court in the light of the



provisions under Sections 63 and 68 of the Evidence Act. Relying on the evidence of the attesting witnesses Will cannot be held to be proved and therefore findings of this Court has to be reviewed.

8. Per contra, Sri H.S.Dwarakanath, learned counsel for the defendants contended that the Trial Court has not accepted the execution of the Will and on re-appreciation of the evidence, this Court has accepted the Will. The claim of the plaintiff is based on the proof of the Will. When this Court has re-appreciated the evidence and recorded clear finding, the review petitioner cannot ask for redoing the same, the Court cannot re-appreciate the evidence and to record a different finding, which is beyond the scope of the review.

9. In this regard, he has relied on the judgment of Hon'ble Apex Court in ***Sanjay Kumar Agarwal and ors. vs. State Tax Officer and Ors.***<sup>1</sup>, to the effect that, in order to review the judgment, review petitioner

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<sup>1</sup> (2024) 2 SCC 362



has to make out any mistake or error apparent on the face of the record in the judgment.

10. ***Shanti Conductors (P) Ltd. and Ors. vs. Assam State Electricity board and Ors.,***<sup>2</sup> to the effect that, only an error in the judgment could only be the review.

11. ***Arun Dev Upadhyaya vs. Integrated Sales Service Ltd. and Ors.,***<sup>3</sup> to the effect that an error on the face of the record must be such an error which, mere looking at the records should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

12. We have carefully gone through the submissions made on behalf of both parties. This Court has re-appreciated the evidence of the attesting witnesses to the Will and recorded the finding that the Will is proved. The learned counsel for the review

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<sup>2</sup> (2020) 2 SCC 677

<sup>3</sup> (2023) 8 SCC 11



petitioners, after probing the evidence and also the judgment of this Court arguing that the appreciation of the evidence is not in compliance of Sections 63 and 68 of the Evidence Act, which apparently is not an error apparent on the face of the record. According to the plaintiffs, there is another view is also possible if the evidence is re-appreciated. If such being the case, the appeal has to be re-heard.

13. In a review petition as laid down by the Hon'ble Apex Court, re-hearing of the appeal is not permissible as laid down in ***S. Madhusudhan Reddy vs. V.Narayana Reddy and Others***<sup>4</sup> 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. 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 can be corrected by the superior Court, however, error

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<sup>4</sup> 2022 (17) SCC 255



apparent on the face of the record can only be corrected by exercising the review jurisdiction. Hence the request made by the review petitioner is beyond the scope of the review, we do not find any ground to consider the said request.

14. Therefore, review petition is devoid of merits. In the result, we pass the following:

**ORDER**

Review Petition is dismissed.

**SD/-**  
**(K.S.MUDAGAL)**  
**JUDGE**

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

MKM  
List No.: 1 SI No.: 4