

* HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

+ Review CRP MP No.4638 of 2017
in CRP No.6697 of 2004

% 23-02-2018

Bhagya Nagar Plot Owners Welfare Association,
Ashoknagar, Hyderabad, rep.by its President,
P. Venkat Ram Reddy. ... Petitioner
v.

\$M/s. Prime Properties,
a registered partnership firm
rep.by its Partner, Sri Yaseem Shakir
and 20 others. ... Respondents

! Counsel for the petitioner: V. Bhoopathi Reddy and others
(Sri Challa Seetharamaiah, Senior counsel)

Counsel for the Respondents: K.K. Waghray & others

< Gist:

> Head Note:

? Cases referred:

- ¹ 2015 (1) SCC 379
- ² AIR 1972 Cal 345
- ³ AIR 1982 AP 115
- ⁴ 2004 (6) ALT 111
- ⁵ 1963 SC 1909
- ⁶ 2001 (6) ALT 226
- ⁷ AIR 1978 SC 45
- ⁸ 2004 (4) ALD 787
- ⁹ AIR 1995 Guwahati 82
- ¹⁰ 1988 (2) SCC 602
- ¹¹ 2003 (6) SCC 675
- ¹² AIR 1983 SC 75
- ¹³ AIR 1997 SC 173
- ¹⁴ 2015 (1) SCC 379
- ¹⁵ (1997) 8 SCC 715
- ¹⁶ (2006) 4 SCC 78
- ¹⁷ 2006 SCC online Cal 564
- ¹⁸ (2006) 8 SCC 686
- ¹⁹ (1970)1 SCC 582
- ²⁰ (1969) 3 SCC 769
- ²¹ (1997) 5 SCC 76
- ²² AIR 1978 Delhi 122
- ²³ AIR 1998 SC 1872
- ²⁴ (2004) 3 SCC 214
- ²⁵ (1999) 4 SCC 396
- ²⁶ 2008 (1) ALD 366
- ²⁷ 2005 (6) SCC 149
- ²⁸ 2005 (7) SCC 605
- ²⁹ (1983) 1 SCC 228
- ³⁰ AIR 1962 Cal 169 (DB)
- ³¹ AIR 1956 Patna 233
- ³² 1960-61(Vol.65)-CWN-848
- ³³ 2009 (1) C.H.N. 135
- ³⁴ 2009 (2) Bom CR 247
- ³⁵ AIR 2002 SC 1771
- ³⁶ (2000) 1 SCC 666,



HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

Review CRP MP No.4638 of 2017

in

CRP No.6697 of 2004

ORDER:

In view of the orders of the Hon'ble Supreme Court of India, dated 10.01.2017 in Special Leave Petition No.11595 of 2009, the review CRP MP No.4638 of 2017 that has been filed in CRP No.6697 of 2004 was taken up for hearing.

At that stage, a number of learned counsels appeared and stated that their clients were also affected by the orders dated 20.03.2009 of the learned single Judge of this Court in CRP No.6697 of 2004 and that they are all the persons 'aggrieved' who have right to be heard. This was strongly opposed by counsels who were satisfied with the order under review. There were a large number of applicants and also opponents. Therefore, with the consent of the learned counsels, this Court proceeded to hear the matter as follows:

All the parties who wanted a review of the order dated 20.03.2009 in CRP No.6697 of 2004 were heard first and later all the parties who wanted the order dated 20.03.2009 to be sustained/continued were heard next. Some have sought leave to file review; some wanted a review while others wanted to implead themselves etc. to challenge the impugned order. Therefore, this method was adopted with consent of the counsels for all the parties.

The lead in this matter was taken in Review CRP MP No.4638 of 2017 by Sri Challa Seetharamaiah, learned senior counsel on behalf of the Bhagyanagar Plot Owners Welfare Association.

The learned senior counsel argued that the order dated 20.03.2009 in CRP No.6697 of 2004 impugned in the review petitions is totally opposed to all known canons of law. It is his submission that the procedure under Order XXI Rule 52 of the Civil Procedure Code (CPC) will only begin when there is an attachment of the property in execution. He drew the attention of this Court to the provisions of Order XXI Rule 52 CPC and argued that the essential pre-requisite for an application under Order XXI Rule 52 CPC is the attachment of a property, which is in the custody of a Court or a public officer. He also drew the attention of this Court to the heading of the Order XXI Rule 52 CPC, which states “Attachment of property in custody of Court or public officer”. The learned senior counsel argued that where the property to be attached is in the custody of a Court or a public officer, the attachment shall be made by a notice to such Court or officer. He relied on the proviso which says “provided that where such property is in the custody of a Court, any question of title or priority etc. including a claim by a third party shall be determined by such Court.” Therefore, it is the contention of the learned senior counsel that for invoking the provisions of Order XXI Rule 52 CPC, a) there must a ‘property’ in the ‘custody’ of a

Court or an officer; b) that the property which is in the custody of a Court or an officer must be attached by a formal order from the Court and then c) that Court alone can decide any question of title or priority over the attached property even if raised by a third party.

The learned senior counsel drew the attention of this Court to the plaint in O.S.No.3306 of 1984, which is the genesis of the entire litigation and pointed out that there is a clear pleading in para-6 of the plaint that a substantial part of the land has already been sold and a very little land is left. Therefore, he submits that in the impugned order, there is a manifest error when the entire property was ordered to be delivered. He also pointed out that the plaint in the very same paragraph refers to similar transactions by this firm.

He drew the attention of this Court to the fact that the Urban Land Ceiling (ULC) Authorities have held that M/s. Prime Properties do not have title or possession to the land (the petitioners in IA No.811 of 2004 under Order XXI Rule 52 CPC). He also argued that the Urban Land Ceiling Act (ULC Act) has been repealed and as physical possession has not been taken over by the Urban Land Ceiling Authorities by virtue of the repeal provisions of ULC Act, the land is still with the original owners, as per the learned senior counsel. This fact and the filing of the suit (O.S.No.4401 of 2002) by Prime Properties were suppressed and not brought to the notice of this Court.

The learned senior counsel also argued that the order dated 22.11.2004 granted by the lower Court in I.A. No.811 of 2004 was in consonance with the provisions of Order XXI Rule 52 CPC and that the lower Court rightly held on merits that this application under Order XXI Rule 52 CPC is not maintainable. He drew the attention of this Court to the receiver's report, which is styled as interim report and pointed out that there is no clarity whatsoever in the report to show when and how the receiver actually took possession of the land. Neither the boundaries nor the distinctive features of the land were mentioned in the report. No clear data is also available to show when and what land was actually taken possession of by the receiver. He also drew the attention of this Court to the Memo dated 30.09.2009 filed by the subsequent receiver wherein the new receiver himself pointed out that there is no clarity as to when the previous receiver has taken possession of the property. The new receiver pointed out that the earlier report is full of uncertainty; that the measurements of the land, boundaries, survey numbers etc. are not furnished. This report also indicates that there are number of claims to the land. His submission is that without determining whether the 'receiver' has actually taken possession; the impugned order was passed.

It is also the contention of the learned senior counsel that only an appeal lies against the order passed under Order XXI rule 52 CPC and that the revision is not maintainable.

He also pointed out that as per Section 114 and clause (3) of Section 115 CPC, a revision does not lie when an appeal is provided and that the revision itself should not have been entertained under clause (2) of Section 115 CPC, since the appeal is provided. He also argued that the impugned order suffers from a manifest and clear error on the face of record and so it should be reviewed.

In support of his contentions, the learned senior counsel relied upon the following judgments:

- i) ***Sameer Singh v. Abdul Rab***¹
- ii) ***Central bank v. S.C. Guha***²
- iii) ***Narhar Raj v. Tirupathi Bibi***³
- iv) ***Gurram Seetharam Reddy v. Gunty Yashoda***⁴

Sri Vedula Venkata Ramana, learned senior counsel appearing in CRP MP Nos.4912 and 4921 of 2017 continued the submissions. His preliminary submission is that any person, who considered himself 'aggrieved' by an order, may apply for review. Therefore, it is his submission that Section 114 CPC itself gives the scope to seek a review to any person aggrieved and that the review need not be limited to the parties, who were before the Hon'ble Supreme Court of India. It is the submission of the learned senior counsel that apart from the provisions of Section 114 CPC and under Article 227

¹ 2015 (1) SCC 379

² AIR 1972 Cal 345

³ AIR 1982 AP 115

⁴ 2004 (6) ALT 111

of the Constitution of India, this Court has inherent powers of review *de hors* Order XLVII or Section 114 CPC also. It is his case that the Constitution Bench of the Hon'ble Supreme Court of India in a judgment reported in ***Shivdeo Singh v. State of Punjab***⁵ has held that the power of review is inherent in every Court particularly the High Court. He also relied upon ***Digambar Rao v. Govt. of Andhra Pradesh***⁶, ***India Pipe Fitting Co. v. Fakruddin M.A. Baker***⁷. He argued that neither the Limitation Act nor CPC would come in the way of this Court entertaining the review application. He also drew the attention of this Court to the case laws in ***Gurram Satyaseshamamba @ Gurram Satya Santamani v. Gurram Krishnavenamma (died) by LRs***⁸, ***Kanak Chandra Sarma v. Board of Secondary Education, Assam, Guwahati***⁹ ***A.R. Antulay v. R.S. Nayak***¹⁰ and ***Surya Dev Rai vs. Ram Chander Rai***¹¹.

The learned counsel also drew the attention of this Court to the prayer made in I.A.No.811 of 2004, which is as follows:

“It is prayed that the question of right, title and interest of the petitioner to/in the land in custodia legis be adjudicated *pro interesse suo* by the Court and the petitioner be put into possession of the same.”

⁵ 1963 SC 1909

⁶ 2001 (6) ALT 226

⁷ AIR 1978 SC 45

⁸ 2004 (4) ALD 787

⁹ AIR 1995 Guwahati 82

¹⁰ 1988 (2) SCC 602

¹¹ 2003 (6) SCC 675

It is the submission of the learned senior counsel that when a request for adjudication of title/interest is made, the Court should have adjudicated the same, which necessarily implies a proper investigation into the title by conducting a proper trial and since the prayer is for possession; the question of possession/dispossession and return of possession should also be decided. It is his submission that in the order under revision, the learned single Judge adjudicated the title on the basis of photostat copies of documents, without examining witnesses, without giving any opportunity for cross-examination by the parties, who were before the Court and ultimately passed an order which beyond the scope of application itself. It is also his contention that 'adjudication' necessarily implies a proper trial and that unless and until such trial is carried out, an order under Order XXI Rule 52 CPC cannot be passed. He also argued that the entire procedure under Order XXI Rule 52 CPC would commence when a decree is passed, attachment is ordered and then a request is made for *inter se* determination of the rights. It is his submission that in this case, the High Court took over the functions of the trial Court and adjudicated the matter in a very summary manner in a revision under Article 227 of the Constitution of India. Therefore, it is his contention that the applications for review should be allowed as they suffer from a patent error in law and are passed ignoring the law on the subject.

In CRP MP No.5940 of 2017, Sri P. Venugopal, learned senior counsel, who appears for the individual owners of the plots, supports the submissions made by his predecessors. He argued that the order in revision runs foul of the very fundamental principles of natural justice and that the order was passed without following principle of *audi alteram partem*. He drew the attention of this Court to **National Textile Workers' Union v. P.R. Ramakrishnan**¹² and argued that the Court has a greater duty to follow the principles of natural justice. It is his contention that in this case the order under review was passed without following the very basic tenet of our jurisprudential system. He also relied upon **Shivdeo Singh's** case (5 supra). He contends that the entire order under review is contrary to law.

In CRP MP No.874 of 2017, Sri Pilli Balaiah, learned counsel and others appeared and argued that these petitioners are independent purchasers of the disputed property. They have purchased the property in 1970, through various sale deeds. They support the case of the learned senior counsels who argued before them.

In CRP MP No.3403 and 3404 of 2017, Sri M.V. Durga Prasad, learned senior counsel appeared for individual plot owners and argued that his clients had acquired title independently. He also states that his clients are the persons, who are 'aggrieved' by the order under review and can seek a

¹² AIR 1983 SC 75

review. He also argued that the revision is not maintainable as the order is appealable and that the provisions of the Order XXI Rule 52 CPC will only come into play in execution of a judgment and after attachment. He fully supported the order passed by the lower Court in I.A.No.811 of 2004, which rejected the application. The learned senior counsel also pointed out that the impugned order was passed in total contravention of all the rules of natural justice. He also pointed out that initially the revision was dismissed for default on 19.10.2006 and it was restored on 20.03.2009 on the very same date on which the final order was passed. He also pointed out that Special Leave Petitions were filed and subsequently, they were also withdrawn in the Hon'ble Supreme Court. He, therefore, alleged that there is a large scale conspiracy behind this entire exercise. He drew the attention of this Court to the fact that the petitioner in I.A.No.811 of 2004, who wanted adjudication of its rights never stated in the entire affidavit filed in I.A.No.811 of 2004 that they are in possession of the property or that there is a threat to their possession. He also pointed out that in paragraph No.7 of the affidavit filed, there is a reference to various parties forming a partnership firm and contributing their lands to the partnership as their capital investment. Thus, they claim that the entire land in Survey No.1007 became the partnership asset.

It is the submission of the learned senior counsel that even in paragraph Nos.8 & 9 of the affidavit, there is a discussion about other claims, other suits etc., which are pending. In addition, there is also a reference to the Urban Land Ceiling Act and the provisions thereunder. The learned senior counsel pointed out that a duty was cast upon this Court when it is hearing the revision petition to see the provisions of Order XXI Rule 52 CPC; discuss the issues; consider the suits/claims mentioned; adjudicate the title and then only pass an order.

The learned senior counsel states that in the impugned order, the entire process of adjudication viz., entire trial and decision on the title etc. is done on one single day without examining one witness or marking one document let alone cross examination. It is his strong submission that even though the petitioner in I.A.No.811 of 2002 did not state that they were in possession or that they were dispossessed, the Court ordered possession is to be given to them.

In CRP MP No.5211, 5214 and 5238 of 2017, Sri Kakara Venkata Rao, learned counsel supported the arguments advanced by the senior counsels earlier and he also filed a synopsis in writing. It is his submission that in passing the impugned order, this Court exceeded the power granted to it and adjudicated the matter in a manner unknown to law. He also relies upon ***Anthony C. Leo v. Nandlal Bal Krishnan***¹³

¹³ AIR 1997 SC 173

The matter was then taken up for hearing of the parties, who are of the opinion that the impugned order is correct and that the review petition is not maintainable.

Sri D. Prakash Reddy, learned senior counsel commenced the arguments in Review CRP MP No.4638 of 2017 for Prime Properties (first respondent) with the consent of all the counsels on behalf of this group of parties.

It is the contention of the learned senior counsel that Prime Properties is the actual owner of the property in question and that they are claiming their title, through a sale deed of 1952 and the suit O.S.No.122 of 1973, which is the basis for the title of Hashim Ali and others. He submits that Mir Fazeelath Hussain from whom the review petitioners are claiming title does not have any title to the land and in the decree passed in O.S.No.122 of 1973 on the file of the Additional Chief Judge, City Civil Court, Mir Fazeelath Hussain gave up his claim on the property in respect of Survey No.1007. Therefore, it is the submission of the learned senior counsel that after the decree passed on 22.11.1973, Mir Fazeelath Hussain has no connection whatsoever with the property in Survey No.1007.

The learned senior counsel pointed out that the sale deeds executed through the Court in favour of the Bhagyanagar Cooperative Housing Society are not valid sale deeds. He also pointed out that relying upon the U.L.C. declaration that Mir Fazeelath Hussain laid claim only for

Ac.69.33 guntas of land in Survey No.1007. Also when the *ex parte* decrees were passed for specific performance; only Mir Fazeelath Hussain was shown as party by Bhagyanagar Cooperative Housing Society. Therefore, it is his contention that all the four sale deeds are invalid and that the review petitioner has no title whatsoever to the property. The learned senior counsel submits that the donees in the compromise deed dated 22.11.1973 in O.S.No.122 of 1973 are the original partners of the firm i.e., the predecessor of Prime Properties Ltd. Therefore, he argues that Prime Properties has valid title to the land in Survey No.1007.

Coming to the maintainability of the review petition, the learned senior counsel argues that the Hon'ble Supreme Court of India in its order dated 10.01.2017 said that only the Bhagyanagar Plot Owners Welfare Association can agitate its right and all other parties will have to approach an appropriate forum and file appropriate applications. The learned senior counsel stressed on the fact that the Hon'ble Supreme Court directed only the review petition filed by the said association to be heard and did not state that the other parties who wanted to implead themselves or who filed SLPs can maintain the review applications. Therefore, the contention of the learned counsel is that the Hon'ble Supreme Court gave liberty to any person who feels aggrieved to file an appropriate application but not a review petition. Therefore, he prays that all other applications for review, implead etc.,

are to be dismissed and only the review petition filed by the Bhagyanagar Plot Owners Welfare Association can be considered.

It is the contention of the learned senior counsel who relies upon ***Sameer Singh v. Abdul Rab***¹⁴ that the revision is maintainable and that the lower Court while passing an order in IA No.811 of 2004 did not decide the matter on merits and there is no decree on merits. Therefore, the learned senior counsel contends that since the order in IA No.811 of 2004 is not an order on 'merits', the revision is maintainable.

On merits, the learned senior counsel submits that the Bhagyanagar Plot Owners Welfare Association or its members have no title whatsoever to the property and that therefore, the impugned order dated 20.03.2009 passed in CRP No.6697 of 2004 is perfectly valid. According to the learned senior counsel, his clients' title is traced with certainty and therefore, the order passed by the learned single Judge on 20.03.2009 is perfectly in order.

Sri M.V. Suresh Kumar, learned senior counsel continued the arguments in CRP MP No.5991 OF 2017. He also argued that the original owner of the property is one Hashim Ali for whom this property in Survey No.1007 was acquired. The title of Mir Fazeelath Hussain was negated in O.P.No.117 of 1972, therefore, it is his submission that after this decree, dated 22.11.1973, Mir Fazeelath Hussain did not

¹⁴ 2015 (1) SCC 379

have any property whatsoever to convey. All the documents that he executed are not valid as per the learned senior counsel. According to the learned senior counsel, a person, who has a bona fide title, has a right to agitate about his rights if the Court is adversely dealing with his property. It is his submission that as his clients are having paramount title, the application filed in I.A.No.811 of 2004 is perfectly maintainable. A reading of the application makes it clear that Order XXI Rule 52 CPC is quoted by mistake and that Section 151 CPC is enough to grant relief to his clients. It is his contention that if provision of law is wrongly quoted, it should not stop the Court from granting an order under the correct provision of law.

The learned counsel also pointed out that the Society filed O.S.No.230 of 2001 and also filed I.A.No.1038 of 2001 against the Government and Prime Properties for an injunction. The same was dismissed. Therefore, according to the learned senior counsel, the Society is not in possession of the property in Survey No.1007. It is also his contention that the names of the individual members are also not given in this case before this Court to appreciate that the Association (review petitioner) has the power and authority to represent the members.

The learned senior counsel also pointed out that ever since the preliminary decree was passed in the suit O.S.No.3306 of 1984, it is his clients alone and their

predecessors in title who have been agitating for their rights, whereas the Bhagyanagar Cooperative Housing Society or the petitioner in review CRP MP No.4638 of 2017 have not done anything till the filing of the review petition to protect its so-called interest. He also submitted a) that a review cannot be asked for by everyone; b) that the review is not maintainable; c) that the power of review is controlled by Order XLVII CPC. He relies upon ***Parsion Devi v. Sumitri Devi***¹⁵.

This argument was followed by Sri K.G. Krishna Murthy, learned senior counsel, who represents the parties/implead petitioners in CRP MP No.2730 of 2017. Sri K.G. Krishna Murthy, learned senior counsel also filed a brief note. His clients are Sri Venkateshwara Hills Plot Owners Welfare Association. They are seeking to implead themselves as parties to this litigation. They are admitting the title of Prime Properties who is the petitioner in CRP No.6697 of 2004 before this Court. According to the learned counsel, his clients were also parties before the Hon'ble Supreme Court of India in SLPs. According to the learned senior counsel, his clients are the owners of Ac.42.00 guntas of land. It is the submission of the learned senior counsel that Sri P. Venkata Rami Reddy, who is the President of the Bhagyanagar Plot Owners Welfare Association, is not authorized to represent the members and that he was also removed as President of the petitioner society. It is also urged that Sri P. Venkata

¹⁵ (1997) 8 SCC 715

Rami Reddy, President of the review petitioner's association is also an accused in number of criminal cases. Therefore, his clients wish to protect their own interest by filing this implead petition and prays this Court that his clients should be allowed to implead in this matter.

As far as maintainability of the review is concerned, the learned senior counsel relied upon **Haridas Das v. Usha Rani Bank**¹⁶ wherein after a review of the entire case law, the Hon'ble Supreme Court of India held that a review of the judgment can only be sought on one of the following grounds:

"A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason."

It is the submission of the learned senior counsel that a review can only be ordered in a case where an error is so apparent that one need not go into a long drawn process of reasoning. He also submits that in this case, there is no error apparent on the face of the record. He also states that the review petition is being heard after long delay and is barred by time.

On 08.02.2018, Sri M.V. Suresh Kumar, learned senior counsel again continued his arguments. His submission is that Order XXI Rule 52 CPC was wrongly noted in the application filed. He pointed out that in the grounds raised in

¹⁶ (2006) 4 SCC 78

CRP No.6697 of 2004 in Point No.(h), they have pleaded that Order XXI Rule 52 CPC is wrongly noted. The learned counsel also relied upon **Narhar Raj** (3 supra). According to the learned counsel, the CPC does not really provide for *pro interesse suo* proceeding and that the inherent provisions of the Court have to be involved to determine the *pro interesse suo* rights in such a proceeding. He also argued that the mere mentioning of wrong provision is not fatal to the present case and that the Court has power *de hors* the provisions of CPC to decide this issue. The learned senior counsel pointed out that the impugned order in fact proceeds to assess the claim *de hors* the provisions of Order XXI Rule 52 CPC. He drew the attention of this Court to the finding in part-21 of the impugned order wherein this Court referred to Order XXI and Rule 52 CPC and used the words 'apart from that' as follows:

“Apart from that, the petitioner can maintain the application as a *pro interesse suo* proceeding.”

He contends that the order of the lower Court is right. He also pointed out that there is a serious dispute as to the identity of Hashim Ali himself. He drew the attention of this Court to the documents filed wherein the police have also conducted an enquiry, pursuant to the orders of this Court in WP No.14696 of 2014. He states that in WP No.29790 of 2014, the petitioner wanted an enquiry into the matter of identity of the first petitioner-Hashim Ali. Therefore, it is his

contention that the very identity of the person from whom title is claimed in this Court is doubtful.

Continuing these submissions on behalf of Prime Properties, Sri S. Niranjan Reddy, learned senior counsel also argued that the proceedings are maintainable under the inherent powers of the High Court and that the mentioning of Order XXI Rule 52 CPC is a mistake. He argues that the power to entertain a claim *pro interesse suo* is imported from English Law and there is no such provision in the Indian Procedural Courts. He relied upon the decision reported in **Venkateshwar Fiscal Services Private Limited v. Bagla & Company**¹⁷. He also pointed out that all the parties to the dispute rely upon the sale deed of 1952. It is his contention that all the parties to the compromise in the said suit are the partners of the firm which is now renamed as Prime Properties. Therefore, it is his contention that Prime Properties has paramount title and that the impugned order of this Court is not wrong. It is also the contention of the learned senior counsel that the power of review that is being exercised by this Court is not an untrammelled power but is a power that is controlled by Order XLVII and Section 114 CPC. He relied upon **Union of India v. B. Valluvan**¹⁸ for this proposition. Therefore, the learned senior counsel submits that in this case all the third parties, who were seeking to implead, cannot join the proceedings. He pointed out that the

¹⁷ 2006 SCC online Cal 564

¹⁸ (2006) 8 SCC 686

CRP is only between the Prime Properties and the partners of the firm-Sridevi Colonisers. He states that O.S.No.3306 of 1984 is a suit for dissolution of the firm and in that suit, IA No.811 of 2004 was filed by his client-Prime Properties. Therefore, it is a proceeding between the Prime Properties and the firm/its partners in which third parties cannot intervene. The learned senior counsel submits that even the Hon'ble Supreme Court held that third parties and parties trying to intervene can exercise their rights in an appropriate forum. He pointed out that the Hon'ble Supreme Court did not say that they could implead themselves in the present proceedings. The Hon'ble Supreme Court permitted only one association to continue the review. The learned senior counsel also pointed out that the third parties and others who want to implead themselves have to seek the leave of this Court to show how they are effected or likely to be effected by the order that is passed. If they are allowed to implead the scope of the suit O.S.No.3306 of 1984 would get absolutely enlarged and he submits that the same is not permissible. According to him, his client's right can only be decided *vis-à-vis* parties to the suit O.S.No.3306 of 2004 and others cannot join the litigation. They have their independent rights, which they have to work out.

Coming to the merits of the case, the learned senior counsel also pointed out that latches and delay are a ground in this case to reject the review. According to him, it is his

client-Prime Properties alone that either tried to implead itself or agitate for its rights and that the present review petitioner-Bhagyanagar Plot Owners Welfare Association did not do anything to agitate its rights. On the ground of latches, the said petition deserves to be dismissed as per the learned counsel. He also argued that there are limitations on this Courts power to 'review' and that the power of review must be exercised within the framework of Section 114 and Order LXVII CPC only. He cited **B. Valluvan**'s case (18 supra).

Sri S. Niranjan Reddy, learned senior counsel summed up the arguments stating that the High Court is not precluded from carrying investigation into the facts and that there is enough power to the Court to go through the facts and come to a conclusion. According to him, it is wrong to argue that matters of 'fact' cannot be looked into by the High Court.

- i) ***Century Spinning and Manufacturing Company Ltd. v. The Ulhasnagar Municipal Council***¹⁹.
- ii) ***Smt. Gunwant Kaur v. Municipal Committee, Bhatinda***²⁰

He also argued that there is no error apparent on the face of the record and the jurisdiction that is vested in the Court was in fact exercised. According to him, an error apparent on the face of the record is something that would be *ex facie* visible and which does not require further

¹⁹ (1970)1 SCC 582

²⁰ (1969) 3 SCC 769

investigation or scrutiny. He also pointed out that in this case, there is no error apparent on the face of the record. It is also his submission that there is no allegation made in the application that the evidence was wrongly considered or ignored. Therefore, in conclusion, the learned senior counsel submits that parties to the suit are seeking a review on tenuous grounds. He relied upon ***Achutananda Baidya v. Prafulla Kumar Gayen***²¹ for contending that there are no grounds for review at all. It is his submission that they cannot get involved in these proceedings and expand the scope and ambit of the original *lis*. The third parties who have right to seek remedies on their own cannot join this case and widen the scope of the suit. Therefore, it is the submission of the learned senior counsel that the entire exercise in this case was wrong and all the review applications deserve to be dismissed.

Sri K.K. Waghray, learned counsel continued the argument after Sri S. Niranjan Reddy, learned senior counsel. He appears for the plaintiff in the suit O.S.No.3306 of 1984. According to him, the review is not maintainable as the main relief itself is no longer available. His submission is that the plaintiff has given up this case in the suit by filing a Memo and as such the property in Survey No.1007 is no longer the subject matter of the suit and therefore, he submits that even if the review is considered, the receiver cannot put to be back

²¹ (1997) 5 SCC 76

in possession of the property, which is not the subject matter of the suit. Therefore, his contention is that the main relief cannot be granted. As the main relief cannot be granted, all the subsequent prayers are also not available. He also cited the judgments reported in ***Bharat Singh v. Sheo Parshad Giani Ram***²² and ***Gopabandhu Biswal vs. Krishna Chandra Mohanty***²³ to contend that the present applicants are not aggrieved persons and so the review is not maintainable.

With this; the submission of all the counsel, who argued for dismissing the present review, were completed.

In rejoinder, Sri Challa Seetharamaiah, learned senior counsel appearing for the review petitioner in CRP MP No. 4638 of 2017 contended that the review is being entertained by this Court on the strength of an order dated 10.01.2017 passed by the Hon'ble Supreme Court in SLP No.11595 of 2009. It is his contention that the Court need not look into any other provision of law or section/order in CPC etc to decide the review. It is his submission that the Hon'ble Supreme Court has power to pass 'any order'. The learned counsel states that as per the Articles 136 and 142 of the Constitution of India, the power of the Hon'ble Supreme Court of India extends to give any direction to any Court and the said Courts are bound to follow the same. He relies upon

²² AIR 1978 Delhi 122

²³ AIR 1998 SC 1872

Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai²⁴.

It is also the submission of the learned senior counsel that the orders passed by ULC authorities on 04.08.2003 were in the knowledge of the Prime Properties, but they did not bring the same to the notice of this Court. It is his submission that the ULC authorities who have the necessary resources to examine the facts on the ground conducted a physical enquiry and held that the review petitioners are in the possession of the land in Survey No.1007. He also pointed out that in the very same order, the ULC authorities rejected the case set up by the Prime Properties. The learned senior counsel also pointed out that Prime Properties misled this Court by not bringing all the facts to the knowledge of the Court. His contention is that suppression of very important documents like the orders passed by ULC authorities, pleadings in all the pending suits etc. led this Court to pass the impugned order. His submission is that a deliberate fraud was played on the Court and therefore, the order should be recalled. He also argued that the power to recall an order is inherent in every Court.

The learned senior counsel also pointed out that the plain language reading of the Order XXI Rule 52 CPC shows that it starts with the words 'where the property to be attached is in the custody of any Court or public officer, the

²⁴ (2004) 3 SCC 214

attachment shall be made by a notice to such Court or officer.' According to him, the proviso to the said order states where 'such' property is in the custody of a Court, that Court can determine the title. Therefore, the learned counsel argued that Order XXI Rule 52 CPC starts with the need for an attachment of a property in the custody of a Court or a public officer. After the attachment of the property, as per the proviso, an investigation into the rival claim can be made. Therefore, it is the submission of the learned senior counsel that Order XXI Rule 52 can only come into play when there is an attachment of the property and a claim regarding that attachment is made. The learned senior counsel submits that this position is clear from a reading of the section itself.

He also submits that both the first Court which passed the order in IA No.811 of 2004 in IA No.1108 of 2001 in O.S.No.3306 of 1984 and this Court in the impugned order relied upon the provisions of Order XXI Rule 52 CPC and then proceeded to pass orders. Therefore, the learned senior counsel argued that the submissions made by the opposing counsel that Order XXI Rule 52 CPC was wrongly mentioned is not correct and cannot be countenanced.

The conclusions of Sri Challa Seetharamaiah, learned senior counsel are therefore to the effect that

- a) Order XXI Rule 52 CPC is not applicable because there should be an attachment of the property;

- b) fraud was played on deliberate suppression of the very important documents and events.
- c) civil suits challenging the sale deeds in favour of his clients have already been filed by the Prime Properties in O.S.Nos.898 to 901 of 2001 on the file of the Senior Civil Judge's Court, Ranga Reddy District and above all there is a direct challenge in O.S.No.4401 of 2002 (3rd Junior Civil Judge, Ranga Reddy District) challenging the preliminary decree in O.S.No.3306 of 1984. Therefore, according to him, the order under review dated 20.03.2009 is to be recalled and the parties should agitate their rights as per law in a forum of their choice.

Sri M.V. Durga Prasad, learned senior counsel in continuation also supported the submissions made by Sri Challa Seetharamaiah and argued that the submissions made by the opposing counsel about the mistaken mentioning of the provision of law as Order XXI Rule 52 CPC is not correct. Both in the lower Court and in this Court, they relied upon Order XXI Rule 52 CPC. Once it was pointed out that Order XXI Rule 52 CPC begins with an attachment of the property, he submits that the learned opposing counsel changed their tack and argued that the same was mentioned by mistake. He states that the same is not permissible. He also argued that Section 151 CPC can only be utilized when there is no other provision in the CPC. In this case, the learned senior counsel submits that the application could have been filed

under Order XL Rule 2 CPC or under Order XXI Rule 52 CPC and therefore, the argument that Section 151 CPC is applicable is not correct. The learned senior counsel also argued that large scale fraud was played and important documents and events which have a bearing on the case are not filed. He relies on ***Budhia Swain v. Gopinath Deb***²⁵. He states that a review is maintainable and prays that leave may be granted in all the applications and that the review applications also may be allowed.

Sri P. Venugopal, learned senior counsel continued his reply in the same lines and cited the following two judgments to contend that an appeal should have been filed and once there is an effective alternative remedy, the remedy under Article 227 of the Constitution of India would not be available.

- i) ***Erlapati Veera Lakshmi v. Guda Haritha Rani***²⁶;
- ii) ***Gurram Seetharam Reddy***'s case (4 supra)

Sri J.C. Francis, learned counsel made his submissions and argued that in the light of the submissions made by all the senior counsels, the power of review should be exercised and fraud should not be allowed to be perpetuated. He argued that the deliberate suppression of facts was carried out to secure the order under review.

Sri T.S. Praveen Kumar, learned counsel appearing for the petitioner in CRP MP No.6660 of 2017 argued on similar

²⁵ (1999) 4 SCC 396

²⁶ 2008 (1) ALD 366

lines and pointed out that he has also filed copy of orders of ULC authorities, dated 04.08.2003, which clearly held that Bhagyanagar Cooperative Housing Society and its members were in possession. Therefore, he argued that as the order under review was obtained by suppression of facts, it should be recalled. He cited the following judgments.

- i) ***The State of Andhra Pradesh v. T. Suryachandra Rao***²⁷
- ii) ***Bhaurao Dagdu Paralkar v. State of Maharashtra***²⁸
- iii) ***National Textile Workers' Union v. P.R. Ramakrishnan***²⁹

Sri Kakara Venkata Rao, learned counsel also replied on the same lines and argued that the large scale fraud was perpetrated and so the impugned order must be recalled.

After hearing, both the groups of counsel one interested in seeking a review and other opposing the review, the following points emerged for consideration.

- A) Whether the review is maintainable?
- B) Whether on merits the order in question can be reviewed?

A) Whether the review is maintainable?:

This Court after hearing all the submissions comes to a conclusion that the review in CRP MP No.4638 of 2017 is to be heard and disposed because the order of the Hon'ble Supreme Court of India dated 10.01.2017 in SLP No.11595 of 2009 is very clear. It has given a clear direction to this Court to dispose of the review. The said order is binding on this

²⁷ 2005 (6) SCC 149

²⁸ 2005 (7) SCC 605

²⁹ (1983) 1 SCC 228

Court. Sri Challa Seetharamaiah, learned senior counsel argued basing on the judgment in ***Jamshed Hormusji Wadia's*** case (24 supra) that once an order is passed by the Hon'ble Supreme Court on the basis of the extra ordinary power vested in it, this Court is bound to consider the review on merits. Therefore, his submission is that this Court is duty bound to take up and hear the review without being hindered by any procedural or other laws. This Court agrees with the same.

Apart from that, this Court also finds that a complex issue of title was decided in a summary manner. This is a manifest error on the face of the record. Vital and important documents, which would have been bearing on the case, were not supplied by the 1st respondent/3rd party in the review MP. For example, on the question of possession, there is an order passed by the ULC orders on 04.08.2003, which was passed after physical inspection of the property. The said order was not brought to the notice of this Court by 1st respondent. Similarly, the pleading or orders pertaining to four suits that were filed by Prime Properties against Bhagyanagar Cooperative Housing Society were not brought to the attention of this Court. These pleadings or proceedings of the Courts in the four suits would reveal that the Bhagyanagar Cooperative Housing Society is claiming title on the basis of four decrees passed by the lower Court. Although there is a brief mention of these suits, this Court did not enquire into

the same at all and embarked an enquiry in a summary manner. The pleading in the suit OS No.4401 of 2002 was suppressed. Suppression of material facts and material documents led to this order being passed. Fraud is thus manifested in the suppression of material facts to mislead the Court as per **Bhaurao Dagdu Paralkar's case** (28 supra). Rules of natural justice were flouted and issues of title and possession were determined in a summary manner. The Court has duty to see that the persons affected by the order were given a fair opportunity. The case law cited including **S.C. Guha's case** (2 supra) makes it very clear that the proceedings under Order XXI Rule 52 CPC are summary in nature and if complex questions are raised, the same should be determined in regular proceedings before a Court and not in a summary procedure.

Last but not the least, this Court finds that the order passed in IA No.811 of 2004 on 22.11.2004 is an order on merits and is not a simple rejection of the application on the ground of lack of jurisdiction. Although it was argued that the order is not very well drafted, still the fact remains that the Junior Civil Judge considered all the legal and factual submissions and came to the conclusion that the proviso under Order XXI and Rule 52 CPC are not applicable to the facts, as the petitioner is not a decree holder and that the petition is barred by limitation. Therefore, after considering the rulings applicable to the cited provision viz., Order XXI

Rule 52 CPC, the Junior Civil Judge came to the conclusion in paragraphs 4 to 10 that the application is not maintainable. Therefore, this Court is of the opinion that the same is 'appealable' order. The Full Bench decision cited by the learned senior counsels reported in **Gurram Seetharam Reddy's** case (4 supra) is applicable to the facts of the case. A revision is not maintainable, as the Order dated 22.11.2004 in IA No.811 of 2004 is an order on merits.

For all the above reasons including the direction from the Hon'ble Supreme Court of India, this Court holds that the review application is maintainable.

B) Whether on merits the order in question can be reviewed?:

This Court is of the opinion that the order should actually be reviewed for the following reasons:

i) The application filed in the lower Court viz., IA No.811 of 2004 is an application filed under Order XXI Rule 52 CPC read with Sections 98 and 151 CPC. The prayer made is by Prime Properties is to the following effect.

“the question of right, title and interest of the petitioner to/in the land in a *custodia legis* be adjudicated *pro interesse suo* by this Hon'ble Court and the petitioner be put into possession of the same.”

In paragraph No.15 of the affidavit filed in support of the petition, it is clearly mentioned that the petition is filed for determination of title to the land. Even the impugned order dated 20.03.2009 clearly mentions about the provisions of

Order XXI Rule 52 CPC. The counsel argued about the applicability of Order XXI Rule 52 CPC and this Court in the Order under review also considered the provisions of Order XXI Rule 52 CPC (para-18). The Court clearly held that a third party who is claiming title to the property can maintain a petition under Order XXI Rule 52 CPC (para-19). In Paragraph No.19, the case law cited and relied upon by the Court is clearly under Order XXI Rule 52 CPC. The Court clearly held in paragraph No.21 that the petition under Order XXI Rule 52 CPC is maintainable. Therefore, this Court agrees with the contentions of the counsels that the argument now adopted that Order XXI Rule 52 CPC is wrongly quoted is not correct and that the same is argued to get over the bar created by Order XXI Rule 52 CPC.

ii) Order XXI Rule 52 CPC occurs in that part of CPC that deals with “execution of the decree”. It is a procedure created by law to enable the parties to agitate their cause or rights without filing separate suits when their property is attached in execution etc. This is to prevent multiplicity of proceedings. A plain reading of Order XXI Rule 52 CPC makes it clear that where the property to be attached is in the custody of a Court or a Public Officer, the same shall be attached by a notice to such Court or officer. After the property is attached by such notice, any question of title or priority arising between the decree holder and a third party (not the judgment debtor) shall be decided by the Court in whose custody the property

is. Therefore, the plain language interpretation of Order XXI Rule 52 CPC makes it clear that a) there should be an attachment of property pursuant to a decree of a Court; b) the property that is attached/to be attached is in the custody of a Court or a Public Officer; c) the attachment shall be made by a notice to such Court or officer and d) the proviso comes into play if any claim arise between the decree holder and a third party. The said Court shall then determine the same.

In this case, it is apparent from the record that there are no execution proceedings pursuant to a decree and there is no attachment either. There is no decree holder with/ against whom the *pro interesse suo* proceedings are maintainable. The proviso of Order XXI Rule 52 CPC does not come into play at all in the opinion of this Court. The case law cited by both the parties includes **Narhar Raj** case (3 supra). The learned single Judge of this Court held as follows:

“the *pro interesse suo* proceedings are a judicial device intended to protect the rights of the persons who are not parties to the proceedings in a suit but who suffered a legal injury because of the dominant Court action. For the grant of relief to such a third party who makes an application *pro interesse suo* it must first be found that the property that has been dealt with by the Court earlier did not form part of the subject matter of the previous litigation and that the third party now applying has a paramount interest which should not be allowed to be simply affected by the superior might of the Court.”

The learned single Judge in **Narhar Raj**'s case (3 supra) relied upon **Union of India v. Kashi Prasad**³⁰ and held that the Indian equivalent of a *pro interesse suo* proceedings is the procedure prescribed in Order XXI Rules 58 to 63 CPC. Therefore, if the procedure under Order XXI Rule 58 CPC is to be adopted for *pro interesse suo* proceedings, the Court shall adjudicate the claim itself by considering the oral and documentary evidence. However, this Court is of the opinion that this procedure cannot be adopted in the matters of this nature in a *pro interesse suo* case as complex questions of possession/ title are best investigated and decided in a trial.

iii) The impugned order under review is also wrong because it suffers from a manifest error, as the Court took up an investigation into title on the basis of incomplete and also inadequate evidence. A reading of the application filed in IA No.811 of 2004 by Prime Properties reveals that they have raised issues about a society called Rehmatnagar Cooperative House Building Society in a suit OS No.72 of 1968 and a suit OS No.122 of 1973. In addition, they also state that the respondents joined some other adventurers along with the Bhagyanagar Cooperative Housing Society against whom five suits are pending. They also raised issues about the ULC declarations that were filed by the first respondent. In addition to the above, in paragraph Nos.12 & 13, they discussed about the application filed by them and the five

³⁰ AIR 1962 Cal 169 (DB)

suits initiated by the petitioner-Prime Properties. These facts should have set off an alarm bell but the Court ignored the issues raised and proceeded to decide the matter in a summary manner. Ultimately, it confirmed the title of Prime Properties and directed the receiver to take over the property.

Pro Interesse Suo:

As this Court had the benefit of hearing a member of distinguished counsel on the issue of 'pro interesse suo', this Court summarizes the position of law on this aspect as follows:

The proceedings *pro interesse suo* a) are generally very summary in nature b) if the Court finds that the investigation cannot be done in a summary manner it should relegate the parties to regular suit or such other proceeding for establishing its rights. The relevant case laws are:

- i) ***Prahlad Pd. Modi. v. Tikaitni Faldani Kumari***³¹
- ii) ***Union of India v. Radha Kissen Agarwalla***³²
- iii) ***S.C. Guha***'s case (2 supra)
- iv) ***Narhar Raj***' case (3 supra)
- v) ***Prema Gupta v. TCI Finance Ltd.***³³
- vi) ***Narayan Manik Patil v. Jaywant J. Patil***³⁴
- vii) ***Anthony C. Leo***' case (13 supra)

³¹ AIR 1956 Patna 233

³² 1960-61(Vol.65)-CWN-848

³³ 2009 (1) C.H.N. 135

³⁴ 2009 (2) Bom CR 247

Sri Vedula Venkata Ramana, learned senior counsel also cited **Kashi Prasad's** case (30 supra) and argued that Order XXI Rule 58 CPC as it stood prior to the amendment of CPC and allowed the Court to pass an order in case of a third party makes a claim against the decree holder. He argued that the scope of enquiry was limited and that the Court has to either decide the matter on admitted facts and go to the rescue of the affected third party or if the facts are very complicated, the matter has to be relegated to a regular proceeding in a Court. He also relied upon **Prahlad Pd. Modi's** case (31 supra) for the same proposition. The learned senior counsel also pointed out that the very heading of Order XXI Rule 58 CPC is as follows "adjudication of claims to or objections to attachment". He also pointed out that the entire scheme of CPC beginning from Order XXI Rule 47 up to Order XXI Rule 57 CPC is about attachment of 'property' and various types of property including attachment of a decree.

Therefore, the learned senior counsel contends that the revision Court usurped the role of a lower Court. The impugned judgment of this Court also noticed the case reported in **Narhar Raj's** case which in turn discussed **Kashi Prasad's** case and held that the Indian equivalent to a *pro interesse suo* application is Order XXI Rules 58 to 63 CPC. As pointed out by the learned counsel, if the Court comes to a conclusion that there are conflicted issues of facts and law, the Court should leave the aggrieved parties to bring an

action which the law allows him. As per the learned senior counsel, the only investigation that is permissible in a *pro interesse suo* application is whether to continue the attachment or not.

The learned counsel relied upon Order XXI Rule 59 CPC as it stood prior to the amendment to CPC which clearly states that if the Court is satisfied, the Court shall make an order releasing the property only or to such extent as the Court thinks fit from the attachment. Therefore, the contention of the learned counsel is that **Kashi Prasad's** case read with **Narhar Raj's** case makes it clear that the scope of enquiry in a *pro interesse suo* application is very limited in scope. In the case of **Narhar Raj**, 40 acres of land, which is not the subject matter of the suit, were taken possession by a receiver. Therefore, the learned single Judge of this Court held that the property should be taken back from the receiver, as the facts were simple and clear.

Along with Sri Vedula Venkata Ramana, Sri Kakara Venkata Rao also filed a written brief and reply to the submissions. It is his submission that even when a receiver was appointed, a third party can make a claim in respect of the property of the custody of receiver, which is a *pro interesse suo* application. Even such an application is made, it is his submission that the Hon'ble Supreme Court in **Anthony C. Leo's** case (13 supra) held that in case it becomes necessary to determine any rights, it is desirable that the

Court will refrain from such determination in summary procedure and the Court will direct the receiver to seek adjudication of the dispute before the competent civil Court (para-34). The learned counsel submits that in similar circumstances in civil appeal Nos.3253 and 3254 of 2016 also, the Hon'ble Supreme Court initially appointed a retired Chief Justice as a receiver to sell the land. Thereupon, implead applications were filed and according to the learned counsel, the Supreme Court realized that the receiver should not proceed any further and therefore, by orders dated 31.03.2017 the Hon'ble Supreme Court recalled the order appointing the former Chief Justice as a receiver. The learned counsel seeking review argued that there is a grave and present danger that unless the impugned order is set aside, the same will be misused.

Sri V. Ramachandra Goud learned counsel for the petitioner in Review CRP MP No.6470 of 2017 has pointed out that M/s. Prime Properties have already moved an application in IA No.614 of 2017 in OS No.1121 of 2002 where they have relied upon the order under review and prayed the Hon'ble Court in O.S.No.1121 of 2002 to stay of all further proceedings in IA No.508 of 2016. The fear expressed by the learned counsel is that no officer would pass any order relating to the property in Survey No.1007 in any matter in any sub-ordinate Court in the States of Telangana and Andhra Pradesh, if the order under review is allowed to stand.

Sri Kakarala Venkata Rao, the learned counsel for the petitioner in CRP MP Nos.5291, 5214 and 5238 of 2017 also submits that no Court or any authority will take a decision in the matter in relation to Survey No.1007 so long as this order survives.

Sri Vedula Venkata Ramana, learned senior counsel also argued that ultimately justice has to be rendered and justice not only be done but must also be seem to be done. He also pointed out relying upon **Rupa Ashok Hurra v. Ashok Hurra**³⁵ that for rendering justice *ex debito justitiae* the Court has inherent power to prevent the abuse of law. In order to cure miscarriage of justice, the inherent power to review an order is to be exercised. Similarly, he relied upon **A.R. Antulay**'s case (para 40) that a superior Court can always correct its own error brought to its notice either by way of petition or *ex debito justitiae*.

Final Conclusions:

This Court is of the opinion that the order dated 20.03.2009 which is a subject matter of the review should not have been passed in the manner in which it was done. Such a complex investigation into the facts could not have been taken up under Article 227 of the Constitution of India. Therefore, this Court is of the opinion that there is a mistake and error apparent on the face of the record. This Court is of the opinion that there is a clear disregard of the law (as per

³⁵ AIR 2002 SC 1771

Budhia Swain and **Surya Dev Rai**'s cases). There is a manifest error apparent on the face of the record and correcting it is a conclusion of this Court's conscience (as per **Rupa Ashok Hurra** and **Shivdeo Singh**'s cases).

In the case on hand, the final conclusions of this Court are: a) that there was deliberate suppression of facts leading to the impugned order (as per **Budhia Swain** and **Digambar Rao**'s cases); b) the Court also mistakenly entertained the revision when there is an effective alternate remedy of appeal (as per **Gurram Seetharam Reddy**'s case); c) this Court embarked on an enquiry and decided the issues of title and ordered delivery of possession without a trial or a detailed enquiry as is known in law disregarding the rules of natural justice (as per **Digambar Rao**' case); d) the Court should have refused to exercise jurisdiction *pro interesse suo* and should have exercised restraint when such complicated facts, issues of title and questions of about possession of property are raised and ignored the ratio of the case of **Narhar Raj** (3 supra); e) the Court committed an error manifest on the face of record when it entertained the application under Order XXI Rule 52 CPC filed by a third party when there is no decree or attachment of any property under a decree and this is a patent error in procedure resulting in findings without material (as per **Achutananda Baidya**'s case) and f) if the order under review is allowed to stand, it can lead an exploitation of the situation, as it is an order of the superior

Court and no lower Court or authority will decide against the findings of title; possession etc. mentioned in the same. This will lead to manifest injustice (as per **Achutananda Baidya's** case).

In **M.M. Thomas v. State of Kerala**³⁶, the Hon'ble Supreme Court observed in paras-14 & 17 as follows:

"14. High Court as a Court of Record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A Court of Record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual, memorial and testimony. A Court of Record is undoubtedly a superior Court which is itself competent to determine the scope of its jurisdiction. The High Court, as a Court of Record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regards is plenary. in Naresh Sridhar v. State of Maharashtra MANU/SC/0044/1966 : [1966]3SCR744 , a nine Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a Court of plenary jurisdiction being a Court of Record.

17. If such power of correcting its own record is denied to the High Court, when it notices the apparent errors its consequence is that the superior status of the High Court will dwindle down. Therefore, it is only proper to think that the plenary powers of the High Court would include the power of review relating to errors apparent on the face of record."

For all the above reasons, the review CRP MP No.4638 of 2017 is allowed and the order dated 20.03.2009 in CRP No.6697 of 2009 passed by this Court is recalled. The order dated 22.11.2004 passed by the VII Junior Civil Judge, City Civil Court, Hyderabad in IA No.811 of 2004 in IA No.1108 of 2001 in O.S.No.3306 of 1984, which was filed under Order XXI Rule 52 CPC r/w Sections 98 and 151 CPC is upheld.

³⁶ (2000) 1 SCC 666,

In view of the orders in CRP MP No.4638 of 2017, all the other applications filed by all the parties viz., the implead petitions, petitions seeking leave to file review; review applications etc., are closed. It is made clear that all the parties who have claims are at liberty to agitate their rights under the relevant provision of law before the appropriate forum in line with the order of the Hon'ble Supreme Court of India in SLP No.11595 of 2009, dated 10.01.2017.

In the circumstances of the case, there shall be no order as to costs.

D.V.S.S. SOMAYAJULU, J

Date: 23.02.2018

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Note: L.R. Copy marked.

