

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REVIEW PETITION NO.171 OF 2024
C/W REVIEW PETITION NO.180 OF 2024

IN RP No. 171/2024

BETWEEN:

1. A NAGARAJ
AGED ABOUT 61 YEARS
S/O LATE ANDANAPPA

2. A HANUMANTHAIAH
AGED ABOUT 58 YEARS
S/O LATE ANDANAPPA

3. SRI. A. RANGANNA
DEAD BY HIS LRS

3(A). SMT. PREMA
AGED ABOUT 63 YEARS
W/O A.RANGANNA

3(B). SMT. CHANDANA RANGANA
AGED ABOUT 39 YEARS
D/O LATE A RANGANNNA

3(C). SRI.JAYANTH RANGANNA
AGED ABOUT 37 YEARS
S/O LATE A RANGANNA

APPELLANT 3(A) TO (C) ALL ARE
RESIDING AT NO.92, 7TH MAIN
3RD CROSS,
NEAR LAKSHMIVALLABA KALYANAMANTAPA
KAMAKSHIPALYA,
BENGALURU-560079.

Digitally
signed by
MALATESH
K C

Location:
HIGH
COURT OF
KARNATAKA

4. A KRISHNA MURTHY
AGED ABOUT 51 YEARS
S/O LATE ANDANAPPA
 5. A.B GOWDA
SINCE DEAD BY HIS LRS
 - 5(A) SMT. NAGARATHNA
W/O A.B.GOWDA
AGED ABOUT 54 YEARS
R/AT NO.S 885, CHINNADHAGIRI,
13TH CROSS, 2ND STAGE,
BHARATH NAGAR
BENGALURU NORTH,
VISWANEEDAM POST
BENGALURU - 560 091
 - 5(B) SRI KULASHEKAR A.B
S/O A B GOWDA
AGED ABOUT 35 YEARS
R/AT NO.49, 1ST MAIN,
11TH CROSS, ANDANAPPA ROAD,
NEAR AMBA MAHESHWARI TEMPLE
KAMAKSHIPALYA
BENGALURU - 566 079
 - 5(C) SRI YUVARAJ K.B
S/O A.B.GOWDA
AGED ABOUT 33 YEARS
RESIDING AT NO.S 885,
CHINNADHAGIRI
13TH CROSS, 2ND STAGE,
BHARATH NAGAR
BENGALURU NORTH, VISWANEEDAM POST
BENGALURU - 560 091
 6. A.NARAYANASWAMY
AGED ABOUT 45 YEARS
S/O LATE ANDANAPPA
- RESPONDENTS 1 TO 2 AND 4 TO 6
ALL ARE RESIDING AT

KAMAKSHIPALYA
MAGADI MAIN ROAD
BANGALORE – 560 079

7. SMT. A.PARVATHAMMA
SINCE DEAD BY LRS

7(A) SMT. C. RAMA
AGED ABOUT 58 YEARS
W/O GIRI GOWDA
R/AT NO.3, 11TH CROSS, KAREKALLU
NEAR AMBAMAHESHWARI TEMPLE
KAMAKSHIPALYA
BENGALURU- 560 079

7(B) SRI C UDAY
AGED ABOUT 55 YEARS
S/O LATE CHANNALINGE GOWDA
R/AT NO.70, 4TH CROSS,
JARAKABANDE KAVAL,
INDUSTRIAL WORKERS LAYOUT
MAHALAKSHMI LAYOUT,
NANDINI LAYOUT POST,
BENGALURU-560 096

8. SMT. A JAYALKSHMI
SINCE DEAD BY HER LR

8(A) SMT. H.M.PRAMEELA
AGED ABOUT 53 YEARS
W/O C.D. KUMAR
R/AT NO.644, 7TH MAIN,
KAMAKSHIPALYA
MEENAKSHI NAGAR,
BASAVESHWARANAGAR
BENGALURU – 560 079

...PETITIONERS

(BY SRI C M NAGABUSHANA, ADVOCATE)

AND:

1. B HONNAIAH
SINCE DEAD BY HIS LRS

- 1(A) SMT JAYAMMA
SINCE DEAD BY HER LEGAL REPRESENTATIVES
RESPONDENT NOS.1(B) TO 1(H)
- 1(B) H JAGANATH
S/O LATE B HONNAIAH
AGED ABOUT 64 YEARS,
NO.411, 10TH CROSS, 6TH BLOCK,
II STAGE, NAGARABHAVI,
BANGALORE -560 072
- 1(C) H VENUGOPAL
S/O LATE B HONNAIAH,
AGED ABOUT 62 YEARS,
NEAR MAYURA TEXTILES,
RANGANATHAPURA, KAMAKSHIPALYA,
BANGALORE -560079
- 1(D) SMT H GOWRAMMA
S/O LATE VYADYANATH,
AGED ABOUT 60 YEARS,
NO.6, K L E SCHOOL ROAD,
3RD BLOCK, 2ND STAGE, NAGARABHAVI,
BANGALORE -560 072
- 1(E) H NAGENDRA
S/O LATE B HONNAIAH,
AGED ABOUT 58 YEARS,
NO.40, AGRAHARADASARAHALLI,
MAGADI MAIN ROAD,
BANGALORE -560 400
- 1(F) SMT INDIRA
W/O SRI GOPINATH,
AGED ABOUT 56 YEARS,
NO.3, SIRUR PARK ROAD,
2ND CROSS, MALLESHWARAM,
BANGALORE -560 003
- 1(G) SMT H VIJAYA
W/O SRI GANGADHAR,
AGED ABOUT 54 YEARS,
NO 202/Y, 13TH MAIN ROAD,

3RD BLOCK, RAJAJINAGAR,
BANGALORE -560 010

- 1(H) H KUMAR
S/O LATE B HONNAIAH,
AGED ABOUT 58 YEARS,
NO.40, AGRAHARADASARAHALLI,
MAGADI MAIN ROAD,
BANGALORE -560400
2. B HANUMANTHAPPA
SINCE DEAD BY HIS LRS,
- 2(A) SMT SAROJAMMA,
W/O LATE B HANUMANTHAPPA,
AGED ABOUT 80 YEARS,
NO.71, 6TH CROSS, JAGAJOTHI LAYOUT,
DODDA BASTI ROAD, KENCHANAPURA CROSS,
BANGALORE -560 057
- 2(B) SMT SARASWATHAMMA
D/O LATE B HANUMANTHAPPA,
AGED ABOUT 60 YEARS,
R/AT 245, KALAPPA BLOCK
12TH MAIN ROAD,
ANANTHAMURTHY LAYOUT, SRINAGAR,
BANGALORE – 560 057
- 2(C) SMT LALITHA
D/O LATE B HANUMANTHAPPA
AGED ABOUT 58 YEARS,
NO.71, 6TH CROSS, JAGAJOTHI LAYOUT,
DODDA BASTI ROAD,
KENCHANAPURA CROSS,
BANGALORE -560 057
- 2(D) SMT SUJATHA
D/O LATE B HANUMANTHAPPA
AGED ABOUT 55 YEARS,
R/AT K R ROAD, GARADI APARTMENTS,
BASAVANAGUDI,
BANGALORE -560 004

2(E) MANJUNATHA
SINCE DEAD BY HIS LRS

2(E)(A) SMT.GEETHA
W/O LATE MANJUNATH
AGED MAJOR

2(E)(B) RANJITHA.M
D/O LATE MANJUNATH
AGED MAJOR

2(E)(C) ASHWINI.M
D/O LATE MANJUNATH
AGED MAJOR

THE RESPONDENTS 2(E)(A) TO 2(E)(C)
ARE ALL R/AT KAMAKSHIPALYA MAIN ROAD
NEAR GOVERNMENT SCHOOL
BENGALURU – 560 079

2(F) SUNDARARAJ
S/O LATE B HANUMANTHAPPA
AGED ABOUT 51 YEARS
R/AT KAMAKSHIPALAYA MAIN ROAD,
NEAR GOVERNMENT SCHOOL,
BANGALORE -560 079

2(G) GANGADHAR
S/O LATE B HANUMANTHAPPA
AGED ABOUT 49 YEARS
R/AT KAMAKSHIPALYA MAIN ROAD,
NEAR GOVERNMENT SCHOOL,
BANGALORE -560 079

2(H) SMT TEJASWANI
D/O LATE B HANUMANTHAPPA
AGED ABOUT 45 YEARS
R/AT NO.1117/B, 8TH A MAIN ROAD,
3RD STAGE, 3RD BLOCK,
BASAVESHWARANAGAR,
BANGALORE - 560079

3. B KALASAPPA
SINCE DEAD BY HIS L.RS,
 - 3(A) K SHIVASHANKAR,
S/O.LATE KALASAPPA
AGED ABOUT 55 YEARS
 - 3(B) K VASU
S/O LATE KALASAPPA
SINCE DEAD BY HIS L.RS
 - 3(B)(i) SMT. GOWRAMMA,
AGED ABOUT 52 YEARS
 - 3(B)(ii) VIJAYA KUMAR
AGED ABOUT 30 YEARS
 - 3(B)(iii) UMESH
AGED ABOUT 28 YEARS

ALL R/AT KAVERIPURA
KAMKASHIPALAYA
MAGADI MAIN ROAD
BANGALORE -560 079

- 3(C) SMT.JAYALAKSHMAMMA
MAJOR IN AGE
W/O HARINARAYANA
R/AT NO.69, GOKUL I STAGE
1ST PHASE, 2ND CROSS, MATHIKERE
BANGALORE – 560 054
- 4. B KRISHNAPPA
AGED ABOUT 62 YEARS
S/O LATE BORAIAH

RESPONDENTS 2 TO 4 ARE
RESIDING AT KAMAKSHIPALYA
MAGADI MAIN ROAD,
BANGALORE-560 079
- 5. SMT.BORAMMA

SINCE DEAD BY HER LRS

- 5(A) SMT.VENKATALAKSHMAMMA
W/O LATE SRINIVASAIAH
AGED MAJOR
R/AT NO.4, 1ST MAIN
ADESHANKAR, KUVEMPUNAGARA POST
TUMKUR – 570 210
- 5(B) SRI THIMMEGOWDA
S/O LATE RANGAPPA
AGED MAJOR
R/AT NO.70/26, 4TH MAIN
MEENAKSHINAGAR
KAMAKSHIPALYA
BENGALURU – 560 079
- 5(C) SMT.GANGAMMA.R
D/O LATE RANGAPPA
R/AT THAGGIKUPPE VILLAGE
KASBA HOBLI, MAGADI TALUK
RAMANAGAR – 562 120
6. SMT.LAKSHMAMMA
AGED ABOUT 73 YEARS
R/A NO.35/114, MES EXTN,
T.B.ROAD, MAGADI TOWN
7. SMT.A THUNGABHADRAMMA
AGED ABOUT 62 YEARS
W/O NARAYANASWAMY
R/O SUNKADAKATTE
VISHWANEEDAM POST
BANGALORE-560 091

...RESPONDENTS

(BY SRI. RAJESWARA P N, ADVOCATE FOR R1(B TO H);
SRI GURUDATH.V.R, ADVOCATE FOR R2(E)(A TO C) AND ALSO
FOR R2(B, C, D, F, G AND H);
SRI NISCHAL DEV, ADVOCATE FOR R3(A), R3(B), (I TO III)
AND R3(C);

SRI K.G.RAGHAVAN, SR. ADVOCATE FOR SRI N.BAYYA REDDY,
ADVOCATE FOR R4;

SRI MANJEGOWDA, ADVOCATE FOR R5(A TO C) AND R6;

SRI N.SHIVAKUMAR, ADVOCATE FOR R7)

THIS REVIEW PETITION UNDER ORDER 47 RULE 1 READ
WITH SECTION 151 OF CIVIL PROCEDURE CODE, PRAYING TO
REVIEW THE JUDGMENT DATED 21.12.2023 PASSED BY THIS
HON'BLE COURT IN RFA NO.1276/2005 IN THE INTEREST OF
JUSTICE AND EQUITY.

IN RP NO. 180/2024

BETWEEN:

SRI B KRISHNAPPA
S/O LATE BORAI AH
AGED ABOUT 74 YEARS,
RESIDING AT KAMAKSHIPALYA,
MAGADI MAIN ROAD,
BANGALORE -560 079

...PETITIONER

(BY SRI K.G.RAGHAVAN FOR
SRI. BAYYA REDDY N, ADVOCATES)

AND:

1. SRI A NAGARAJ
S/O LATE ANDANAPPA
AGED ABOUT 80 YEARS,
2. SRI A HANUMANTHAI AH
S/O LATE ANDANAPPA
AGED ABOUT 77 YEARS,

SRI A RANGANNA
S/O LATE ANDANAPPA
SINCE DIED BY HIS LRS
(RESPONDENT NOS.3 TO 5 ARE THE LEGAL
REPRESENTATIVES OF THIS RESPONDENT)

3. SMT PREMA
W/O LATE A RANGANNA
AGED ABOUT 63 YEARS
4. SMT CHANDANA RANGANA
D/O LATE A RANGANNA
AGED ABOUT 39 YEARS
5. SRI JAYANTH RANGANNA
S/O LATE A RANGANNA
AGED ABOUT 37 YEARS

RESPONDENT NO.3 TO 5 ARE
RESIDING AT NO.92, 7TH MAIN,
3RD CROSS, NEAR LAKSHMIVALLABA
KALYANAMANTAPA
KAMAKSHIPALYA
BENGALURU -560 079

6. SRI A KRISHNA MURTHY
S/O LATE ANDANAPPA
AGED ABOUT 71 YEARS
7. SRI A B GOWDA
S/O LATE ANDANAPPA
AGED ABOUT 68 YEARS
SINCE DEAD BY HIS LRS.
- 7(a) SMT. NAGARATHNA
W/O LATE A.B.GOWDA
AGED ABOUT 54 YEARS
RESIDING AT NO.S 885,
CHINNADHAGIRI
13TH CROSS, 2ND STAGE
BHARATH NAGAR,
BENGALURU NORTH,
VISHWANEEDAM POST
BENGALURU – 560 091
- 7(b) KULASHEKAR A.B
S/O LATE A.B.GOWDA
AGED ABOUT 35 YEARS
RESIDING AT NO.49, 1ST MAIN,

11TH CROSS, ANDNAPPA ROAD,
NEAR AMBA MAHESWARI TEMPLE
KAMAKSHIPALYA,
BENGALURU-560079

- 7(c) SRI. YUVARAJ.A.B
S/O LATE A.B.GOWDA
AGED ABOUT 33 YEARS
RESIDING AT NO. S 885,
CHINNADHAGIRI
13TH CROSS, 2ND STAGE
BHARATH NAGAR, BENGALURU NORTH
VISWANDEEDAM POST
BENGALURU-560 091

SRI A NARAYANASWAMY
S/O LATE ANDANAPPA
AGED ABOUT 64 YEARS

SMT A PARVATHAMMA
W/O LATE H S CHANNALINGE GOWDA
SINCE DEAD BY HER LRS
(RESPONDENT NO.9 TO 10 ARE
THE LEGAL REPRESENTATIVES OF THIS RESPONDENT)

9. SMT C RAMA
AGED ABOUT 58 YEARS,
W/O GIRI GOWDA,
R/AT NO 3, 11TH CROSS,
KAREKALLU, NEAR AMBAMAHESHWARI TEMPLE,
KAMAKSHIPALYA,
BENGALURU -560079
10. SRI C UDAY
AGED ABOUT 55 YEARS
S/O LATE CHANNALINGE GOWDA
R/AT NO 70, 4TH CROSS
JARAKABANDE KAVAL,
INDUSTRIAL WORKERS LAYOUT,
MAHALAKSHMI LAYOUT,
NANDINI LAYOUT POST,
BENGALURU 560096

A JAYALAKSHMI
W/O H MARIYANNA
SINCE DEAD BY HER LRS

11. SMT H M PRAMEELA
AGED ABOUT 53 YEARS,
W/O C D KUMAR,
R/AT NO.644, 7TH MAIN,
KAMAKSHIPALYA,
MEENAKSHI NAGAR,
BASAVESHWARANAGAR
BENGALURU -560 079

B HONNAIAH
W/O LATE BORAI AH
SINCE DEAD BY HIS LRS

SMT JAYAMMA
W/O LATE B HONNAIAH
SINCE DEAD BY HER LRS

SMT.JAYAMMA
W/O LATE B HONNAIAH
SINCE DEAD BY HER LRS
(RESPONDENT NO.12 TO 17 ARE
THE LEGAL REPRESENTATIVES OF THIS RESPONDENT)

12. SRI H.JAGANATH
S/O LATE B.HONNAIAH
AGED ABOUT 64 YEARS
NO.411, 10TH CROSS
6TH BLOCK, II STAGE
NAGARABHAVI
BANGALORE – 560 072

13. SRI H VENUGOPAL
S/O LATE B HONNAIAH
AGED ABOUT 62 YEARS,
NEAR MAYURA TEXTILES
RANGANATHAPURA
KAMAKSHIPALYA,
BANGALORE -560079

14. SMT H GOWRAMMA
W/O LATE VYADYANATH
AGED ABOUT 60 YEARS,
NO.6, K.L.E SCHOOL ROAD,
3RD BLOCK, 2ND STAGE,
NAGARABAVI
BANGALORE – 560 072
15. SRI H NAGENDRA
S/O LATE B HONNAIAH
AGED ABOUT 58 YEARS,
NO.40, AGRAHARADASARAHALLI
MAGADI MAIN ROAD
BANGALORE - 560040
16. SMT INDIRA
W/O SRI GOPINATH
AGED ABOUT 56 YEARS,
NO.3, SIRUR PARK ROAD
2ND CROSS, MALLESHWARAM
BANGALORE -560 003
17. SMT H VIJAYA
W/O SRI GANGADHAR
AGED ABOUT 54 YEARS,
NO 202/Y, 13TH MAIN ROAD,
3RD BLOCK, RAJAJINAGAR,
BANGALORE -560010
18. SRI H KUMAR
S/O LATE B HONNAIAH
AGED ABOUT 58 YEARS,
NO 40, AGRAHARADASARAHALLI,
MAGADI MAIN ROAD,
BANGALORE - 560400

B HANUMANTHAPPA
S/O LATE BORAIAH
SINCE DEAD BY HIS LRS

SMT SAROJAMMA
W/O LATE B HANUMANTHAPPA
SINCE DEAD BY HER LRS

(RESPONDENT NO.19 TO 27 ARE
THE LEGAL REPRESENTATIVES OF THIS RESPONDENT)

19. SMT SARASWATHAMMA
D/O LATE B HANUMANTHAPPA
AGED ABOUT 60 YEARS,
R/AT NO 245, KALAPPA BLOCK,
12TH MAIN ROAD,
ANANTHAMURTHY LAYOUT,
SRINAGARA
BANGALORE -560 057

20. SMT LALITHA
D/O LATE B HANUMANTHAPPA
AGED ABOUT 58 YEARS
NO.71, 6TH CROSS,
JAGAJOTHI LAYOUT,
DODDA BASTI ROAD
KENCHANAPURA CROSS,
BANGALORE -560057

21. SMT SUJATHA
D/O LATE B HANUMANTHAPPA
AGED ABOUT 55 YEARS,
R/AT K R ROAD,
GARADI APARTMENTS
BASAVANAGUDI
BANGALORE -560004

MANJUNATHA
S/O LATE B.HANUMANTHAPPA
SINCE DEAD BY HIS LRS

(RESPONDENT NO.22 TO 24 ARE THE LEGAL
REPRESENTATIVES OF THIS RESPONDENT)

22. SMT GEETHA H
W/O LATE MANJUNATH
MAJOR

23. RANJITHA M
D/O LATE MANJUNATH
MAJOR

24. ASHWINI M
D/O LATE MANJUNATH
MAJOR

RESPONDENT NO.23 TO 25 ARE
RESIDING AT KAMKASHIPALYA MAIN ROAD,
NEAR GOVERNMENT SCHOOL,
BANGALORE 560079

25. SRI SUNDAR RAJU H
S/O LATE B HANUMANTHAPPA,
AGED ABOUT 51 YEARS,
RESIDING AT KAMAKSHIPALYA MAIN ROAD,
NEAR GOVERNMENT SCHOOL,
BANGALORE 560079

26. SRI GANGADHAR
S/O LATE B HANUMANTHAPPA,
AGED ABOUT 49 YEARS,
RESIDING AT KAMAKSHIPALYA MAIN ROAD,
NEAR GOVERNMENT SCHOOL,
BANGALORE -560079

27. SMT TEJASHWINI
D/O LATE B HANUMANTHAPPA,
AGED ABOUT 45 YEARS,
RESIDING AT NO.1117/B,
8TH A MAIN ROAD,
3RD STAGE, 3RD BLOCK,
BASAVESHWARANAGAR
BANGALORE-560 079

PRESENTLY RESIDING AT
NO.1260, GNANABHARTHI
BDA LAYOUT, 1ST BLOCK,
VALAGERAHALLI, KENGERI,
BENGALURU -560059

B KALASAPPA
S/O LATE BORAIAH
SINCE DEAD BY HIS LRS

SRI K SHIVASHANKAR
S/O LATE KALASAPP
AGED ABOUT 36 YEARS
RESIDING AT NO.69,
GOKUL 1ST STAGE, 1ST PHASE,
2ND CROSS, MATHIKERE,
BENGALURU -560 054

K VASU
S/O LATE KALASAPPA
SINCE DEAD BY HIS LRS

SMT GOWRAMMA
W/O LATE K VASU
AGED ABOUT 52 YEARS,

30. SRI VIJAYA KUMAR K S
S/O LATE K VASU
AGED ABOUT 30 YEARS,

31. SRI UMESH K S
S/O LATE K VASU
AGED ABOUT 28 YEARS,

RESPONDENT NO.29 TO 31 ARE
RESIDING AT KAVERIPURA,
KAMAKASHIPALYA,
MAGADI MAIN ROAD,
BANGALORE -560079

32. SMT JAYALAKSHMAMMA
W/O HARINARAYANA
AGED MAJOR
RESIDING AT NO.69,
GOKUL 1ST STAGE
1ST PHASE, 2ND CROSS,
MATHIKERE, BENGALURU -560 054

SMT BORAMMA
D/O LATE BORAIAH AND W/O RANGAPPA
SINCE DEAD BY HER LRS

(RESPONDENT NO.33 TO 35 ARE

THE LEGAL REPRESENTATIVES OF
THIS RESPONDENT)

33. SMT VENKATALAKSHMAMMA
W/O LATE SRINIVASAIAH
AGE MAJOR
RESIDING AT NO.4, 1ST MAIN
ADESHANAKR
KUVEMPUNAGAR POST,
TUMAKURU -570210
34. SRI THIMMEGOWDA R
S/O LATE RANGAPPA
AGE MAJOR,
RESIDING AT NO.70/26,
4TH MAIN ROAD, MEENAKSHINAGAR,
KAMAKSHIPALYA,
BENGALURU -560079
35. SMT GANGAMMA R
D/O LATE RANGAPPA
THAGGIKUPPE VILLAGE,
KASABA HOBLI,
MAGADI TALUK
RAMANGARA 562120
36. SMT LAKSHMAMMA
D/O BORAIAH
AGED ABOUT 60 YEARS,
RESIDING AT NO.35/114,
MES EXTN, T B ROAD,
MAGADI TOWN -562 120
37. SMT A THUNGABHADRAMMA
W/O NARANASWAMY
MAJOR
RESIDING AT SUNKADA KATTE,
VISHWANEEDAM POST,
BENGALURU -560091

...RESPONDENTS

(BY SRI C.M.NAGABHUSHAN, ADVOCATE FOR R1 TO R11
AND R37 AND R7(A TO C);

SRI RAJESWARA.P.N, ADVOCATE FOR R12 TO R16 AND R18;
SRI GURUDATH.V.R, ADVOCATE FOR R19 TO R27;
SRI NISCHAL DEV, ADVOCATE FOR R28 TO R32;
SRI MANJEGOWDA, ADVOCATE FOR R33 TO R36;
SRI N.SHIVAKUMAR, ADVOCATE FOR R37)

THIS REVIEW PETITION UNDER ORDER 47 RULE 1 OF CODE OF CIVIL PROCEDURE PRAYING TO CALL FOR RECORDS IN R.F.A.NO.1276/2005(PAR) AND REVIEW THE JUDGMENT DATED 21.12.2023 IN R.F.A.NO.1276/2005 (PAR) PASSED BY THIS HON'BLE COURT IN THE INTEREST OF JUSTICE AND EQUITY.

THESE PETITIONS HAVING BEEN RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

CAV ORDER

These two review petitions - RP No.171/2024 and RP No.180/2024 are filed by appellants and respondent No.4 respectively in RFA No.1276/2005 challenging the considered judgment passed in RFA No.1276/2005.

2. Brief facts which are utmost necessary for disposal of the review petitions are as under:

3. A suit in O.S.No.8943/1980 was filed in respect of the joint family properties of the parties. It was contented that Sri Kalasappa was the common prepositious who had two children namely, Chikka Huchaiah and Boraiah. There were few alienations made by Chikka Huchaiah between the period 1928 to 1932.

4. In the year 1935, there was an oral partition between Chukka Huchaiah and Boraiah and as per the oral partition, joint family properties were divided.

5. In the year 1946, Chikka Huchaiah died leaving behind his three children namely, Andanappa, Mariyappa and Huchaiah. The only brother of Chikka Huchaiah namely, Boraiah said to have died on 1972 leaving behind his four sons and three daughters namely, Honnaiah, Hanumanthappa, Kalasappa, Krishnappa, Sarojamma, Boramma and Lakshmamma.

6. In the year 1975 there were two separate sale deeds which have been executed in favour of BEML society pursuant to the oral partition which had taken place in the year 1935. Honnaiah, being the eldest son of Boraiah, brother of Chikka Huchaiah filed a suit in O.S.No.1025/1979 before the Civil Judge, Bengaluru City, but as the territorial jurisdiction

existed then, plaint was returned and represented before the Additional Civil Judge, Bengaluru Rural District, Bengaluru, wherein it was renumbered as O.S.No.265/1980. But when the City Civil Courts were formed in the year 1980, suit was transferred to the City Civil Court and renumbered as O.S.No.8943/1980. Said suit was filed by the plaintiff for partition and separation of his share of 8x35th share in all the suit properties.

7. Legal heirs of Andanappa, son of Chikka Huchaiah got impleaded themselves as parties to the suit and they were shown as defendant Nos.13 to 22.

8. Legal heirs of Mariyappa, yet another son of Chikka Huchaiah got impleaded themselves as defendant Nos.35 to 42. Chikka Huchaiah died during the pendency of the suit and his wife Gowramma was impleaded as party/defendant No.43.

9. Other siblings of plaintiff namely, Hanumanthappa, Kalasappa, Krishnappa, Boramma, Lakshmmamma were made as parties as defendant No.2 to 6 in the suit. After the death of the original plaintiff, legal heirs were brought on record.

10. Suit was resisted by defendant Nos.1, 4, 7 and 9 alone by filing written statement on 20.04.1982.

11. It was contented that land bearing Sy.No.70/1, 71/2, 70/30 had fell to the share of Boraiah in the oral partition and therefore suit was sought for passing appropriate decree.

12. Likewise, it was further contended that two houses in Sy.No.70/1, item No.7-B, fell to the share of Boraiah and property described in suit schedule 'A', namely, item 1A, 1B, 2A, 7B, 10 and 11 and item No.1(b) of 'B' schedule property measuring about 1 acre and item No.1 in 'C' schedule property are ancestral properties in which the parties still have a share and sought for that Boraiah acquired other properties from the nucleus of joint family income and sought for passing appropriate decree.

13. On 06.12.2001 issues were framed and fifth issue reads as under:

"5) Whether item No.1 (a), 1 (b), 2 (b), 2(b), 10 and 11 of schedule 'A' and item No.1 of schedule 'B' are the properties exclusively held by defendants 13 to 22 and are not liable for partition?"

14. On 21.02.2001, the review petitioner herein who was the respondent No.4 in the appeal filed additional written statement contending that defendant Nos.13 to 22 filed their written statement and in the said written statement some items

included in 'A' schedule and 'B' schedule properties belong to them exclusively. Therefore a reply was filed by the review petitioner denying the contents of additional written statement.

15. In other words, it is not the plaintiff who opposed the claim of defendant No.13 to 22 who were impeded subsequently, but it is opposed by defendant No.4. As such, the dispute with regard to the items mentioned by defendant No.13 to 22 was primarily between defendant No.4 (review petitioner) and defendant No.13 to 22.

16. Based on the additional written statement, no additional issues were framed.

17. Sri A.Ranganna being the son of Andanappa was examined on behalf of defendant Nos.13 to 22. Pertinently, he was cross examined by defendant No.4 in piecemeal on number of occasions. After conclusion of the recording of evidence, learned judge by judgment dated 31.05.2005 decreed the suit in part.

18. Challenging the part decreeing the suit, legal heirs of the plaintiff filed an appeal in RFA No.1472/2005; whereas defendant No.5 namely, Boramma opposed the appeal grounds by filing cross-objection vide RFA Crob No.41/2006. Likewise,

defendant Nos.13 to 22 filed separate appeal in RFA No. 1276/2005.

19. By order dated 28.01.2005, RFA No. 1472/2005 and RFA Crob No.41/2006 ended in a compromise.

20. Thus, the *lis* between appellants and respondents got settled except the branch of Andanappa's family members who are defendant Nos.13 to 22.

21. It was also mentioned in the compromise that the said compromise would be subject to result of remaining two first appeals namely, RFA No.1276/2005 and RFA No.1529/2005.

22. On 21.12.2023, after hearing the parties on merits, this Court noted that while answering the issues, the plaintiff having failed to place on record necessary material evidence to establish that all the properties are joint family properties, still based on the finding recorded by the Trial Court on issue No.5 decreed the suit of the plaintiff. As such, there was no proper finding recorded on all issues by the trial court.

23. After hearing the parties and granting sufficient time to file written arguments, it was noted by this Court that written arguments filed by parties did not mention the proper

factual aspects. As such, allowed both the appeals and remitted the matter to the Trial Court for fresh disposal.

24. Reasons assigned by this Court for the limited remand is found in paragraphs 40 to 63 in RFA No.1276/2005 as under:

40. "D.W.18 also admitted the suggestion that after the year 1932-33, Chikka Huchaiah till his death did not acquire any other property.

41. The trial Court no doubt considered the above evidence, especially the recitals found in Ex.P.13 which is the sale deed dated 28.02.1975 where under Sy.No.33/29 and Sy.No.33/19 of Saneguruvanahalli village was sold to BEML society. In paragraph No.42 of the impugned judgment, the trial Court has also extracted the relevant portion in Ex.P.13. In fact, similar recitals were also found in Ex.P.14.

42. These aspects of the matter has been taken note of by the learned trial Judge while holding that the disputed properties are also the joint family properties.

43. On cumulative consideration of oral and documentary evidence on record, especially the admissions given by D.W.18 it is crystal clear that in the impugned judgment, except mentioning in paragraph No.40 about the documents, there is no discussion as to what is the probative value of those documents vis-à-vis claim of defendant Nos.14 to 22.

44. *Learned trial Judge has come to the conclusion that there is no pleading with regard to income possessed by Chikka Huchaiah by selling Ragi, Pady and Soap nut purchased from Magadi Town and being sold at Bengaluru. However, in the page No.46 at paragraph No.2 of his cross-examination, D.W.18 has admitted that after the year 1932-33 Chikka Huchaiah did not purchase any properties. D.W.18 is cross-examined at length on different occasions running into more than 50 pages.*

45. *In the impugned judgment, the trial Court has only picked chosen few admissions and disbelieved the case of the appellants without there being a thorough discussion of the oral and documentary evidence on record placed on behalf of Appellant. For example, what is the effect of Ex.D.55 is not properly considered by the learned trial Judge. Much has been discussed about the contents of Exs.P.13 and P.14. However, the explanation offered by D.W.18 in this regard is totally ignored by the learned trial Judge in the impugned judgment.*

46. *No doubt, the learned trial Judge has clearly recorded a finding that there is no pleading with regard to the independent income possessed by Sri Chikka Huchaiah. But, in the further examination in chief of D.W.18 by way of second affidavit which is filed on 22.10.2003, D.W.18 has deposed about the partition that has taken place between his father Andanappa, younger brother Mariyappa and C. Huchaiah, who are the sons of Chikka Huchaiah. In that regard, he has referred to a table where under the property possessed*

by Chikka Huchaiah is divided amongst Andanappa, Mariyappa and C. Huchaiah. The father and uncles of D.W.18 have also transacted as per the said table.

47. Yet again D.W.18 has been examined further by filing an affidavit on 29.01.2004. In the said affidavit, details has to how 43rd defendant Smt. Gowramma filed written statement and how it is not acceptable. The cross-examination with regard to those two affidavits are not even mentioned in the impugned judgment much less discussing the evidence in detail.

48. On 08.10.2004 again D.W.18 filed one more affidavit in lieu of further examination in chief where under he has brought to the notice of the Court about 35th defendant selling the site in Sy.No.38 to Smt. Sujatha. Mariyappa selling another site in Sy.No.38 to Kodandaramaiah. It is also brought to the notice of the Court that defendant Nos.36 to 40, who are the children of Mariyappa being the consenting witnesses. By placing those sale deeds on record D.W.18 wanted to establish that there was a partition as is stated by him in the affidavit dated 23.10.2003.

49. In respect of further examination in chief, there is no cross-examination by other defendants.

50. Effect of the further examination in chief of D.W.18 is not discussed by the learned trial Judge in the impugned judgment. In other words, those affidavits styled themselves as rebuttal evidence.

51. In the impugned judgment, the learned trial Judge was duty bound to consider whether the examination-

in-chief, cross-examination placed by D.W.18 was sufficient enough to rebut the evidence placed by the plaintiff on record.

52. In the back drop of above discussion, there is sufficient force in the argument put forward on behalf of the appellants that the learned trial Judge ought not to have come to the conclusion that since the plaintiff has successfully established that the suit properties are joint family properties and therefore, issue with regard to the self acquisition of disputed properties are held against the appellants is incorrect.

53. Further, even according to the plaintiff, Ex.D.55 is not acted upon. If it is so, how Boraiah enjoyed the properties as mentioned in Ex.D.55 is a question that remains unanswered. Further, there is no proper cross-examination in respect of Ex.D.55 on behalf of the plaintiffs. Some of the documents produced and exhibited on record are not even adverted to in the impugned judgment by the learned trial Judge, let alone, considering its probative value and bearing on the rival claims.

54. Therefore, a case is made out by appellants for interference in this appeal. In the paper book and the memo dated 27.10.2022 though the typed copy of contents of Ex.D.55 has been provided, on comparison with original of Ex.D.55, this Court is of the opinion that the typed copy of the paper book and the typed copy provided on the memo by the counsel for the appellant do not tally exactly with the contents of Ex.D.55. When Ex.D.55 is not properly readable and no proper typed

copy is provided before the trial Court, how the trial Court appreciated Ex.D.55 is again a question, which needs consideration at the hands of this Court.

55. The material on record also discloses that it was not the plaintiff who has actively contested the suit, but it is the fourth defendant. Amendment to the written statement of fourth defendant more than once is a classic example in that regard.

56. Learned trial Judge failed to note the contentions raised on behalf of defendant Nos.14 to 22 in this regard. The vakalaths filed and exhibited on behalf of the defendants trying to establish that there is active collusion between plaintiff and fourth defendant is not even considered by the learned trial Judge in the impugned judgment, let alone, appreciating the said aspect while deciding the rival claims.

57. The trial court was duty bound to consider the rebuttal evidence while answering issue No.5. In the impugned judgment, no such detailed discussion has been made as to the rebuttal evidence placed on record by D.W.18 on 22.10.2003, 29.01.2004 and 08.10.2004.

58. Therefore, issue No.5 raised in the suit by the trial Court needs reconsideration in the light of the rebuttal evidence placed on record by D.W.18 on behalf of defendant No.14 to 22.

59. Non consideration of the material on record properly by the trial Court, therefore is to be held as legally impermissible and to that extent finding

recorded by the trial Court on issue No.5 is to be termed as perverse, calling for interference from this Court in this appeal by exercising the powers vested in this Court under Section 96 of the Code of Civil Procedure.

60. In view of the foregoing discussion, this Court is of the considered opinion that the finding recorded by the learned trial Judge needs to be set aside.

61. Having said so, since there is no proper appreciation evidence on record especially while deciding the issue No.5 and answering issue No.1 in favour of the plaintiff and resultantly answering issue No.5 in the negative is not proper approach by the trial Court.

62. As such, need has arisen to remit the matter to the trial Court for answering issue No.5 by rehearing the parties on the evidence already placed on record. Such a limited remand would not only meet the ends of justice, but also serves the interest of the parties in its proper perspective.

63. This Court has also noticed few factual mistakes in the written arguments filed by both the parties. However, the same is not adverted to in detail, as embarking upon those mistakes and record a finding thereon would prejudice the rights of the parties when the fresh hearing taken place before the trial Court.”

25. Operative portion of the order of this Court in RFA No.1276/2005 reads as under:

"Appeal is allowed in part.

Impugned judgment and decree insofar as 'disputed properties' referred to supra is set aside.

Matter remitted to the trial Court for recording a fresh finding on the issue No.5 supra by affording sufficient opportunities for both the parties to address the arguments only.

It is made clear that this Court has not permitted to lead additional evidence on issue No.5. So also this Court has not expressed any opinion on the merits of the matter insofar on Issue No.5.

Parties are directed to appear before the trial Court without further notice on 16th January, 2024.

Taking note of the fact that suit is of the year 1980 (renumbered), trial Court may expedite the matter and conclude the same on or before 30th June, 2024.

Ordered accordingly."

26. While so remitting the matter, this Court also noted that the typed copy of Ex.D.55 though provided in the paper book, the contents of typed copy did not tally with the Ex.D.55. Admittedly, no such typed copy was provided before the Trial Court.

27. Pertinently, on bare look at Ex.D.55, in the first place it is not capable of reading by any normal person as handwriting is unreadable. Secondly, it is not signed by any of

the parties. It is nothing but a piece of paper. On the basis of Ex.D55 the Trial Court recorded a finding and decreed the suit in part.

28. Further, learned Trial Judge while passing the judgment in O.S.No.8943/1980 did not even advert into many of the documents which were marked as exhibits and relied on by the parties. As such, this Court noted that if this Court were to record a finding by re-appreciating the very same factual aspects for the first time by exercising power under section 96 of Code of Civil Procedure, unsuccessful party in the appeal would lose the right of an appeal. Therefore, remitted the matter to the Trial Court.

29. Being aggrieved by remitting of the matter to the Trial Court, review petitioners in both RP No.171/2024 and RP No.180/2024 approached the Hon'ble Apex Court in SLP (C) No.6655/2024 and SLP (C) No.7418 of 2024.

30. Hon'ble Apex Court by an Order dated 05.04.2024 permitted the review petitioners to withdraw the special leave petitions and directed the parties to approach this Court by way of a review petition.

31. In the backdrop of the above factual aspects, the grounds urged in RP No.171/2024 are culled out hereunder:

- *The Appellants by inadvertence failed to bring to the consideration of this Hon'ble Court regarding Ex.D51, which is of the plaint filed 2nd Defendant in the original suit in O.S.No.8259/1995, on the file of the Hon'ble City Civil Court, which is an admission by pleading recorded in O.S.No.8943/1980 which is of pending adjudication (out which this R.F.A.No.1276/2005 has arisen), as such in the discussion of this Hon'ble Court, the legal implication and effect of that document is not adjudicated.*
- *This Hon'ble Court has not appreciated Ex.D54 and Ex.D55 marked in the evidence of contesting defendants B. Krishnappa who was examined as D24 which are in accordance with the admissions made in O.S.No.8259/1995.*
- *At para 52 of the judgment, this Hon'ble Court has recorded a finding that, the learned trial judge ought not have come to the conclusion that since the plaintiff has successfully established that the suit properties are joint family properties and therefore, issue with regard to self-acquisition of disputed properties are held against the Appellants is incorrect, in such circumstances, non-remittance of suit even in respect of Issue No.1 in so far as disputed properties, is an error apparent on Record.*
- *The Respondents have not brought to the consideration of this Hon'ble Court that, if the items 1(a), i.e., the land bearing Sy.No.35 of plaint 'A' Schedule properties is considered as joint family properties, as per Ex.D54 and Ex.D55 in that property an extent of 04 Acres 10 Guntas came to be allotted to the share of Chikkahuchaiah, as such the Respondents could not have included the Item*

No.1(a) of the 'A' Schedule i.e., 04 Acres 10 Guntas in Sy.No.35 as allotted to the share of Boraiah.

- *The fact that, if Appellants have not proved that Sy.No.35 is not the self-acquired property of Chikkahuchaiah the said item should have been partitioned between the branches of Chikkahuchaiah and Boraiah, but this aspect of case is not adjudicated by this Hon'ble Court.*
- *It is the settled proposition of law that one who comes to the Hon'ble Court has prove his case, as such unless the Issue No.1 is proved by the Plaintiff/Respondent No.1, the burden of proving issue No.5 by the Defendants 14 to 22/Appellants would not arise, as such the Plaintiff/Respondent No.1 is required to be dismissed, and this aspect of case is not adjudicated, which is an error apparent on the record.*
- *The Ex.D54 and Ex.D55 are not considered and the impact of such documents on the contention of the plaintiff/respondent that there was a partition in the year 1932-33.*
- *This Hon'ble court has not considered Ex.D140 and Ex.D141 and the contention taken therein by the Plaintiff /Respondents, and in view of that admission there contention that there was a partition in the year 1932-33 fails.*
- *This Hon'ble Court failed to consider that, the pleading of the Plaintiffs / Respondents being vague, the suit ought to have been rejected, because when it is alleged that there was a partition between the Chikkahuchalah and Boralah's branches the plaint alleges that the property allotted to Boraiah's branch without stating what are the properties allotted to Chikkahuchalah.*

- *Though this Hon'ble Court at para 61 has recorded a finding that the approach of the Trial Court in answering issue no.5 without answering issue no.1 in the first instance is not proper approach, is to consider the Impact of that point in adjudicating this R.F.A.*
- *This Hon'ble court though held that the approach of the trial court in answering issue no.5 before adjudicating issue no.1 is erroneous, thus the trial court has misplaced the burden on the Defendants 14 to 22 which was required to be discharged by the Plaintiffs / Respondents has not adjudicated the said issue.*
- *It was not brought to the consideration of this Hon'ble Court the effect and impact of Ex.D137 which is an mutation entry and Ex.D139 which is R.T.C extract which establishes long and un-interrupted possession which disproves the contention of the Plaintiff/Respondent."*

32. Likewise, the grounds in RP No.180/2024 are reads as under.

- *That under the scheme of Order XLI Rule 23, 23 A, 24, 25, 26 & 26 A of the Code of Civil Procedure, 1908, there is no provision to remand a matter only for the purpose of recording afresh findings on an issue. Under Rule 23 of Order XLI of the Code of Civil Procedure, 1908 remand is ordered if the suit is disposed of on a preliminary point. Under Rule 23 A remand is ordered in case the Appellate Court considers re-trial necessary. Under Rule 24 on the other hand, if the evidence on record is sufficient, the Appellate Court would determine the case finally. In cases covered under Rule 25 remand is ordered only when the Appellate Court frames an issue*

and refers them for trial to the Trial Court. In the case on hand the matter is remanded only for the limited purpose of recording findings on issue No.5. Thus it is not a case that falls under Rule 23, 23A and 25. The matter is fully covered by Rule 24 i.e., the evidence on record is sufficient based on which the Appellate Court itself could have pronounced the Judgment. In the given case on hand the suit is of the year 1980. The first Appeal was filed before this Hon'ble Court in 2005. That being the case remanding the matter only for the purpose of recording a finding not by ordering the Trial Court to record evidence on the said issue, but only to record a finding on the said issue is not what is contemplated under Rules 23, 23A, 24 & 25 of Order XLI of the Code of Civil Procedure, 1908. This Hon'ble Court has not come to the conclusion that retrial is necessary or that the evidence is not sufficient to record a finding under Rule 24. Therefore, this Hon'ble Court itself can determine the suit, notwithstanding the fact that the Hon'ble Trial had proceeded upon some ground other than which the Appellate court proceeds. Hence, the matter calls for review of the judgment and decree.

- *That the Petitioner is aged about 74 years and the if the matter is decided one way other by the Hon'ble Trial Court, again a fresh appeal will have to be filed by the aggrieved parties, which will only delay the matter, in view of the fact that the appeal would be treated as a fresh appeal filed in the year 2024 or 2025 and the seniority for hearing the matter finally would be reckoned as if the appeal is the year of 2024 or 2025. As many of the parties to the suit are senior citizens, it is implored and beseeched before this Hon'ble Court to*

hear the matter on merits before this Hon'ble Court itself on Issue No.5 finally, so that the parties are not required to undergo the agony of waiting for the decision for further years.

- *That this Hon'ble Court has recorded a finding that Ex.D.55 has not been considered properly by the Hon'ble Trial Court. It is submitted that DW-18, Defendant No.14 to 22 have not placed their defence or their case on Ex.D.55 and DW-18 has specifically denied the contents of the Ex.D.55. That being so, Ex.D.55 cannot be used by Defendant No.14 to 22 to support their case. It would be like approbation and reprobation. In that view of the matter, the findings of this Hon'ble Court on Ex.D.55 are required to be reviewed.*
- *That this Hon'ble Court at Pages 111 to 112 and 115 to 116 at Paragraphs 46, 47, 48, 49 & 57 has held that there is no detailed discussion in the rebuttal evidence placed on record by DW-18 on 22.10.2003, 19.01.2004 and 08.10.2004. The finding thus suffers from the error apparent of the face of the record, in that the evidence is not rebuttal evidence nor is unchallenged evidence. There is already a cross examination on the aspects mentioned in the further evidence filed by the DW-18 and there was no necessity to further cross-examine the witness on those aspects of the matter as the evidence in cross examination had sufficiently demolished the case of the witness."*

33. Sri C.M.Nagabhushana, learned counsel for the review petitioner in R.P.No.171/2024 reiterating the grounds urged in his review petition contended that the observations

made by this Court at paragraphs 52 and 61 is not proper approach having regard to the discussions carried out in the body of the judgment. Therefore, appeal ought to have been allowed in *toto* and remitting the matter for fresh disposal has resulted in miscarriage of justice.

34. Sri Nagabhushana also contended that the review petition filed by defendant No.4 is to be dismissed in view of the fact that it is not the plaintiff who questioned the contents of the written statement of defendant Nos.13 to 22, but it is the defendant No.4.

35. Per contra, Sri K.G.Raghavan, learned Senior Counsel appearing for the review petitioner/defendant No.4 reiterating the grounds urged in the appeal memorandum would contend with vehemence that this Court misread appellate powers as is contemplated under Order XLI Rule 23, 23A, 24, 25, 26 and 26A of the Civil Procedure. Therefore, order of remand passed by this Court is suffering from patent legal error and therefore review petition is to be allowed and first appeals are to be heard afresh.

36. Sri Raghavan would emphasize that under Rule 23 of Order XLI of Code of Civil Procedure, remand of a matter is permissible only if the suit is disposed of on a preliminary point,

while Rule 23A of Order XLI of Code of Civil Procedure allows the First Appellate Court if there is a necessity of retrial.

37. Sri Raghavan further pointed out that power vested in the Appellate Court in Rule 24 of Order XLI of Code of Civil Procedure would indicate that if the material evidence is sufficient on record, Appellate Court is required to determine the case finally and therefore, remand order is bad.

38. He would also invite the attention of this Court to the power of remand in Rule 25 of Order XLI of Code of Civil Procedure only when additional issues are framed or matter is referred for fresh trial to the Trial Court.

39. According to him, none of these contingencies arose in these appeals and therefore order of remand passed by this Court is *per se* illegal only on the ground that fresh findings are required to be recorded by the Trial Court on issue No. 5.

40. He would also point out that the suit is of the year 1980 and first appeal was filed in the year 2005. As such, remand order under review is unjust and needs to be set aside and the appeal must be heard on merits afresh in accordance with law.

41. Sri Raghavan also pointed out that the review petitioner is aged 74 years as on the date of filing the review

petition and in the event of Trial Court again adjudicating the matter and passing judgment would necessarily result in filing an appeal before this Court and therefore, defendant No.4 would be practically denied the enjoyment of the fruits of the decree passed by the Trial Court and therefore, sought for allowing the review petition.

42. Sri Raghavan pointed out that in paragraphs 46, 47, 48, 49 and 57 of the judgment passed by this Court in the appeal there is a finding recorded that no detailed discussion is carried out on the rebuttal evidence placed on record by DW18. It is his submission that such a finding suffers from an error apparent on record inasmuch as no rebuttal evidence is placed on record.

43. He points out that DW18 has been cross-examined on seven occasions and ignoring the same, passing an order that there is no challenge to the rebuttal evidence is thus error apparent on record and thus sought for allowing the review petition.

44. In support of their respective contentions, counsels for review petitioners in both the review petitions have relied on following judgments wherein it has been held as under:

**I. Citations on behalf of petitioner in
R.P.No.180/2024:**

***Shivakumar and others v.
Sharanabasappa and others,
(2021) 11 SCC 277:
2020 SCC OnLine SC 385 at page 316:***

Whether remand was called for

26. Taking up the other point for determination, the submission of the learned counsel for the appellants that the High Court ought to have considered remanding the case by taking recourse to the provision contained in Order 41 Rule 23-A CPC, in our view, remains totally bereft of substance; this submission has only been noted to be rejected.

26.1. The procedure relating to appeals from original decrees (usually referred to as "regular first appeal") is provided in Order 41 of the Code of Civil Procedure, 1908 and therein, various provisions relating to hearing of an appeal, remand of case, remitting of issues for trial, production of additional evidence in appellate court, etc. are contained in Rules 16 to 29 under the sub-heading "Procedure on hearing". For their relevance, we may take note of the provisions contained in Rules 23, 23-A, 24 and 25 of Order 41 CPC as follows:

"23. Remand of case by appellate court.— Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the appellate court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to readmit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23-A. Remand in other cases.— Where the Court from whose decree an appeal is preferred

has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a retrial is considered necessary, the appellate court shall have the same powers as it has under Rule 23.

24. Where evidence on record sufficient, appellate court may determine case finally.—Where the evidence upon the record is sufficient to enable the appellate court to pronounce judgment, the appellate court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the appellate court proceeds.

25. Where appellate court may frame issues and refer them for trial to Court whose decree appealed from.—Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the appellate court essential to the right decision of the suit upon the merits, the appellate court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the appellate court together with its findings thereon and the reasons therefore within such time as may be fixed by the appellate court or extended by it from time to time.”

26.2. Rule 23-A came to be inserted in Order 41 CPC by way of the Code of Civil Procedure (Amendment) Act, 1976. Prior to this amendment, it was generally accepted by the Courts that although under Rule 23, an order of remand could be made only on reversal of a decree disposing of suit on a preliminary point but, the appellate court has the inherent power of remanding a case where it was considered necessary to do so in the interest of justice. Some of the High Courts had made similar provisions by way of their respective amendments. Insertion of Rule 23-A in Order 41

by the amending Act of 1976 makes it explicit that even when the suit has been disposed of otherwise than on a preliminary point and the decree is reversed in appeal, the appellate court shall have the power of remand, if a retrial is considered necessary. [Such powers of remand, as provided in Rules 23 and 23-A of Order 41, are different than the power of the appellate court to remit an issue for findings under Rule 25. The power of remitting is ordinarily to be resorted to when the trial court has omitted to try any material issue or to determine any question of fact. In other words, the proper procedure in a case where the trial court, while disposing of the suit on merits, had failed to determine one or more of the material issues/questions, is to remit the issue/question(s) under Rule 25 and not to remand the whole case for retrial. Ordinarily, in the case of an order under Rule 25 of Order 41, the matter is retained on the file of the appellate court and only the issue/question(s) are remitted to the trial court for findings. On the other hand, when an order of remand is made under Rule 23 or Rule 23-A, the whole case goes back for decision to the trial court except on the point on which the appellate court has returned concluded finding, if any. While making a remand under Rule 23 or Rule 23-A, the judgment and decree of the trial court is required to be set aside but it is not necessary to set aside the impugned judgment and decree when taking recourse to Rule 25 of Order 41.]

26.3. *A comprehension of the scheme of the provisions for remand as contained in Rules 23 and 23-A of Order 41 is not complete without reference to the provision contained in Rule 24 of Order 41 that enables the appellate court to dispose of a case finally without a remand if the evidence on record is sufficient; notwithstanding that the appellate court proceeds on a ground entirely different from that on which the trial court had proceeded.*

26.4. *A conjoint reading of Rules 23, 23-A and 24 of Order 41 brings forth the scope as also contours of the powers of remand that when the available evidence is sufficient to dispose of the*

matter, the proper course for an appellate court is to follow the mandate of Rule 24 of Order 41 CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a retrial is considered necessary that the appellate court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice. An order of remand only on the ground that the points touching the appreciation of evidence were not dealt with by the trial court may not be considered proper in a given case because the first appellate court itself is possessed of jurisdiction to enter into facts and appreciate the evidence. There could, of course, be several eventualities which may justify an order of remand or where remand would be rather necessary depending on the facts and the given set of circumstances of a case.

26.4.1. *The decision cited by the learned counsel for the appellants in Mohan Kumar [Mohan Kumar v. State of M.P., (2017) 4 SCC 92 : (2017) 2 SCC (Civ) 368] is an apt illustration as to when the appellate court ought to exercise the power of remand. In the said case, the appellant and his mother had filed the civil suit against the Government and local body seeking declaration of title, perpetual injunction and for recovery of possession in respect of the land in question. The trial court partly decreed the suit while holding that the plaintiffs were the owners of the land in dispute on which trespass was committed by the respondents and they were entitled to get the encroachment removed; and it was also held that the Government should acquire the land and pay the market value of the land to the appellant. Such part of the decree of the trial court was not challenged by the defendants but as against the part of the decision of the trial court which resulted in rejection of the claim of the appellant for allotment of an alternative land, the appellant preferred an appeal before the High Court. The High Court not only dismissed [Mohan Kumar v. State of M.P.,*

FA No. 3 of 1998, order dated 24-1-2005 (MP)] the appeal so filed by the appellant but proceeded to dismiss the entire suit with the finding that the appellant-plaintiff had failed to prove his ownership over the suit land inasmuch as he did not examine the vendor of his sale deed. In the given circumstances, this Court observed that when the High Court held that the appellant was not able to prove his title to the suit land due to non examination of his vendor, the proper course for the High Court was to remand the case to the trial court by affording an opportunity to the appellant to prove his title by adducing proper evidence in addition to what had already been adduced. Obviously, this Court found that for the conclusion reached by the High Court, a case for retrial was made out particularly when the trial court had otherwise held that the appellant was owner of the land in dispute and was entitled to get the encroachment removed as also to get the market value of the land. Such cases where retrial is considered necessary because of any particular reason and more particularly for the reason that adequate opportunity of leading sufficient evidence to a party is requisite, stand at entirely different footings than the cases where evidence has already been adduced and decision is to be rendered on appreciation of evidence. It also remains trite that an order of remand is not to be passed merely for the purpose of allowing a party to fill- up the lacuna in its case.

26.5. *It gets perforce reiterated that the occasion for remand would arise only when the factual findings of the trial court are reversed and a retrial is considered necessary by the appellate court.*

Municipal Corpn., Hyderabad v. Sunder Singh, (2008) 8 SCC 485 : 2008 SCC OnLine SC 940 at page 496

32. *A distinction must be borne in mind between diverse powers of the appellate court to pass an order of remand. The scope of remand in terms of Order 41 Rule 23 is extremely limited. The suit was not decided on a preliminary issue.*

Order 41 Rule 23 was therefore not available. On what basis, the secondary evidence was allowed to be led is not clear. The High Court did not set aside the orders refusing to adduce secondary evidence.

33. *Order 41 Rule 23-A of the Code of Civil Procedure is also not attracted. The High Court had not arrived at a finding that a retrial was necessary. The High Court again has not arrived at a finding that the decree is liable to be reversed. No case has been made out for invoking the jurisdiction of the Court under Order 41 Rule 23 of the Code.*

34. *An order of remand cannot be passed on ipse dixit of the court. The provisions of Order 2 Rule 2 of the Code of Civil Procedure as also Section 11 thereof could be invoked, provided of course the conditions precedent therefore were satisfied. We may not have to deal with the legal position obtaining in this behalf as the question has recently been dealt with by this Court in Dadu Dayalu Mahasabha, Jaipur (Trust) v. Mahant Ram Niwas [(2008) 11 SCC 753].*

***Civil Appeal No.2647/2024 arising from SLP
(C) No.18912/2019***

"2 The appellate Court is the final court of fact and law. An order of remand under Order 41 Rule 23, Code of Civil Procedure cannot be made for a mere asking. If the High Court is of the view that the evidence is not sufficient enough to decide a particular issue from its point of view, it can very well call for a finding from the trial Court. "

**II. Citations on behalf of respondents in
R.P.No.180/2024:**

Hiya Associates and others v. Nakshatra Properties (P) Ltd., (2018) 18 SCC 358 :

**(2019) 2 SCC (Civ) 714 : 2018 SCC OnLine
SC 1673 at page 361**

17. In our opinion, the remand of a case to the subordinate court is considered necessary when the superior court while exercising its appellate or revisionary jurisdiction finds that the subordinate court has failed to decide some material issues arising in the case or there is some procedural lacuna noticed in the trial, which has adversely affected the rights of the parties while prosecuting the suit/proceedings or when some additional evidence is considered necessary to decide the rights of the parties which was not before the trial court, etc. (See Order 41 Rules 23, 23-A, 24 and 25 of the Code of Civil Procedure, 1908.) Such was not the case here.

45. In reply, Sri C.M. Nagabhushna would contend that the argument put forward on behalf of the defendant No.4, who is the review petitioner in R.P.No.180/2024, is against the records inasmuch as this Court in the aforesaid paragraphs has recorded a categorical finding that there is no detailed discussion as to the rebuttal evidence and there is no challenge to the rebuttal evidence and thus, sought for passing the suitable orders.

46. Having heard the arguments of both sides, this Court perused the material on record meticulously.

47. On such perusal of the material on record, the sole point that would arise for consideration of this court is

“Whether review petitioners have made out a case for review the common order dated 21.12.2023 in RFA No.1276/2005?

48. What is the Scope of review petition is no longer *res integra*. Hon'ble Apex Court in the decisions relied on by the parties themselves, has clearly pointed out what is the scope of review petition.

49. In this regard, this Court gainfully places reliance on the judgment of the Hon'ble Apex Court in the case of ***S.Murali Sundaram v. Jothibai Kannan***, reported in **(2023) 13 SCC 515**.

50. Having regard to the scope and ambit of the review petitions as is contemplated under Section 47, this Court is in finds force in the contentions urged by Sri K.G.Raghavan that the remand order passed by this court did not fall within the scope of Rule 23 and 23A of Order XLI of Code of Civil Procedure. However, insofar as Rule 24 of Order XLI of Code of Civil Procedure is concerned, since the Trial Court has recorded a finding based on Ex.D.55 without holding any discussion much less probative value of said document and also taking note of the fact that Ex.D55 is not a readable document and admittedly there was no translation copy that was furnished

before the Trial Court, the finding recorded by the Trial Judge which is a crucial document was required to be set aside.

51. It is in this regard, this Court noted that the typed copy of Ex.D55 filed in the paper book did not tally with the contents of Ex.D55. Since there was no discussion on Ex.D55, this Court did not want to harm the rights of the parties by recording a finding before this Court itself for the first time. If such an exercise was carried out by this Court in the appeal, same would have definitely curtailed the rights of an unsuccessful party. As such, to afford fresh opportunity for the parties, this Court directed the parties to furnish the written arguments based on the available material including the exhibits. This Court, noted that the written arguments filed by both the parties contained improper and incorrect facts, especially with regard to the probative value of exhibits including Ex.D55.

52. It is in that background, this Court recorded the findings in the impugned judgment in paragraph 63 as referred to supra. Needless to emphasize that it is the parties who are required to assist the Court especially when the documents that have been placed on record which are incapable of comprehension on the first look.

53. Moreover, this Court also noted that rebuttal evidence placed on record by DW18 with regard to issue No.5 was not considered in detail by the Trial Judge. This Court further noted that in the impugned judgment of the Trial Court no discussion whatsoever has been carried out as to the answers elicited in the cross examination of DW18 on 29.11.2002, 03.12.2002, 05.12.2002, 10.12.2002, 11.12.2002, 20.01.2003 and 21.01.2003. It is in that background, this Court directed that re-hearing is necessary and remanded the matter to the Trial Court.

54. It is to be noted that, in a given case High Court enjoys the power to set right the illegality committed by a Court in the appellate jurisdiction not only as is contemplated under Order XLI of Code of Civil Procedure, but also can set right the illegality by exercising the power of judicial superintendence by resorting to Article 227 of the Constitution of India.

55. Article 227 of the Constitution of India reads as under:

***"227. Power of superintendence over all
Courts by the High Court***

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may--(a) call for returns from such courts; (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts; and (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such Courts and to attorneys, advocates and pleaders practicing therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision or any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces."

56. No doubt, such a power cannot be exercised as a routine. But, in a given case, if an order is suffering from perversity, capriciousness or arbitrariness, such an order can be set aside and if rehearing of the matter is found to be best

course, this Court can very well fall back onto powers under Article 227 of the Constitution of India and remit the matter to Trial Court de hors the power of remand as is contemplated in Order XLI of Code of Civil Procedure.

57. Likewise, when there is a failure of exercise of jurisdiction or if a Court has exceeded in its jurisdiction, power under Article 227 of Constitution of India can be resorted by the High Court to serve the ends justice.

58. It may not be out of place here to mention that powers vested in the High Court under Article 227 of the Constitution of India encompasses itself to reverse the conclusions which are perverse in nature or irrational or it would fail test of the reasonableness.

59. Lastly, power under Article 227 of Constitution of India would not limit the High Court in setting right manifest errors in a given judgment and in such circumstances two options are available for the High Court.

60. Firstly, the High Court while exercising the power under Section 96 of Code of Civil Procedure can very well set right the mistake committed by the Trial Court, both on factual and legal aspects, and rewrite the judgment in a given suit.

61. Secondly, it may afford an opportunity for the parties for the purpose of retrial or reconsideration of the material evidence by remitting the matter to the Trial Court, if not under Order XLI Rule 23 to 25 of Code of Civil Procedure, but by exercising the power under Section 151 of Code of Civil Procedure and Superintendence power under Article 227 of the Constitution of India.

62. In this regard, this Court places reliance on the judgment of the Hon'ble Apex Court in the case of **K. Valarmathi and others vs. Kumaresan**, reported in **2025 SCC OnLine SC 985**, relevant paragraphs are culled out hereunder for ready reference:

"In the present case, High Court has supervened the provisions of the Code when it rejected the plaint on the ground it was barred by law. In doing so, the High Court not only substituted itself as the court of first instance but also rendered nugatory a valuable right to appeal available to the appellant had the issue been adjudicated by the trial court in the first place."

63. In the above background, while this Court agrees with the traditional approach of powers of the Court in remanding a matter to the Trial Court as is contemplated under Order XLI Rule 23, 23A, 24, 25 of Code of Civil Procedure, a

High Court while exercising appellate power is not powerless in a given case where remand is a just order to serve the ends of justice by resorting to Article 227 of Constitution of India.

64. In this regard, this Court places reliance on the judgment of the Hon'ble Apex Court in the case of ***P.Purushottam Reddy and another vs. Pratap Steels Limited***, reported in **(2002) 2 Supreme Court Cases 686**.

Their lordships in the said case in para 10 as held as under:

"10. The next question to be examined is the legality and propriety of the order of remand made by the High Court. Prior to the insertion of Rule 23-A in Order 41 of the Code of Civil Procedure by the CPC Amendment Act, 1976, there were only two provisions contemplating remand by a court of appeal in Order 41 CPC. Rule 23 applies when the trial court disposes of the entire suit by recording its findings on a preliminary issue without deciding other issues and the finding on preliminary issue is reversed in appeal. Rule 25 applies when the appellate court notices an omission on the part of the trial court to frame or try any issue or to determine any question of fact which in the opinion of the appellate court was essential to the right decision of the suit upon the merits. However, the remand contemplated by Rule 25 is a limited remand inasmuch as the subordinate court can try only such issues as are referred to it for trial and having done so, the evidence recorded, together with findings and reasons therefore of the trial court, are required to be returned to the

appellate court. However, still it was a settled position of law before the 1976 Amendment that the court, in an appropriate case could exercise its inherent jurisdiction under Section 151 CPC to order a remand if such a remand was considered pre-eminently necessary *ex debito justitiae*, though not covered by any specific provision of Order 41 CPC. In cases where additional evidence is required to be taken in the event of any one of the clauses of sub-rule (1) of Rule 27 being attracted, such additional evidence, oral or documentary, is allowed to be produced either before the appellate court itself or by directing any court subordinate to the appellate court to receive such evidence and send it to the appellate court. In 1976, Rule 23-A has been inserted in Order 41 which provides for a remand by an appellate court hearing an appeal against a decree if (i) the trial court disposed of the case otherwise than on a preliminary point, and (ii) the decree is reversed in appeal and a retrial is considered necessary. On twin conditions being satisfied, the appellate court can exercise the same power of remand under Rule 23-A as it is under Rule 23. After the amendment, all the cases of wholesale remand are covered by Rules 23 and 23-A. In view of the express provisions of these Rules, the High Court cannot have recourse to its inherent powers to make a remand because, as held in *Mahendra Manilal Nanavati v. Sushila Mahendra Nanavati* [AIR 1965 SC 364 : 66 Bom LR 681] (AIR at p. 399), it is well settled that inherent powers can be availed of *ex debito justitiae* only in the absence of express provisions in the Code. It is only in exceptional cases where the court may now exercise

the power of remand dehors Rules 23 and 23-A. To wit, the superior court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order 20 Rule 3 or Order 41 Rule 31 CPC and hence it is no judgment in the eye of law, it may set aside the same and send the matter back for rewriting the judgment so as to protect valuable rights of the parties. An appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23-A or Rule 25 CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided.”

65. As could be seen from the above paragraph, when an Appellate Court finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order XX Rule 3 of Code of Civil Procedure, it can be termed as no judgment in the eye of law and in such circumstances, while setting aside the judgment of the Trial Court, send the matter back for rewriting the judgment so as to protect the valuable rights of the parties.

66. In this background, if the order passed by this Court in the appeal challenged by the review petitioners, is viewed, this Court has afforded sufficient reasons for justifying the remand.

67. Moreover, as already pointed out, if this Court records a finding in respect of any one of the parties for the first time in the appeal, the unsuccessful party would definitely lose a chance of appeal.

68. Further, this Court was not oblivious of the fact that the suit is of the year 1979 renumbered in the year 1980. Pertinently, the order sheet discloses that it is the parties who are responsible for the long drawn trial. So also the delay to be attributed to the parties while disposing of the appeals as well. As already pointed out this Court was unhappy with the support rendered by counsels for the parties in disposing of the old appeals. Paper books filed were not in order. There was no proper assistance rendered by the parties even when the appeals were heard in regard illegible documents. Written arguments filed by the parties contained many factual errors. Left with no alternative, this Court had to peruse the records by itself, each of exhibits and number of witnesses that were examined on behalf of the parties.

69. Pertinently, on the plaintiff's side, there were 44 documents which were exhibited and on behalf of the defendants, as many as 248 documents were exhibited. While

on behalf of the plaintiff, 4 witnesses were examined. On behalf of defendants, 21 witnesses were examined.

70. Learned Trial Judge did not take into consideration its judgment on these aspects of matter, the discussion with regard to the pleadings itself ran into the several pages. Mere quoting of the number of documents, that is mere reproducing number of documents and its details are not the consideration of the probative value of the documents.

71. It is to be noted that the learned Trial Judge made an omnibus observation that defendant Nos.13 to 22 have not whispered in their pleadings about the income from Chikka Huchaiah with which these defendants owned these lands in their individual capacity to term it as their self acquired property.

72. On the contrary, the material evidence on record especially the examination in chief of D.W.18 in paragraph 5, he has stated that his grandfather Chikka Huchaiah was in the business of purchasing ragi, paddy and soap nut. He further deposed that he used to purchase those commodities in and around Magadi town on wholesale basis and used to sell the same at Bangalore. In his cross examination by the plaintiff, there is no denial with regard to the aforesaid income. In the

cross-examination on behalf of fifth defendant, also there is no denial about the income of Chikka Huchaiah. Likewise, in the cross examination of DW18 by second defendant also, there is no denial.

73. In other words, independent income as is deposed by DW18 of Chikka Huchaiah having not been denied, the learned Trial Judge ought not to have recording a proper finding to the material evidence on record.

74. These aspects of the matter were taken into account by this Court while passing the first appeal and therefore afforded an opportunity for both the parties to address fresh arguments.

75. There cannot be any dispute with regard to the principles of law enunciated in the decisions relied on by the parties referred supra. But having regard to the peculiar facts and circumstances of the case on hand and in view of discussion carried out supra by this Court, detailed discussion of those decisions are not carried out.

76. From the above discussion this Court is of the considered opinion that in the case on hand the order passed by this Court in Regular First Appeal and remitting the matter to the Trial Court for the limited purpose as indicated in the

operative portion of the judgment of the appeal requires no further consideration by reviewing the judgment.

77. Consequently, following:

ORDER

Review petitions are meritless and hereby dismissed.

Sd/-
(V SRISHANANDA)
JUDGE

MR