

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA

RAO

Rev.A.S.M.P.No.1460 of 2014 in A.S.No.999 of 1995
&

Tr.Rev.A.S.M.P.No.1461 of 2014 in Tr.A.S.No.88 of

2010

%02-03-2015

Agina Varamma

...petitioner

VERSUS

\$ 1. Agina Chandramouli (died)

2. A.Chandrakala @ Anasuya and others.

...Respondents

< **GIST:**

> **HEAD NOTE:**

!Counsel for the Review Petitioner : Sri K.Raji
Reddy

^ Counsel for the Respondents : Sri Anand
Kumar Kapoor

? Cases referred

[1][1] 2015 (1) ALT 418

2 2015 (1) ALT 502

3 AIR 1980 SC 1858

4 (1951) 2 All.E.R. 587 at 589

5 AIR 1953 SC 244 Pg.246

6 AIR 1959 SC 352 Pg.355

⁷ 2015 (1) ALT 502 (D.B)

⁸ AIR 1954 SC 526

⁹ (2005) 4 SCC 741

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
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COMMON JUDGMENT :

These two Review applications have been filed under Section 114 R/w. Order 47 Rule 1 CPC seeking review of the common judgment delivered by this Court on 28.04.2014 in AS.No.999 of 1995 and Tr.A.SNo.88 of 2010.

2. The Review petitioner is the plaintiff in OS.No.40 of 1985 on the file of Sub-Ordinate Judge, Jagityal and 2nd defendant in OS.No.4 of 1999 on the file of Senior Civil Judge, Sircilla.

3. The suit OS.No.40 of 1985 was filed for partition and separate possession of the joint family properties shown in the schedules A, B and C therein. In this suit, the Review Petitioner's elder son Agina Murali and younger son Agina Chandramouli are defendants 1 and 2 respectively. The said suit was decreed on 30.06.1995 granting the Review petitioner 1/9th share in the plaint 'A',

'B' and 'C' schedule properties and five tulas of gold which she had.

4. While OS.No.40 of 1985 was pending, the Review petitioner's second son Agina Chandramouli filed OS.No.1 of 1992 before the Sub-Ordinate Judge, Jagityal against her and his brother Agina Murali seeking partition of an extent of Ac.14.35 gts. in Sy.No.474 of Vemulavada Village. He claimed 1/3rd share therein along with the Review petitioner and Agina Murali. The said suit was transferred to the court of Senior Civil Judge, Sircilla and re-numbered as OS.No.4 of 1999. This suit was dismissed on 10.07.2006.

5. Questioning the judgment in OS.No.40 of 1985 and OS.No.4 of 1999, Agina Chandramouli filed AS.No.999 of 1995 and Tr.A.S.No.88 of 2010 in this Court.

6. Pending the appeals, Agina Chandramouli died and his legal representatives were impleaded in both appeals. They are his wife, two sons and a daughter.

7. By a common judgment dt.28.04.2014, this Court dismissed AS.No.999 of 1995 and allowed Tr.A.S.No.88 of 2010. In that judgment, this court granted a decree as under :

"(i) plaint A, B and C schedule properties and 5 tulas of gold are the joint family properties of late Ramalingam and

defendants 1 and 2. On his death, in these properties, the plaintiff in OS.No.40 of 1985 is entitled to 1/9th share and defendants 1 and 2 are entitled to 4/9th share each.

(ii) that the extent of Ac.14.35 gts. in Sy.No.474 of Vemulawada Village is the self-acquired property of late Ramalingam. Therefore on his death, the plaintiff in OS.No.40 of 1985 and her two sons, defendants 1 and 2 therein are each entitled to 1/3rd share.”

8. It is to be noticed that while delivering the above judgment, this Court (having noted in the body of the judgment that Agina Chandramouli had died and his legal representatives were impleaded) did not, while passing the above decree of partition, take into account the consequences of his death, i.e., that his share would devolve on the Review petitioner (his mother) and also on his wife and children in equal shares as per the provisions of the Hindu Succession Act, 1956.

9. It is contended in the Review petition and not disputed by the counsel for the respondent nos.2 to 5 (legal representatives of Agina Chandramouli) Sri Anand Kumar Kapoor that during the course of arguments, the counsel for the Review petitioner had raised this issue, but due to oversight this court had not taken note of this issue while delivering judgment and failed to mould the relief on that basis.

10. Counsel for the Review petitioner, Sri K. Raji

Reddy, contended that this constitutes an error apparent on the face of record entitling the Review petitioner to seek a Review of the said judgment since the Review petitioner would then be entitled to 4/45th share in plaint A, B and C schedule properties and the five tulas of gold and 2/5th share in Acs.14.35 gts. in Sy.No.474 of Vemulavada Village.

11. Counsel for respondent nos. 2 to 5, however, contended that under Section 114 of C.P.C. a Review lies to the same court which passed a judgment/decree; since the common judgment in the appeal was delivered on 28.04.2014, and subsequent thereto, the A.P. Reorganization Act, 2014 (Act 6 of 2014) carved out the State of Telangana from the erstwhile State of Andhra Pradesh w.e.f.02.06.2014, and since the Review petitions were filed on 30.07.2014 in the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, this Court is not the “same Court” which was in existence at the time when the common judgment was delivered on 28.04.2014; and therefore, the Review petitions are not maintainable. He further contended that after the formation of the common High Court, the Judges of the erstwhile High Court of Andhra Pradesh have not taken oath again as envisaged under Article 231 (c) of the Constitution before commencing to discharge their duties as Judges of the common High Court at Hyderabad for

the State of Telangana and for the State of Andhra Pradesh and therefore this court cannot exercise the jurisdiction to review the judgment delivered by it on that count. He also contended that the A.P. Reorganization Act, 2014 does not provide for extension of/ continuation of Review jurisdiction in respect of proceedings not pending on the notified date and S.105 only provided for transfer of pending proceedings in a Court subordinate to the High Court. On the merits of the Review Petition, he contended that an aspect which was not determined in the judgment cannot be a ground to review it and that the Review petitioner, not being the appellant in the appeals, cannot seek review thereof. He further contended that unless the review is allowed, matter cannot be heard on merits.

12. In reply, Sri K. Raji Reddy, counsel for Review petitioner, contended that a Division Bench of this Court in **T. Madan Mohan Reddy and others v. B.R. Meena, IAS**^[1] had dealt with the issues raised under the A.P. Reorganization Act, 2014 with reference to the jurisdiction of the common High Court at Hyderabad for both States and decided that High Court Judges functioning on or before that day would continue to function as judges of the common High Court for both States and there was no need to take oath afresh on that day or subsequent thereto. He contended that the said decision was

followed in **Bar Council of India v. Savulgay Prabhakar and others**^[2]. He contended that as per Section 30(1) (b) of the said Act, the Judges of the High Court at Hyderabad for the existing State of Andhra Pradesh holding office immediately before the appointed day (02.06.2014) shall become on that day the judges of the common High Court; that the jurisdiction of the erstwhile High Court for the composite State of Andhra Pradesh continues to be vested in the common High Court at Hyderabad post 02.06.2014; therefore, it is the “same Court” for the purposes of Section 114 and Order 47 Rule 1 C.P.C. and the Review petitions are therefore maintainable. He further contended that the contention now raised in the Review petitions by the Review petitioner was admittedly canvassed at the time of hearing of the appeals, but the same was not dealt with by the Court while delivering judgment; that the parties cannot be made to suffer for the mistake of the Court; and interests of justice would warrant exercise of Review jurisdiction, in the facts and circumstances of the case. He also contended that mere fact that the Review petitioner was not appellant in the Appeals would not bar her from seeking Review since Section 114 C.P.C. permits a Review petition to be filed by “*any person considering himself aggrieved*”; that there is no question of estoppel; and while it is true that the matter cannot be heard on merits unless Review is allowed, in view of the error

apparent on the face of record, the Review ought to be allowed to the extent prayed for; and there is no necessity to interfere with other findings in the common judgment since the Review petitioner is not interested in seeking a Review on the other aspects decided in the common judgment.

13. In view of the above submissions, the following issues arise for consideration :

- a. Whether the subject Review petitions can be entertained by this Court, although they were filed after 02.06.2014 (when the erstwhile composite State of Andhra Pradesh was bifurcated into the State of Telangana and the State of Andhra Pradesh and the erstwhile Andhra Pradesh High Court was designated as the common High Court at Hyderabad for both the States), particularly when no fresh oath was taken by the Judges after the said date ?
- b. Whether the Review petitioner was entitled to seek Review of the common judgment dt.28.04.2014 in A.S.No.999 of 1995 and Tr.A.S.No.88 of 2010, even though she was not an appellant in the said appeals ?
- c. Whether there is an error apparent on the face of record in the common judgment dt.28.04.2014 in A.S.No.999 of 1995 and Tr.A.S.No.88 of 2010 warranting exercise of Review jurisdiction ?

d. To what relief ?

POINT (a) :

14. Section 114 of CPC states :

“114. Review: –

Subject as aforesaid, any person considering himself aggrieved –

(a) *by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.*

(b) *by a decree or order from which no appeal is allowed by this Code, or*

(c) *by a decision on a reference from a Court of Small Causes,*

may apply for a Review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

15. Thus, any person considering himself aggrieved by judgment may apply for Review thereof to “*the court which passed the decree*”. The question is whether this court after 02.06.2014 (the appointed day under the A.P. Reorganization Act, 2014 when it became the Common High Court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh) is the court which passed the common judgement/decreed in the above appeals on 28.04.2014.

16. Section 30 of the said Act states :

“(1) *On and from the appointed day, --*

*(a) the High Court of Judicature at Hyderabad **shall be** the common High Court for the State of Telangana and the State*

of Andhra Pradesh till a separate High Court for the State of Andhra Pradesh is constituted under Article 214 of the Constitution read with Section 31 of this Act;

(b) the Judges of the High Court at Hyderabad for the existing State of Andhra Pradesh holding office immediately before the appointed day shall become on that day the Judges of the common High Court.

(2) The expenditure in respect of salaries and allowances of the Judges of the common High Court shall be allocated amongst the States of Andhra Pradesh and Telangana on the basis of population ratio.”

17. Section 31 (1) states:

“31. (1) Subject to the provisions of Section 30, there shall be a separate High Court for the State of Andhra Pradesh (hereinafter referred to as the High Court of Andhra Pradesh) and the High Court of Judicature at Hyderabad shall become the High Court for the State of Telangana (hereinafter referred to as the High Court at Hyderabad).”

... ..
... ..

18. Sec.32 (1) states:

“32.(1) Such of the Judges of the High Court at Hyderabad holding office immediately before the date of establishment of the High Court of Andhra Pradesh as may be determined by the President, shall, from that date cease to be Judges of the High Court at Hyderabad and become, Judges of the High Court of Andhra Pradesh.”

... ..
... ..

19. Sec.40 states:

“Section 40 - Transfer of proceedings from Hyderabad High Court to Andhra Pradesh High

Court:

(1) Except as hereinafter provided, the High Court at Hyderabad shall, as from the date referred to in sub-section (1) of section 30, have no jurisdiction in respect of the State of Andhra Pradesh.

(2) Such proceedings pending in the High Court at Hyderabad immediately before the date referred to in sub-section (1) of section 30 as are certified, whether before or after that day, by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court of Andhra Pradesh shall, as soon as may be after such certification, be transferred to the High Court of Andhra Pradesh.

(3) Notwithstanding anything contained in sub-sections (1) and (2) of this section or in section 33, but save as hereinafter provided, the High Court at Hyderabad shall have, and the High Court of Andhra Pradesh shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to the Supreme Court, applications for Review and other proceedings where any such proceedings seek any relief in respect of any order passed by the High Court at Hyderabad before the date referred to in sub-section (1) of section 30:

Provided that if after any such proceedings have been entertained by the High Court at Hyderabad, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Andhra Pradesh, he shall order that they shall be so transferred, and such proceedings shall thereupon be transferred accordingly.

(4) Any order made by the High Court at Hyderabad--

(a) before the date referred to in sub-section (1) of section 30, in any proceedings transferred to the High Court of Andhra Pradesh by virtue of sub-section (2), or

(b) in any proceedings with respect to which the High Court at Hyderabad retains jurisdiction by virtue of sub-section (3), shall for all purposes have effect, not only as an order of the High Court at Hyderabad, but also as an

order made by the High Court of Andhra Pradesh.”

20. From the above provisions, it is clear that on and from the appointed day i.e, 02.06.2014, the High Court of Judicature at Hyderabad *shall be* the common High Court for the State of Telangana (newly carved out of the erstwhile composite State of Andhra Pradesh) as well as the residuary State of Andhra Pradesh *and* the Judges of the High Court at Hyderabad for the existing State of Andhra Pradesh holding office immediately before the appointed day *shall become* on that day the Judges of the common High Court. This would continue till a separate High Court for the State of Andhra Pradesh is constituted under Article 214 of the Constitution of India r/w Section 31 of the Act. Only after such separate High Court is constituted, Judges of the High Court at Hyderabad holding office immediately before the date of establishment of the High Court of Andhra Pradesh as may be determined by the President, cease to be Judges of the High Court at Hyderabad and become, Judges of the High Court of Andhra Pradesh.

21. It is not in dispute as on date that no separate High Court for the State of Andhra Pradesh has been constituted under Article 214 of the Constitution r/w Section 31 of the Act. Therefore, in view of Section 30 of the Act, the High Court of Judicature at Hyderabad, on and from the appointed day, became the common High

Court for both States. It continues to be so *as on date* and the Judges of the High Court at Hyderabad for the existing State of Andhra Pradesh holding office immediately before the appointed day became the Judges of the common High Court and continue to be so.

22. It may be that there is no specific provision in the Act for hearing of cases filed in the High Court existing before the appointed day, by the common High Court after the appointed day. Section 105 of the Act only dealt with transfer of proceedings pending in Courts *other than* the High Court.

23. But by virtue of Section 30, (i) the Parliament having created a fiction by which the High Court of Judicature at Hyderabad would be the common High Court for both States, (ii) the Judges of the High Court at Hyderabad for the existing State of Andhra Pradesh holding office immediately before the appointed day becoming on that day the Judges of the common High Court, by giving full effect to the statutory fiction, for all intents and purposes, the common High court after 2.6.2014 is a continuation of the High Court of Andhra Pradesh prior to 2.6.2014.

24. In Industrial **Supplies Pvt. Ltd. vs. Union of India** ^[3], the Supreme Court was considering the provisions of the Coking Coal Mines (Nationalisation) Act,

1972 which provided by sub-Section (1) of Section 4 thereof that the right, title and interest of the owners in relation to the Coking Coal Mines specified in the I Schedule of that Act, on the appointed day, i.e., on 17.10.1971 shall stand transferred to and shall vest absolutely in the Central Government free from all encumbrances. It was contended that raising contractors of Kutchi Baliheri Colliery did not fall within the term “owner” as defined in Section 3(n) of the Act read with Section 2 of the Mines Act, 1952 and that the various machinery, plants, equipment and other fixed assets, current assets and movables belonging to them lying in two coal mines would not vest in the Central Government under sub-Section (1) of Section 4. It was contended by them that they were neither the owners nor immediate occupiers or managing directors of the coal mines in question, but they were merely raising contractors thereof and did not come within the purview of the term “owners” as defined in Section 3(n) of the Act read with Section 2(1) of the Mines Act, 1952 and so they were entitled to dismantle and remove the fixed assets like machinery, plants and equipment installed in the mines.. The Delhi High Court rejected their contention. They appealed to the Supreme Court. The Supreme Court also rejected their plea. It quoted Section 3 (n) of the Coking Coal Mines (Nationalisation) Act, 1972 which defined the term “owner” as follows :

“3 (n) “owner” :-

(i) *when used in relation to a mine, has the meaning assigned to it in the Mines Act, 1952;*

(ii) *when used in relation to a coke oven plant, means any person who is the immediate proprietor or lessee or occupier of the coke oven plant or any part thereof or is a contractor for the working of the coke oven plant or any part thereof.”*

It also referred to Section 2 (1) of the Mines Act, 1952 which reads as follows :

*“(1) “**owner**”, when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver and in the case of a mine owned by a company, the business whereof is being carried on by a managing agent, such managing agent; but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; **but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability;**”*

The Supreme Court interpreted the words ‘occupier’ used in the above provisions as meaning one who takes or holds possession and as a person in actual occupation. It held that the raising contractors were, under the terms of the agreement between themselves and the colliery, entitled and were in fact in actual physical possession and enjoyment of the colliery and were therefore an occupier

thereof. The Court rejected the submission that since the word 'includes' is not there in those provisions, the above definitions do not include a raising contractor and that Section 2 (1) of the Mines Act, 1952 which mentions the term 'contractor' would not include a raising contractor. The Supreme Court observed that there was no need for Parliament to insert the word "includes" because of the words '**as if he were**'. It held that the Parliament, with due deliberation, in Section 3(n) adopted by incorporation the enlarged definition of the term 'owner' in Section 2(1) of the Mines Act, 1952 to make the Nationalisation Act all embracing and fully effective and by this, it intended to make both the owner as well as the contractor equally liable for the due observance of the Act. It declared that when a legal fiction is incorporated in a statute, the Court has to ascertain for what purpose the fiction is created and after ascertaining the purpose, full effect must be given to the statutory fiction and it shall be carried to its logical conclusion. In doing so, it held that the Court has to assume all the facts and conclusions which are incidental or inevitable corollaries to giving effect to the fiction. It declared that the legal fiction of the words "**as if he were**" in the definition of owner in Section 3 (n) of the Nationalisation Act read with Section 2(1) of the Mines Act is that although the petitioners were not the owners, they being the contractors for the working of the mine in question, were to be treated as though in fact they were

so; that unless the term 'owner' in sub-Section (1) of Section 4 is given an extended meaning so as to include a contractor for the working of a mine or any part thereof, the very object of the legislation would be frustrated; it has to be presumed that Parliament was fully aware of the normal pattern of working of all the coal mines, i.e., by employment of raising contractors, and that any other construction would lead to a manifest absurdity and attribute to Parliament a result which it never intended which would result in the contractors escaping from the consequences of vesting under sub-Section (1) of Section 4 of the Act, and permit them to dismantle and remove the additional machinery, plants and equipment which were being utilized for the working of mines.

25. It approved the famous quotation of Lord Asquith in the judgment **East End Dwelling Co. Ltd. V. Finsbury Borough Council**^[4] where he observed :

"... .. If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it --. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs" ...

26. This passage has also been approved by the

Supreme Court in, **State of Bombay v. Pandurang Vinayak**^[5] and in **CIT, Delhi v. S. Teja Singh**^[6] and in several other cases.

27. In my view, the fiction was enacted in Sec.30 (1) of the Act, to ensure that there is no vacuum or crisis and to ensure a continuity of proceedings filed in the High Court prior to 2.6.2014 by the common High Court after 2.6.2014. If this was not what Parliament intended, it would have specified that all cases pending in the High Court on 2.6.2014 would abate. It did not do so.

28. So this fiction must be given full effect to, and that the erstwhile High Court of Andhra Pradesh's successor i.e the common High Court at Hyderabad for both states after 2.6.2014, (till a new High Court is constituted under Art.214 for the new residuary State of Andhra Pradesh), has to hear all cases filed in the erstwhile High Court of Andhra Pradesh and decide them.

29. Any other construction would lead to a manifest absurdity and attribute to Parliament a result which it never intended (i.e., it would lead to a situation where the common High Court cannot decide the cases filed before 2.6.2014 leaving all litigants whose cases were pending as on 2.6.2014 without any remedy at all).

30. The object of the Act was no doubt to bifurcate the erstwhile composite State of Andhra Pradesh into the

States of Telangana and Andhra Pradesh respectively, but at the same time Parliament also intended to ensure that residents of both states would have a legal remedy of approaching the common High Court for relief after 2.6.2014 not only by filing new cases after 2.6.2014, but that legal remedies already availed by them before that date also continue and would be adjudicated by the common High Court, till a separate High Court is constituted for the residuary State of Andhra Pradesh.

31. In **T. Madan Mohan Reddy** (1 supra), a Division Bench of this Court considered provisions of the AP Reorganization Act, 2014 and the question whether from the appointed day i.e. 02-06-2014, the common High Court at Hyderabad had jurisdiction in respect of the residuary State of Andhra Pradesh. A Single Judge entertained a doubt whether from 02-06-2014, the common High Court would have such jurisdiction over matters in respect of the residuary State of Andhra Pradesh or not. The Division Bench, before whom the matter was placed for consideration by the Registry, held that it is the intention of the Legislature that this High Court should act as common institution for the two separate States even after the appointed day, till a date is notified as mentioned in Section 31 for a separate High Court for the State of Andhra Pradesh; and the moment such a separate High Court is created by notification, under Article 214 of the Constitution r/w Section 31, the present

High Court at Hyderabad will not have any territorial jurisdiction over the residuary State of Andhra Pradesh. The Bench held that any other interpretation would render the High Court at Hyderabad after the appointed day as only the High Court for the State of Telangana only and not for the State of Andhra Pradesh, thereby resulting in the State of Andhra Pradesh being one without any High Court (as there is no notification for establishment of High Court for the residuary State of Andhra Pradesh). It held that a provision in any statute has to be read harmoniously with other portions thereof and, if necessary, by removing any mischief applying Heydon's rule of interpretation, so as to arrive at an interpretation that does not lead to absurdity, impossibility or creation of an irretrievable crisis in the operation of the statute; and that Section 40 of the Act which dealt with transfer of proceedings from the High Court at Hyderabad to the Andhra Pradesh High Court, should be interpreted to mean that till a separate High Court is constituted for the residuary State of Andhra Pradesh, the common High Court at Hyderabad would continue to have jurisdiction in respect of the areas covered by the said residuary State also; and it cannot be interpreted that as from the appointed day, the High Court at Hyderabad would have no jurisdiction in respect of the State of Andhra Pradesh. It held that interpretation of the term "*from the date referred to in sub-Section (1) of Section 30*" in sub-Section (1) of

Section 40 as the “appointed day”, i.e., 02.06.2014 as was proposed by the learned Single Judge would create a constitutional vacuum and would be impermissible since from such an interpretation it would follow that from 02.06.2014, the High Court at Hyderabad would have no jurisdiction over the residuary State of Andhra Pradesh and create a crisis thereby depriving litigants from that State, the right to have their disputes adjudicated by a High Court.

32. This judgment was reiterated and followed in **Bar Council of India, rep. by its Secretary Vs. Savulgay Prabhakar and others**^[7] in the context of Section 34 of the Act as to whether a separate Bar Council for the State of Telangana would be deemed to have come into existence from the appointed day i.e. 02-06-2014.

33. Thus in **T.Madan Mohan Reddy** (1 supra), it has been held that on or after 2.6.2014, the common High Court can hear and dispose of cases relating to the residuary State of Andhra Pradesh as well; and merely on account of the passing of the A.P.Reorganisation Act, 2014, it did not cease to have jurisdiction over the territory of the residuary State of Andhra Pradesh.

34. So it follows from this decision also that, in view of S.30(1) of the Act, the common High court has the same jurisdiction as it did before 2.6.2014 and the fiction

contained in that provision is intended to ensure that litigants of the residuary State of Andhra Pradesh also continue to enjoy the facility of approaching the common High Court for redressal. So, it is not open to any party to contend that the common High Court is a different High Court from the High Court for the composite State of Andhra Pradesh as it stood prior to 02-06-2014, and the common High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh cannot take up cases filed prior to the appointed day i.e. 02-06-2014.

35. Thus, I am of the opinion that there was no necessity for Parliament to make a specific provision in the A.P.Reorganization Act, 2014 providing that proceedings filed in the existing High Court of Andhra Pradesh prior to 2.6.2014, the appointed day, shall be taken to be proceedings pending in the common High Court at Hyderabad for the States of Telangana and Andhra Pradesh and the said common High Court can hear and dispose of the same after 2.6.2014. The fiction created by Parliament, taken to its logical extent, enables the common High Court to continue to hear and decide cases filed prior to 02.06.2014, even after 02.06.2014 on the basis that it is the same Court, exercising the same jurisdiction before 02.06.2014.

36. By the same logic, it is not open to the respondents in these Review petitions also to contend

that the Review petitions, having been filed in July 2014 before the Common High Court at Hyderabad, cannot be entertained since the said common High Court is not the Court which passed the judgment and decree on 28-04-2014 in the appeals A.S.No.999 of 1995 and Tr.A.S.No.88 of 2010.

37. Although the counsel for the respondents sought to contend that Section 30 of the AP Reorganization Act, 2014 did not fall for consideration in **T.Madan Mohan Reddy** (1 supra), I am unable to agree with the said submission since a perusal of the said judgment reveals that Sec.30 was also considered.

38. Although counsel for respondents sought to contend by referring to Article 231 (2) (c) of the Constitution that it is not possible to have a common High Court since such common High Court can be located only in Union Territory and that Hyderabad is not a Union Territory, I am unable to agree. The said clause provides that in relation to a common High Court for two or more States or for two or more States and a Union Territory, the reference in Article 219 and 229 to the State shall be construed as a reference to the State in which the High Court has its principal seat; and proviso thereto states that if such principal seat is in a Union Territory, the references in Article 219 and 229 to the Governor, Public Service Commission, Legislature and Consolidated Fund of the

State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India. The said provision does not mandate that the seat of a common High Court can only be in a Union Territory.

39. He then sought to contend that there is no “principal seat” of the High Court for the erstwhile composite State of Andhra Pradesh and there was only one seat at Hyderabad and therefore the Legislature could not have created a common High Court for the States of Telangana and Andhra Pradesh. In these Review Petitions, I am not considering a challenge to the provisions of the AP Reorganization Act, 2014 and it would thus be outside the scope of these Review Petitions to consider the said submission. Therefore this submission cannot be considered in these Review Petitions.

40. He also sought to contend that the conclusion in **T.Madan Mohan Reddy** (1 supra) needs to be reconsidered and so the matter be directed to be placed before a Division Bench again for a possible reference to a Full Bench. Since I am of the opinion that the conclusion in **T.Madan Mohan Reddy** (1 supra) does not suffer from any error warranting a fresh reference to a Division Bench for fresh consideration, I reject the said contention.

41. The contention of counsel for respondents that since I have not taken a fresh oath after 02-06-2014, I cannot exercise Review jurisdiction as a Judge of the common High Court at Hyderabad is also without any merit since the said issue has been considered in **T.Madan Mohan Reddy** (1 supra). The Division Bench held therein that Article 219 provides for making and subscribing for an oath or affirmation only if there is “appointment”, either as a fresh one or by way of “transfer”; and since in the AP Reorganization Act, 2014 it is not stated that the Judges functioning on the appointed day were appointed afresh, they need not take a fresh oath and would be holding office as such on the strength of their initial appointment and it is continuing.

42. In this view of the matter, I am of the opinion that as a Judge of the common High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh, I am entitled to entertain and decide the Review Petitions filed after the appointed day seeking Review of the common judgment rendered by me in the appeals prior to the appointed day. This point is answered accordingly in favor of the Review Petitioner and against the respondents.

Point (b) :

43. Sec.114 of the CPC extracted supra permits a Review petition to be filed by *any person considering*

himself aggrieved by a decree to the Court which passed the decree. Thus if a respondent in the appeals, like the Review Petitioner herein, feels aggrieved by the decree passed in the appeals, she can file applications for Review. The law does not say that only an appellant in an appeal can file a Review.

44. The contention of the counsel for respondents in the Review petitions that the Review petitioner had prayed for the dismissal of the suit OS.No.4 of 1999 (formerly OS.No.1 of 1992) filed by Agina Chandramouli, the plaintiff therein and therefore she estopped by conduct from now filing the Review petition is equally untenable. It is a matter of record that the Review petitioner, who is 2nd defendant in OS.No.4 of 1999, remained *ex parte* and had not filed any written statement praying for dismissal of the suit filed by Agina Chandramouli. Therefore, there is no question of estoppel of the Review petitioner for filing these Review petitions.

45. So this point is answered accordingly in favor of the Review Petitioner and against the respondents.

Point (c):

46. I will now consider the point “Whether there is error apparent on the face of record in the common judgment dt.28.04.2014 in A.S.No.999 of 1995 and Tr.A.S.No.88 of 2010 warranting exercise of Review jurisdiction ?”

47. It is the contention of the Review Petitioner that

while delivering the above judgment, this Court (having noted in the body of the judgment that Agina Chandramouli had died and his legal representatives were impleaded) did not, while passing the decree of partition, take into account the consequences of his death, i.e., that his share would devolve on the Review petitioner (his mother) and also on his wife and children in equal shares as per the provisions of the Hindu Succession Act, 1956. It is also contended in the Review petition *and not disputed by the counsel for the respondent nos.2 to 5* (legal representatives of Agina Chandramouli) Sri Anand Kumar Kapoor, that during the course of arguments, the counsel for the Review petitioner had raised this issue, but due to oversight this court had not taken note of this issue while delivering judgment and moulded the relief on that basis. The question is whether this omission on the part of this Court constitutes an “error apparent on the face of record”.

48. It is the contention of Counsel for respondents that an aspect which was not determined in the judgment cannot be a ground to Review it. But he does not deny the fact that the death of Agina Chandramouli occurred during the pendency of the appeals filed by him and that his wife and children had been impleaded as his legal representatives by filing ASMP.No.979 of 2011 in AS.No.999 of 1995 and ASMP.No.1199 of 2011 in Tr.A.S.No.88 of 2010. He also does not dispute the fact

that the Review petitioner, being the mother of Agina Chandramouli is a class-I heir as per provisions of the Hindu Succession Act, 1956 to his estate along with his wife and children. Lastly, he also does not dispute that the counsel for the Review petitioners had raised an argument at the time of hearing of the appeals that the Review petitioner, being a class-I legal heir to Agina Chandramouli, is also entitled to a share in his property, if a decree of partition of the properties which are subject matter of the suits out of which the appeals arose, is granted.

49. In this view of the matter, it is clear that this Court had committed an error in not taking note of the said submission and moulding relief in the para.103 of the common judgment dt.28.04.2014 in the appeals.

50. In **M.M.B. Catholics vs. M.P. Athanasius**^[8], a Review application was made in the Travancore High Court but it's maintainability was questioned. It rejected the preliminary objection as to maintainability of the Review application and subsequently dismissed the Review application on merits. This was questioned in the Supreme Court by way of Special Leave. While confirming the decision of the said High Court rejecting the objection to the maintainability of the Review petition, the Supreme Court however held that the application for Review on merits ought to have been allowed and held

that *failure to effectively deal with and determine an important issue in the case on which depends the title of the plaintiffs is an error apparent on the face of record*. It was held that when the error complained of is that Court had assumed that a concession had been made, when none had in fact been made, or that the Court misconceived the terms of the concession, or the scope and extent of it, it will not generally appear on the record but will have to be brought before the Court by way of an affidavit and this can only be done by way of Review. It also held that *misconception of the court must be regarded as sufficient reason analogous to an error on the face of the record*.

51. This was reiterated in **Board of Control for Cricket in India v. Netaji Cricket Club**^[9], by the Supreme Court. It held:

“89. Order 47 Rule 1 of the Code provides for filing an application for Review. Such an application for Review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a Review of the order. An application for Review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words “sufficient reason” in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a

court or even an advocate. An application for Review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

52. Therefore, in my opinion, non-consideration of the consequences of the death of Agina Chandramouli by this Court at the time when it delivered the judgment in the appeals on 28.04.2014, even though the said point was admittedly raised at the time of hearing of the arguments in the appeals by Sri K. Raji Reddy, counsel for the Review petitioner, was on account of oversight by this Court; and since it is a failure to deal with an important issue as to devolution of the share of Agina Chandramouli on the parties to the appeals under a misconception that he was still alive, it is clearly an error apparent on the face of record warranting Review of the common judgment rendered in the appeals. The said error in the judgment is an evident error which strikes one on mere looking at record and does not require any long drawn process of reasoning on points where there may conceivably be two opinions. Therefore, the Review applications ASMP.No.1460 of 2014 in AS.No.999 of 1995 and Tr.Rev.ASMP.No.1461 of 2014 in Tr.AS.No.88 of 2010 both deserve to be allowed.

Point (d) :

53. In the common judgment dt.28.04.2014, this Court dismissed AS.NO.999 of 1995 and allowed TrA.S.No.88 of 2010 and granted a decree as under :

“(i) plaint A, B and C schedule properties and 5 tulas of gold are the joint family properties of late Ramalingam and defendants 1 and 2. On his death, in these properties, the plaintiff in OS.No.40 of 1985 is entitled to 1/9th share and defendants 1 and 2 are entitled to 4/9th share each.

(ii) that the extent of Ac.14.35 gts. in Sy.No.474 of Vemulawada Village is the self-acquired property of late Ramalingam. Therefore on his death, the plaintiff in OS.No.40 of 1985 and her two sons, defendants 1 and 2 therein are each entitled to 1/3rd share.”

54. In view of the fact that Agina Chandramouli had died pending the appeals, the Review petitioner, being his mother is also entitled to a share in his estate along with his wife and three children. Therefore, taking into account the said fact the decree in the appeals is modified as under :

“(i) plaint A, B and C schedule properties and 5 tulas of gold are the joint family properties of late Ramalingam and defendants 1 and 2. On the death of late Ramalingam, in these properties, Agina Vamma, the plaintiff in OS.No.40 of 1985 is entitled to 1/5th share, Agina Murali, the 1st defendant in OS.No.40 of 1985 is entitled 4/9th share, and the legal heirs of Agina Chandramouli, i.e., appellant nos.2 to 5 in AS.No.999 of 1995 are each entitled to 4/45th share.

(ii) that the extent of Ac.14.35 gts. in Sy.No.474 of Vemulawada Village is the self-acquired property of late Ramalingam. Therefore on his death, Agina Vamma, the 2nd defendant in OS.No.4 of 1999 is entitled to 2/5th share, Agina Murali, the 1st defendant in OS.No.4 of 1999 is entitled to 1/3rd share, and the legal heirs of Agina Chandramouli, the plaintiff in OS.No.4 of 1999 i.e., appellant nos.2 to 5 in Tr.AS.No.88 of 2010 are each entitled to 1/15th share.”

55. No other point was argued in the Review petitions by both sides.

56. Therefore, Point (d) is ordered as mentioned in Para.52 above. There shall be a decree accordingly in both appeals.

57. In the result, Review Applications ASMP.No.1460 of 2014 in AS.No.999 of 1995 and Tr.Rev.ASMP.No.1461 of 2014 in Tr.AS.No.88 of 2010 both are allowed. No costs.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-03-2015

L.R.Copy to be marked: Yes / No

B/o.

Kvr/Ndr

[\[1\]](#) 2015 (1) ALT 418

[\[2\]](#) 2015 (1) ALT 502

[\[3\]](#) AIR 1980 SC 1858

[\[4\]](#) (1951) 2 All.E.R. 587 at 589

[\[5\]](#) AIR 1953 SC 244 Pg.246

[\[6\]](#) AIR 1959 SC 352 Pg.355

[\[7\]](#) 2015 (1) ALT 502 (D.B)

[\[8\]](#) AIR 1954 SC 526

[\[9\]](#) (2005) 4 SCC 741