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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2024

CORAM :

THE HON'BLE MR. JUSTICE M. SUNDAR
and
THE HON'BLE MR. JUSTICE R. SAKTHIVEL

Review Application No.104 of 2003

S. Sathappan (Died)

1. S.J. Lakshmi @ S. Jayalakshmi
2. Minor S.S. Seetha
3. Minor S. Jagan Somasundaram

Applicants

Minors represented by their mother, second applicant.

(Applicants 1 to 3 brought on record as legal representatives of the deceased sole appellant *vide* order dated 23.10.2002 in C.M.P. No.15957 of 2000)

Applicants 2 and 3 declared as major and their mother (1st applicant) is discharged from guardianship and they are permitted to contest the review application *vide* order of Court dated 01.08.2024 made in C.M.P. Nos.168 and 169 of 2014 and 3 of 2011 in Rev. A. No.104 of 2003 in O.S.A. No.261 of 1995)

vs.

1. P.S.S. Somasundaram Chettiar (Died)
2. S. Nagamanickam Chettiar (Died)
3. S. Kubendran Chettiar
4. S.RM. Sathappa Chettiar
5. Chandragandhi Govindarajulu
representing G.R.G. Charities Trust and
Krishnammal Educational College Trust
Peelamedu
Coimbatore District



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6 Nedungadi Bank Ltd., Head Office
Calicut

7 Canara Banking Corporation Ltd.
presently known as Corporation Bank
Oppanakara Street
Coimbatore District

8 K.G. Kanagaraj

9 K.G. Sathiamoorthi

10 M. Shanmugam

11 Bala Jayaraman

12 Sathianarayanan

13 Dandapani

14 Sundararajan

(RR 11 to 14 recorded as legal representatives of
the deceased R2 as per order dated 05.04.1999
in C.M.P. No.4732 of 1999)

15 Rangasami Rajkumar (Minor) represented by
father and guardian G. Devarajan

16 G. Rangasami

17 A.K. Gopal Chettiar

18 S. Krishnakumar

19 S. Meenakshi Achi

20 G. Krishnamoorthi

21 Ranjini

22 Vijai

23 Balaji



24 Sundar

25 R.P. Ganesh
Proprietor, Theatre Paradise
Pollachi

(R25 impleaded as per order dated
22.02.1999 in C.M.P.No.1621 of
1999)

26 A.R. Seetha

27 A. Sita

28 M. Meena

Respondents

(R1 died) RR 26 to 28 are brought on record
and petitioners 2 and 3 (already on record)
are recorded as legal heirs of deceased R1 –
P.S.S. Somasundaram Chettiar) *vide* order
dated 01.08.2024 made in C.M.P. Nos.168
and 169 of 2014 and 3 of 2011 in
Rev.A.No.104 of 2003 in O.S.A. No.261 of
1995.

Review Application filed under Order XLVII Rule 1 of the Code
of Civil Procedure seeking review of the judgment and decree dated
13.11.2002 passed in O.S.A. No.261 of 1995 insofar as the findings
in respect of the properties at No.116, Arun Chambers, Tardeo,
Bombay – 34 and at No.5, Bishop Garden, Chennai – 600 028 in the
judgment in C.S. No.188 of 1972 are concerned.

For applicant Mr. T.V. Ramanujun
Senior Counsel
for Mrs. R. Ramya

For RR 26-28 Mr.R.Parthasarathy, Sr. Counsel
for Ms.S. Rekha
Ms. R. Supraja & Ms.Tanushree Arvind



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Review Application No.104 of 2003





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ORDER

(made by M. SUNDAR, J.)

Ten months, one year and half a century ago, to be precise, 15.11.1972 and this is the date of a plaint which was presented on the Original Side of this Court, this plaint, on institution of suit, became C.S. No.188 of 1972. This suit was originally filed by mother of one S. Sathappan who was a minor at that time and interestingly, first defendant in the suit one Somasundaram Chettiar is none other than Sathappan's father. One of the classic cases of exception to the age-old adage 'Blood is thicker than water'.

2. Considering the legal perimeter within which the captioned review application should perambulate, it is really not necessary to dilate on facts *qua* lis. It will suffice to state that aforesaid 'C.S. No.188 of 1972' shall hereinafter be referred to as 'partition suit' as Sathappan sought partition of properties adumbrated in as many as ten schedules in the plaint. To be noted, in some of the schedules, multiple items of properties have been set out.

3. Sathappan who was a minor in 1972 was represented by his mother and next friend S. Meenakshi Achi, subsequently, (obviously) he attained majority, he was declared a major, his



mother and next friend was transposed as one of the defendants and Nature overtook both Sathappan and his father. To put it differently, both of them died pending suit/appeal, they are no more and their legal heirs are on board and for self same reason set out in the earlier part of this narrative, we are not dilating more on these facts.

4. In 1976, a bank, viz., Corporation Bank filed a money suit in 'C.S. No.366 of 1976' (hereinafter referred to as 'bank suit' for the sake of convenience) claiming certain sums of money. In this bank suit, a mill which went by the name 'The Kaleeswarar Mills Ltd.,' (for brevity 'Kaleeswarar Mills'), Sathappan and his father P.S. Somasundaram Chettiar were arrayed as D1, D3 and D2 respectively. National Textiles Corporation (Tamil Nadu and Puducherry) {'NTC' for brevity} was arrayed as D4.

5. In September of 1983, Somasundaram Chettiar (Sathappan's father) filed a suit being C.S. No.442 of 1983 with a prayer to declare that he has legal right over properties which are absolute / independent and for a further declaration that Sathappan does not have any legal right either by birth or succession over his absolute properties. This suit (C.S. No.442 of 1983) shall hereinafter be referred to as 'declaration suit' for the sake of convenience.



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6. Considering the factual overlap, all the three aforereferred suits, viz., partition suit, bank suit and declaration suit were taken up for joint trial and after full contest, a Hon'ble Single Judge on the Original Side of this Court, in and by a common judgment dated 07.10.1994, passed preliminary decrees in the partition suit, bank suit, and dismissed the declaration suit.

7. In this regard, before we proceed further, we deem it appropriate to write that in the plaint in the declaration suit (more particularly paragraph 13 thereat), there is a mention about two immovable properties and they are (i) No.5 Greenways Road, Bishop Garden, Chennai 600 028 which is a house property with land area of about 9 grounds and built up superstructure of about 8,000 sq. ft. (hereinafter referred to as 'Bishop Garden house property' for the sake of convenience) and (ii) a fully furnished air conditioned flat in Bombay (now Mumbai) in a Office Complex which went by the name 'Arun Chambers' (hereinafter referred to as 'Bombay furnished flat property' for the sake of convenience) but to be noted, there is no schedule to the said plaint.

8. It is equally important to write that both the Bishop Garden house and Bombay furnished flat properties do not find place in the ten schedules in the partition suit. It is nobody's case that



these two properties viz., Bishop Garden house and Bombay furnished flat properties form part of the bank suit. In the bank suit, the preliminary decree is to the effect that D1 and D4 thereat, viz., Kaleeswarar Mills and NTC, are liable to pay certain sums of money to the bank and that the same can be recovered by the bank by adopting 'procedure known to law'. Most importantly, the bank suit was dismissed as against Sathappan as well as his father, viz., D3 and D2 respectively. As the money was directed to be recovered by what is described as 'procedure known to law', it is in the nature of a mortgage suit *qua* The Kaleeswarar Mills and NTC and therefore, a preliminary decree appears to have been made but that is really outside the perimeter within which instant legal drill perambulates.

9. As already alluded to *supra*, as regards declaration suit, though there is a mention about two immovable properties in the plaint, viz., Bishop Garden house and Bombay furnished flat properties in paragraph 3 of the plaint, there is no schedule and this suit was dismissed lock, stock and barrel. It is also necessary to write (for better appreciation of this order) that in the common judgment, the partition suit in C.S. No.188 of 1972 was the lead suit as the evidence let in and the documents marked as exhibits in the partition suit were taken as deposition and documents respectively as regards the common judgment.



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10. As against the aforementioned common judgment, three intra Court appeals, *i.e.*, '3 Original Side Appeals' ('OSAs' for the sake of brevity), *viz.*, OSA No.261 of 1995, 237 of 1996 and 284 of 1996 were filed. While OSA No.261 of 1995 was filed by Sathappan, O.S.A. Nos.237 and 284 of 1996 were filed by Somasundaram Chettiar. The details of these three appeals as culled out from the earlier Bench order read as follows:

'The plaintiff in C.S. No.188/1972 filed O.S.A. No.261/1995 having aggrieved by the disallowed portion with reference to his claim in the judgment and decree passed in the said suit.

2. O.S.A. No.284/1996 is by the 1st defendant in the said suit, having aggrieved by the judgment and decree therein rejecting his claim that the plaint schedule properties are his absolute properties and nobody can claim any title, interest or whatsoever in the same during his lifetime.

3. The 1st defendant filed another appeal in O.S.A. No.237/1996 against the dismissal of his suit in C.S. No.442/1983 filed by him for a declaration that he is the owner of all the properties. For the convenience, the parties are referred to herein as their description in C.S. No.188/1972.'

11. All three OSAs were taken up, heard together and were disposed of by a common judgment dated 13.11.2002 made by Predecessor Hon'ble Division Bench. This judgment has been reported in a law journal which goes by the name 'Law Weekly'. The citation is 2003-1-L.W. 58. We find that the reported citation refers to the date of judgment as '03.11.2002' whereas the (correct) date as per Court records is '13.11.2002'. It appears to be a printer's devil but



we deem it appropriate to leave it at that.

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12. Before we proceed further, we need to make it clear that the crux and gravamen or in other words, the kernel of the captioned review application is paragraph 269 of the common judgment dated 07.10.1994 made in the three suits and the same reads as follows:

'269. It is thus seen that almost substantial part of the suit properties were acquired by Diwan Bahadur Somasundaram Chettiar and after his death by his adopted son P.S.Sathappan Chettiar and by his wife late Seethai Achi and that during their lifetime the family of the first defendant were identified in an affluent situation with several industries, textile mills, companies and landed and house properties and also were found with fame and glory and was in a peak period. It is noticed that the plaintiff as P.W.1 during his oral evidence has admitted that certain items of the suit properties were the self-acquisitions of the first defendant but however, he added that though the said items were acquired by the first defendant by taking the document in his name, consideration for acquiring the said properties, about which, I have referred to in the previous paragraphs, were taken only from the property and income of the joint family property and that therefore, all the properties were unequivocally and unambiguously treated by the plaintiffs and the defendants 1 to 4 as the joint family properties. As I have already adverted to, there was no evidence or materials available before this Court to show that the first defendant had received any remuneration or scale or pay, whatever the consideration may be, for his working as the Managing Director or the local agent of the several textile mills and industries belonging to his family. Equally so, it was not the case of the first defendant either through evidence or pleadings that he has purchased certain properties out of his own independent income but however separately, from doing so, without any income from the joint family property. What must be the consideration passed in acquiring every property must necessarily have been begotten only from the joint family properties, which are ancestral in nature and not by any self-acquisition of the first defendant. That apart, there is evidence made available by P.W.1 and the contra plea made on behalf of the first defendant with regard to two items of properties, one a house property bearing door number 5 situated in Greenways Road, Madras and another flat acquired in Bombay municipal town. Though these two properties were not added as items in the plaint schedule, evidence was let in and arguments were made on behalf of the respective parties herein. It was the contention made on behalf of the first defendant that he paid the entire consideration for acquiring the house property situated in Greenways Road, Madras, but the document was taken in the



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name of the plaintiff. The same stand was taken with regard to the property at Bombay. However, it was controverted by the plaintiff stating that he had purchased the same out of his own exertion independently. When P.W.1 was confronted in cross-examination by the learned counsel appearing for the first defendant, P.W.1 would simply claim that he got the funds by way of presentations made by his relatives. But it is curious enough to note that the plaintiff who pleaded self-acquisition of the said items virtually failed to establish the fact as to how and when and what part of the consideration he acquired in order to purchase the said two items of properties. If the tenor of the cross-examination made to P.W.1 with regard to the claim of his self-acquisition is considered, as was done by Mr.Vedantham Srinivasan, learned counsel for the first defendant, it was made clear that the plaintiff during the time of purchase of the said two items was not in a position to acquire such part of consideration and that therefore, the said items of properties must have been purchased in the name of the plaintiff with the funds derived from the joint family property. By carefully analysing the entire adduced evidence, I am fully constrained to hold that either the plaintiff or the first defendant had no independent avocation or profession to purchase or acquire any separate property, except the source of money derived from the joint family properties, which are very much involved in this suit.'

13. The aforementioned paragraph has been assailed by Sathappan in his OSA, viz., O.S.A. No.261 of 1995. The most relevant grounds in the memorandum of grounds are grounds 84 to 90 and the same read as follows:

'84. The learned Judge erred in including the properties that were purchased by the plaintiff during the pendency of the suit in his name with his own funds.

85. The learned Judge failed to see that the property at Door No.5, Bishop Garden, Madras-28 is the absolute property of the plaintiff which has been purchased by the plaintiff after attaining majority by means of a registered sale deed dated 3.08.1974.

86. The learned Judge failed to see that the property in Bombay viz., 116, Arun Chamber Tardeo, Bombay-34 about 213 sq.ft. has been purchased by the plaintiff with his own funds after he became major and during the pendency of the suit by acquiring shares in a co-operative society.

87. The learned Judge failed to see the properties purchased by the plaintiff at No.5, Bishop Garden, Madras 28 and No.116, Arun Chambers, Bombay-34 are his self-acquired properties and



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they cannot be made the subject matter of the suit because on the date of filing of the suit, there was disruption of status and there was no joint family.

88. The learned Judge erred in holding that door No.5, Bishop Garden, Madras 28 and No.116, Arun Chambers, Bombay-34 are joint family properties.

89. The learned Judge failed to see that these two items were not mentioned in the schedules in the written statement and there is absolutely no pleading.

90. The learned Judge failed to see that the 1st defendant has not entered the witness box to speak anything about these two properties which are self-acquired properties of the plaintiff and that too, during the pendency of the suit.'

14. We find that aforementioned ground 89 is the epicentre of the captioned review. As would be evident from ground 89 which is a pointed ground set out with specificity, the two items of properties alluded to *supra*, viz., Bishop Garden house and Bombay furnished flat properties have not been mentioned in the schedules in the partition suit but one entire paragraph, viz., paragraph 269 has been dedicated to these two properties and in this paragraph, a verdict of sorts has been returned saying that neither Sathappan nor his father Somasundaram Chettiar had any independent avocation or profession to purchase these two properties and that the only source was money derived from joint family properties. Be that as it may, there is no disputation that these two properties, viz., Bishop Garden house and Bombay furnished flat properties do not find place in the preliminary decree in the partition suit.



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15. As is the usual course, pursuant to the preliminary decree in the partition suit, we are informed that an application for appointment of Advocate Commissioner, obviously under Order XXVI Rule 9 of the Code of Civil Procedure (hereinafter referred to as 'CPC' for the sake of brevity) was taken out, Advocate Commissioner was appointed and the matter progressed and now, final decree proceedings are under way.

16. The tremors *qua* aforereferred the epicentre are in the nature of claim in the final decree proceedings that these two properties, *viz.*, Bishop Garden house and Bombay furnished flat properties should also be included in the partition decree and should be made available for partition. That it should not be made available for partition in the light of the narrative thus far is the bedrock of the review application before us.

17. In the review application taken up by Sathappan seeking review of the common judgment dated 13.11.2002 made in O.S.A. No.261 of 1995, Mr. T.V. Ramanujun, learned Senior Counsel instructed by Ms. R. Ramya, counsel on record for the review applicant was before us in the physical Court.

18. As regards contesting respondents *i.e.*, R26 to R28, Mr.R.Parthasarathy, learned Senior Counsel was before us on the



video conference platform, Ms. S. Rekha and Ms. T. Supraja, counsel on record, were before us in the physical Court (to be noted, this is a hybrid hearing which is a regular/routine/daily feature in this Court).

19. As regards contesting respondents and other respondents who have been given up, we deem it appropriate to write that this order shall be read in conjunction with and in continuation of earlier proceedings of this Court made in C.M.P.Nos.168 and 169 of 2014 and 3 of 2011. In this regard, to be noted, in the proceedings made in the listing on 01.08.2024, the order dated 18.07.2024 has been extracted/reproduced and order dated 01.08.2024 reads as follows:

Order dated 01.08.2024:

**'C.M.P. Nos. 168 and 169 of 2014 and 3 of 2011
in
Rev. A. No.104 of 2003 in O.S.A. No.261 of 1995**

**M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

(Order of the Court was made by M.SUNDAR, J.)

This common order will govern the captioned three 'Civil Miscellaneous Petitions' ('CMPs' in plural and 'CMP' in singular for the sake of brevity).



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2. This common order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 18.07.2024, which reads as follows:

**'Rev. A. No.104 of 2003
in O.S.A. No.261 of 1995
and
C.M.P. Nos.3 of 2011, 168 and 169 of 2014**

**M.SUNDAR,J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

(Order of the Court was made by M.SUNDAR, J.)

Main matter is Review Application No.104 of 2003. If the review application is vintage, suit from which OSAs arise [review application is qua common order dated 13.11.2002 in O.S.A. Nos.261 of 1995, 237 of 1996 and 284 of 1996 (three OSAs)] is ancient as the OSAs arise out of two suits of the year 1972 and 1983 i.e., C.S.Nos.188 of 1972 and 442 of 1983.

2. Ms.Ramya, learned counsel on record for three review applicants submits that C.S.No.188 of 1972 is a partition suit filed by one S.Sathappan, then minor represented by his mother S.Meenakshi claiming half share in joint family properties. Learned counsel submits that there are six schedules of properties to the suit and each schedule consists of multiple items of immovable properties. The other suit is C.S.No.442 of 1983 and this second suit has been filed by one P.S.S.Somasundaram Chettiar (against son Sathappan) seeking a declaration that his legal rights over his properties is absolute and independent and that Sathappan has no legal rights either by birth or by succession.

3. On 07.10.1994, a learned single Judge who tried both suits together partly decreed the partition suit and dismissed the declaration suit. To be noted, decree is obviously a preliminary decree as C.S.No.188 of 1972 is a partition suit.

4. Learned counsel for review applicants submits that in this common judgment dated 07.10.1994 (more particularly paragraphs 269 and 331 thereat), one property at Greenways Road and another property being a flat in Bombay have been held to be joint family properties and this now constitutes the kernel of the review application before us.



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5. The aforementioned three OSAs are directed against this 07.10.1994 common judgment and decree (to be noted, there are two appeals qua partition suit as it was partly decreed) and these three OSAs came to be disposed of by a common order dated 13.11.2002 and captioned review application is directed against the order in one of the three OSAs viz., O.S.A. No.261 of 1995.

6. As regards respondents in the review application, we find that they are 25 in number. Cause list shows M/s.Surana and Surana (Law Firm) represents R1 and R2 to R25 have been given up vide Court order dated 30.08.2005.

7. Learned counsel for review applicants submits that two CMPs viz., C.M.P.Nos.168 of 2014 and 169 of 2014 have been taken out with prayers to declare two of the review applicants viz., S.S.Seetha and S.Jagan Somasundaram as majors and discharge their guardianship (mother). The second application has been filed (C.M.P. No.168 of 2014) with a prayer to bring on record the legal heirs of deceased R1 / P.S.S.Somasundaram Chettiar. Learned counsel submits that these two CMPs have to be considered first.

8. Though two CMPs come across as petitions with innocuous prayers, as no one represented R1 today though name of the counsel M/s.Surana and Surana (Law Firm) is duly shown in the cause list, with the intention of giving opportunity to R1 and counsel for R1, list this matter again on 01.08.2024.'

3. In the aforementioned proceedings in paragraph 2 in Line No.5, 'six' schedules should read as 'ten' schedules. Ms.R.Ramya, learned counsel for petitioners in captioned CMPs expressed regret for the error in the previous proceedings which were made on the basis of submission made at the Bar. This order will now be read as errata/corrigendum in this regard qua aforementioned 18.07.2024 proceedings (on being uploaded).

4. Reverting to captioned CMPs, R1 – Mr.P.S.S.Somasundaram Chettiar is no more, date of demise is 22.09.2013 and date of demise of his spouse is 06.10.2013. Respondents 2 to 25 have been given up. As regards Respondents 26 to 28, who are to be brought on record, Ms.S.Rekha, learned counsel has entered appearance and submits that she does not oppose the prayer in C.M.P.No.168 of 2014. In C.M.P. No.168 of 2014, in the petition, Ms.R.Ramya submits that an inadvertent typographical error has crept in and requests that 'R25 to R27' may please be read as 'R26 to R28'. This request is acceded to.

5. In the light of captioned C.M.P. No.168 of 2014 not being opposed and also taking into account the position that it is



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not only innocuous but imperative for the matter to proceed, C.M.P.No.168 of 2014 is ordered as prayed for. Registry to carry out necessary and consequential amendments in the case file within ten days from today i.e., by 09.08.2024.

6. As regards C.M.P. No.169 of 2014 which has been filed with prayer for declaring the petitioners 2 and 3 as majors and for discharging their guardianship, the position as regards the parties is pretty much the same. In other words, R1 is no more, date of demise is 22.09.2013, date of demise of spouse of R1 is 06.10.2013, R2 to R25 given up and R26 to R28 represented by Ms.S.Rekha, counsel on record does not oppose the prayer. Considering the nature of the prayer which is not only innocuous but imperative for the matter to proceed, captioned C.M.P. No.169 of 2014 is also ordered as prayed for. (to be noted there is no typographical error in the prayer in C.M.P. No.169 of 2014).

7. Registry to carry out necessary and consequential amendments in the case file within ten days from today i.e., by 09.08.2024.

8. Captioned C.M.P. No.3 of 2011 is disposed of as closed without expressing any view or opinion on the merits of the matter as R1 is no more.'

20. The aforementioned proceedings speaks for itself and therefore, all parties (both sides) which are in contest are represented by counsel and learned Senior Counsel are leading them.

21. In the course of the hearing, another factor which emerged is that the review applicant has taken out two Civil Miscellaneous Petitions ('CMPs' for the sake of brevity) viz., CMP Nos.6208 and 6209 of 1998 under Order XLI Rule 27 of CPC with prayers to mark additional documents and these additional documents are to buttress the argument that Somasundaram



Chettiar himself has taken a position that the two properties, viz., Bishop Garden house and Bombay furnished flat properties were properties belonging to Sathappan and one such document sought to be marked as additional evidence is a letter dated 12.04.1975 addressed by Somasundaram Chettiar to the Tax Recovery Officer (Headquarters), Office of the Income Tax Department.

22. Before we proceed to set out the points urged as well as our discussion and dispositive reasoning on each point, we deem it appropriate to delineate with clarity and specificity the legal perimeter within which the legal drill *qua* captioned review application will perambulate.

23. The captioned review application has been filed, *inter alia* under Order XLVII Rule 1 of CPC and therefore, the three grounds on which a review can be entertained are:

- i. discovery of a new and important matter or evidence which is not within the knowledge of the review applicant and could not be produced at the time when the decree was made;
- ii. some mistake or error apparent on the face of the record; and
- iii. any other sufficient reason.



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25. As regards the dismissal of the special leave petitions, we remind ourselves of the judgment of the Supreme Court in **Kunhayammed vs. State of Kerala (2000) 6 SCC 359**. Relevant paragraphs in the said judgment are paragraphs 41 and 44 and the same read as under:

'41.Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.

44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.'

26. **Kunhayammed** was subsequently reiterated in **Khoday Distilleries Ltd. vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., Kollegal, (2019) 4 SCC 376**. Relevant paragraph



from **Khoday Distilleries Ltd.** is paragraph 28 which reads as under:

'28. In the instant case, since special leave petition was dismissed in limine without giving any reasons, the review petition filed by the appellant in the High Court would be maintainable and should have been decided on merits. Order dated 12-11-2008 [*Sri Mahadeswara Sahakara Sakkare Karkhane Ltd. v. Khoday Distilleries Ltd.*, 2008 SCC OnLine Kar 824] passed by the High Court is accordingly set aside and matter is remanded back to the High Court for deciding the review petition on merits. The civil appeal is disposed of accordingly.' (emphasis supplied)

27. As we have adverted to **Kunhayammed** and **Khoday**, going by the time-honoured declaration of law in celebrated judgment of the Supreme Court in **Padma Sundara Rao and others v State of Tamil Nadu and others [(2002) 3 SCC 533]**, we deem it appropriate to set out facts (very tersely though) in **Kunhayammed** and **Khoday**.

28. In **Kunhayammed**, State of Kerala enacted the Kerala Private Forests (Vesting and Assignment) Act, 1971 to vest the Government with private forests in its State for assignment to agriculturists for cultivation. The Act and the assent of the President were published in the Gazette dated 23.08.1971 but the Act was given a retrospective operation, deeming it to have come into force on 10.05.1971. A family consisting of 71 members raised a dispute before the Forest Tribunal, Kozhikode where 1020 acres of land was the subject-matter of dispute and vide order dated 11.08.1982 the



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Tribunal held that the land did not vest with the Government. An appeal was preferred by the State and the Kerala High Court dismissed the same on 17.12.1982, thereafter the State filed a SLP under Article 136 of the Constitution, which was dismissed vide order dated 18.07.1983. By an Amendment Act No.36 of 1986 published in the Gazette dated 01.12.1986, Section 8C was added with retrospective effect from 19.11.1983. In January 1984, the State filed a review of the order dated 17.12.1982 before Kerala High Court. The High Court overruled the preliminary objection as to the maintainability of the review petition, the petitioners therefore sought for leave to appeal to Hon'ble Supreme Court and a bench of two Judges of the Hon'ble Supreme Court referred the matter to a bench of three Judges owing to the importance of the question involved.

29. In **Khoday**, the respondent had filed a suit for recovery of money along with interest before a City Civil Court at Bangalore. Even after finding on merits that the appellant was liable to pay money to the Respondent, the suit was dismissed on 11.11.2005 as it was barred by limitation. Aggrieved over the same, the respondent filed a appeal under Section 96 of the CPC which was allowed on 12.11.2008 on the ground that the original suit was filed within limitation. The amount claimed by the respondent was also decreed



along with interest. Subsequently, the appellant preferred SLP before Hon'ble Supreme Court which was dismissed on 04.12.2009. Following the dismissal of SLP, the respondent filed for the Execution of the decreed amount before the trial court. However, aggrieved appellant filed a review petition for the judgment dated 12.11.2008 before the High Court. The review petition was dismissed by the High Court on the ground that SLP had been dismissed. The Appellant challenged the dismissal of the review petition and the question of law that was to be determined in the said circumstances was whether a review petition is maintainable before a High Court when an SLP against a judgment had already been dismissed.

30. In the same spirit, in **Padma Sundara Rao**, the factual matrix is that a notification issued under Section 6 of the Land Acquisition Act, 1894 was assailed in Madras High Court and the High Court relying on N.Narasimhaiah case reported in (1996) 3 SCC 88 held that the same was validly issued. The matter was carried to Hon'ble Supreme Court on the question of law as to whether after quashing of a notification under section 6, a fresh period of one year is available to the State Government to issue another notification under section 6. It is in this context, i.e., while deciding this legal question, a Constitution Bench of Hon'ble Supreme Court declared the law as regards how courts should place reliance on case laws /



precedents, relevant paragraph in **Padma Sundara Rao** is paragraph 9 and same reads as follows:

'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.' (emphasis supplied)

31. In the light of the narrative thus far, we find that a clear *prima facie* case has been made out by the review applicant and therefore, the review is admitted and with the consent of both sides, main review application itself is taken up and heard out.

32. Before we write the rest of the order, we deem it appropriate to say that both learned Senior Counsel very fairly submitted that the obtaining legal position makes it clear that there is no impediment whatsoever in having the captioned review application heard out by this Court in the light of the trajectory the matter had taken *qua* special leave petitions.

33. We now proceed to set out the points and also write our discussion and dispositive reasoning on the same, one after the other, by way of an adumbration and the same is as follows:



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(i) The first point urged by Mr. R. Parthasarathy turns on the ground for review. In support of this, learned Senior Counsel pressed into service two judgments, viz., oft-quoted judgment in **Kamlesh Verma vs. Mayawati and Others (2013) 8 SCC 320** and the recent judgment in **Tirupathi Rao vs. M. Lingamaiah and others (2024 SCC OnLine SC 1764)**.

In **Kamlesh Verma**, the facts are that Hon'ble Supreme Court had earlier directed CBI to conduct enquiry *qua* the irregularities committed by officers/persons concerned in the Taj Heritage Corridor Project and submit a preliminary report, the CBI filed a report, on the basis of the same, Hon'ble Supreme Court passed an order directing CBI to conduct an inquiry with respect to the execution of the Taj Heritage Corridor Project under the Taj Trapezium Zone (TTZ) area at Agra which culminated in registration of an FIR dated 05.10.2003 under various provisions of the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988 against several persons including Ms. Mayawati. On the very same day, another FIR was lodged against Ms. Mayawati with respect to acquisition of disproportionate



movable and immovable assets. Aggrieved over filing of this FIR, Ms. Mayawati and another preferred Writ Petition (Crl.) No. 135 of 2008 before Hon'ble Supreme Court. One Mr.Kamlesh Verma also moved an application for intervention in the said writ petition. Hon'ble Supreme Court vide order dated 6.7.2012 had quashed the FIR holding that the order dated 18.09.2003 does not contain any specific direction regarding lodging of FIR in the matter of disproportionate assets case against Ms Mayawati and CBI exceeded its jurisdiction in lodging the same and also allowed the application for intervention. Feeling aggrieved over quashing of FIR, Mr.Kamlesh Verma filed a review petition. In this Kamlesh Verma review petition, Hon'ble Supreme Court set out principles as to when a review is maintainable and as to when it is not maintainable.

Relevant paragraph in **Kamlesh Verma** is paragraph 20 and sub paragraphs thereat which reads as follows:

'20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;



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(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in *Chhajju Ram v. Neki* [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poullose Athanasius* [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.'

In **Tirupathi Rao**, the facts are, one Ms. Sultana Jahan Begum, instituted an Original Suit seeking a partition of her father's properties. A preliminary decree was passed



on a compromise on 06.04.1959. On 26.12.2003, the High Court for the State of Telangana at Hyderabad passed a final decree in favour of the first respondent. Subsequently, Nawab Zaheer Yar Jung's descendants claimed the subject land to be a jagir land which was rejected by Nazim-e-Atiyat and the land was escheated to the Government as per Board of Revenue order. Despite this, in 2003, the decree holders executed an assignment deed in favour of the first respondent and the final decree in 2003 was also in favour of the first respondent. The respondent's attempts to have the decree enforced through mutation were thwarted, leading him to file a writ petition. The High Court directed the Tahsildar to effectuate the mutation but the Tahsildar's inaction led to a contempt petition in 2014. The Single Judge found the Tahsildar guilty *vide* an order dated 04.10.2017 in contempt. The appeals against this order resulted in a Division Bench ruling which *vide* order dated 16.08.2018, held that the contempt petition was barred by limitation and therefore, the State could not be bound by the decree. Hon'ble Supreme Court dismissed the first respondent's SLP against the order dated 16.08.2018. Thereafter, review petitions that were filed against the order dated 16.08.2018 were allowed by another Division Bench



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of the High Court which while recalling the order under review, dismissed contempt appeal as well as a letters patent appeal of the appellant. This became the core of the appeal in **Tirupathi Rao**, where Hon'ble Supreme Court concluded that the High Court exceeded both its review and contempt jurisdiction.

Relevant paragraphs in **Tirupathi Rao** are paragraphs 11 to 15 which read as under:

'11. While proceeding to determine the correctness of the impugned order vis-à-vis the exercise of review jurisdiction, we ought to remind ourselves of certain cardinal principles. The exercise of review jurisdiction is not an inherent power given to the court; the power to review has to be specifically conferred by law. In civil proceedings, review jurisdiction is governed by section 114 read in conjunction with order XLVII of the CPC and the court has to be certain that the elements prescribed therein are satisfied before exercising such power. This Court in *Kamlesh Verma v. Mayawati* has succinctly observed that:

“19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.”

(emphasis ours)

12. That the provisions contained in section 114 and Order XLVII of the CPC relating to review of an order or decree are mandatory in nature and any petition for review not satisfying the rigours therein cannot be entertained ex debito justitiae, by a court of law, is trite.

13. There is a plethora of decisions analysing the statutory provisions governing the exercise of review jurisdiction; however, we would be referring to a few of them for the purpose of the present exercise. Suffice it to note that despite legal proceedings having commenced with institution of the civil suit as far back as in 1953, the present controversy has, as its source, a writ petition between the first respondent and the Tahsildar preferred in 2009. Although the explanation to section 141 of the CPC



makes it clear that provisions of the CPC would not apply to proceedings under Article 226 of the Constitution, there is authority in abundance that the principles flowing from the CPC may safely be taken as a guide to decide writ proceedings but to the extent the same can be made applicable.

14. To put it plainly, Order XLVII Rule 1 of the CPC provides three grounds for review:

1) discovery of new and important matter or evidence which, after the exercise of due diligence was not within the applicant's knowledge or could not be produced by the applicant at the time when the decree was passed, or order made; or

2) mistake or error apparent on the face of the record; or

3) for any other sufficient reason, which must be analogous to either of the aforesaid grounds.

15. In *Moran Mar Basselios Catholicos v. Most Rev. Mar Paulose Athanasius*, this Court approved the view that the third ground - "any other sufficient cause" must mean a reason sufficient on grounds, at least analogous to the first two grounds. The same view has been reiterated in a recent decision of this Court in *State (NCT of Delhi) v. K.L. Rathi Steels Ltd.*. This Court affirmed that the scope of the third ground had to be narrowly construed so as to not traverse beyond the orbit of the first two grounds.'

Adverting to clause (ix) in paragraph 20.2 in **Kamlesh Verma**, which according to learned Senior Counsel is buttressed by Tirupathi Rao, learned Senior counsel submitted that the relief has been sought at the time of arguing the main matter and has been negatived.

We carefully considered this point. In his effort to

<https://www.mhc.tn.gov.in/judicial> buttress his argument that the kernel of the captioned



review application is a ground which has been argued and negatived, Mr.R.Parthasarathy, learned Senior Counsel drew our attention to paragraph 11 of the common judgment in OSAs, i.e., judgment which is sought to be reviewed which reads as follows:

'11. In the appeal, the plaintiff has pressed his relief only with respect to Item Nos.9 and 10 in first Schedule, Item Nos.1, 6 to 10 and 12 in the IV Schedule, the title deeds mentioned in VII Schedule with respect to the above said properties, and the properties mentioned in the VIII to X Schedules. With respect to other items mentioned in the plaint, we are not concerned in these Appeals.'

A careful perusal of the common judgment makes it clear for the appellants that the predecessor Hon'ble Division Bench for the sake of clarity has set out those of the schedules on which the appellants are predicating their arguments. We are unable to persuade ourselves to believe that paragraph 11 of the order sought to be reviewed means that grounds 84 to 90 raised by Sathappan in the Memorandum of Grounds of Appeal in OSA 261 of 1995 has been argued and negatived. Therefore, the sequitur is, this really does not cut ice *qua* resistance to the review legal drill. As already alluded to *supra*, the kernel of the matter at hand is paragraph 269 of the common judgment which has been assailed by way of memorandum of grounds *vide* grounds 84 to 90 but the judgment dated 13.11.2002 in the



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OSAs has neither adverted to those grounds nor considered the issue. Therefore, we are of the considered view that it cannot be gainsaid that the point on which the captioned review application is predicated is a point which turns on a relief that was sought at the time of arguing the main matter but had been negated. It will fall in the category of a matter where a pointed ground passed *sub silentio qua* the appeal judgment that is sought to be reviewed. In the light of our view with regard to the ground regarding paragraph 269 of the common judgment passing *sub silentio* in the appeal judgment (that is sought to be reviewed), it follows as a sequitur that review is imperative as it clearly falls under 'any other sufficient reason' category as regards review. This is buttressed by the submission of Mr.T.V.Ramanujun, learned Senior Counsel that two applications under Order XLI Rule 27 of CPC have been taken out but the judgment sought to be reviewed is silent about this also.

Turning to the applications filed under Order XLI Rule 27 of CPC, the law is well settled now *vide* **Union of India vs. Ibrahim Uddin and another (2012) 8 SCC 148** and **Malayalam Plantations Ltd. vs. State of Kerala and**



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another (2010) 13 SCC 487 that such applications have to be taken up with the main appeal.

In **Ibrahim Uddin**, the facts are one Mr.Ibrahim Uddin filed a suit in O.S.No.442 of 1995 before Court of Civil Judge, Agra seeking a decree for declaration that he was the owner of the suit property stating that originally suit land had been with Maratha Government and ancestors of plaintiff having close association with Maratha Government, were made a grant in respect of the suit land in the year 1800. The land was subsequently partitioned between the ancestors of the plaintiff in the year 1819. He became the absolute owner of the land after the death of his mother Smt.Hasin Begum. The suit land was given on rent to State authorities in Agra by executing a rent note. Union of India had claimed title over the suit land illegally. The suit was contested. The trial court came to the conclusion that plaintiff failed to prove the partition between his ancestors and the lease deed alleged to have been executed in favour of the Military Estate Officer under Union of India was not successfully proved and hence dismissed the suit. Plaintiff preferred the first appeal before the District Court, Agra and during the pendency of the said appeal, he preferred an



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application under Order XLI Rule 27 of CPC adducing additional evidence. The said application was allowed by the first appellate Court and the first appeal was also allowed by the first appellate Court. Having aggrieved, Union of India preferred second appeal before the High Court which has been dismissed. Against the dismissal, the appellant approached Hon'ble Supreme Court. Hon'ble Supreme Court, while dealing with the issue *qua* Order XLI Rule 27 of CPC, has observed that the general principle is that the appellate court should not travel outside the record of the lower Court and cannot take any evidence in appeal. However, it was held that this Rule is not so absolute that it does not admit of exception as Order XLI Rule 27 of CPC was held to enable the appellate court to take additional evidence in exceptional circumstances but the appellate court may permit additional evidence only if the conditions laid down in the Rule are found to exist.

Relevant paragraphs in **Ibrahim Uddin** are paragraphs 36 and 49 and the same read as follows:

'36. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional



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evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself. (Vide K. Venkataramiah v. A. Seetharama Reddy [AIR 1963 SC 1526] , Municipal Corpn. of Greater Bombay v. Lala Pancham [AIR 1965 SC 1008] , Soonda Ram v. Rameshwarlal [(1975) 3 SCC 698 : AIR 1975 SC 479] and Syed Abdul Khader v. Rami Reddy [(1979) 2 SCC 601 : AIR 1979 SC 553] .)

49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court. (Vide Arjan Singh v. Kartar Singh [1951 SCC 178 : AIR 1951 SC 193] and Natha Singh v. Financial Commr., Taxation [(1976) 3 SCC 28 : AIR 1976 SC 1053].)

In **Malayalam Plantations**, the facts are, the appellant Malayalam Plantations owns five estates in South Wayanad Taluk, Kerala and doing cultivation of tea, coffee, cocoa, rubber, cardamom and cinnamon. The Kerala Private Forests (Vesting and Assignment) Act, 1971 came into force



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and an area of 5,131 ha of land which was in possession of Malayalam Plantations was deemed to be vested under the said Act. Malayalam Plantations filed five applications before learned Forest Tribunal, Kozhikode in respect of its five Wayanad estates challenging the vesting of 2,588 ha out of the 5,131 ha which were either planted with eucalyptus by them prior to the vesting or were utilised for the purpose of fuel requirement for its factory and for the use of its employees. Forest Tribunal *vide* common order dated 13.03.1979 exempted the entire 2588 ha from the vesting provisions of the Act. State of Kerala has filed appeals against the said order before the High Court of Kerala. Malayalam Plantations has also filed appeals claiming that exemption was granted only on the ground of estoppel on account of collection of land tax for the areas involved even after the vesting and other grounds urged were not accepted by the Tribunal. A Full Bench of the Kerala High Court, *vide* its judgment dated 29.09.1980, while allowing the appeals filed by the Government, had upheld the exemption for the roads and buildings. Aggrieved Malayalam Plantations filed five appeals before Hon'ble Supreme Court. The State Government has also preferred appeals. Hon'ble Supreme Court *vide* judgment dated



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24.08.1992 set aside the judgment of the Kerala High Court and remanded OAs Nos. 3, 4, 5, 6 and 26 of 1975 to the Forest Tribunal, Kozhikode with a direction to determine and exempt the extent of land required by the appellant Malayalam Plantations for the purpose of growing trees for fuel requirement i.e. firewood purposes for its factory as well as for the employees working in the estates. The Tribunal, after hearing both parties by common judgment dated 15.12.1994 exempted and excluded 1400 ha of land from the vesting provisions of the Act as areas required for firewood purposes. State of Kerala filed an appeal before the High Court, challenging the said judgment. The appellant has filed a cross-appeal. By judgment dated 31.05.2002, Hon'ble Division Bench of Kerala High Court exempted 730.58 ha of eucalyptus lands from vesting but held that no forest areas could be exempted for the purpose of firewood in view of the decision of Hon'ble Supreme Court in *State of Kerala v. Pullangode Rubber & Produce Co. Ltd.* [(1999) 6 SCC 92] holding that such areas should not be considered for exemption in the absence of proof that they were actually used in 1971. The Government's appeal was partially allowed and appellant's cross-appeal claiming the whole area was dismissed. Both appellant and



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the State Government have filed appeals before Hon'ble Supreme Court. Hon'ble Supreme Court has considered the issue qua Order XLI Rule 27 of CPC and relevant paragraphs are paragraphs 15 and 16 which read as follows:

'15. In view of the above provision, in our opinion, when an application for reception of additional evidence under Order 41 Rule 27 CPC was filed by the parties, it was the duty of the High Court to deal with the same on merits. The above principle has been reiterated by this Court in *Jatinder Singh v. Mehar Singh* [(2009) 17 SCC 465 : AIR 2009 SC 354] and *Shyam Gopal Bindal v. Land Acquisition Officer* [(2010) 2 SCC 316].

16. If any petition is filed under Order 41 Rule 27 in an appeal, it is incumbent on the part of the appellate court to consider at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing on the issues involved. It is trite to observe that under Order 41 Rule 27, additional evidence could be adduced in one of the three situations, namely, (a) whether the trial court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the appellate court to pronounce the judgment or any other substantial cause of similar nature.'

The aforementioned **Ibrahim Uddin** and **Malayalam Plantations** principles make it clear that when the OSAs were disposed of along with the main appeal, the CMPs filed under Order XLI Rule 27 of CPC ought to have been taken up and the same should have been decided but the same was not done and this, by itself, becomes a ground for review as it falls under the category of 'any other sufficient



reason'.

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In this regard, judgments of Hon'ble Supreme Court in **S.Nagaraj and others vs State of Karnataka and another 1993 Supp (4) SCC 595** and **Beghar Foundation and Justice K.S. Puttaswamy and others (2021) 3 SCC 1** pressed into service by learned Senior Counsel Mr. T.V. Ramanujun are relevant.

The facts in **S.Nagaraj** are that in 1977, the Government of Karnataka framed a scheme for employment for unemployed graduates, who come from families earning less than Rs.3,600/- as their annual income. The Government framed the Karnataka Civil Services (Special Recruitment) Rules, 1982, reserving 50% of direct recruitment for the stipendiary graduates and local candidates in various posts including First and Second Division Assistants in State Civil services, for which a competitive examination would be conducted. The 1987 amendment made the rules applicable to posts in group 'C' in the State Civil services, 50% reservation was split into 40% for stipendiary graduates and 10% for local candidates and lastly examination was done away with for the posts.



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Another set of rules had been framed in 1986 for 'local candidates' as defined in Clause 27-A of Rule 8 of the Karnataka Civil Service Rules. In a matter that went up to Hon'ble Supreme Court with respect to Rules, Hon'ble Supreme Court ordered for the vacancies to be filled in category 'C' by the stipendiary graduates who fulfil the required qualifications. The petitioners persuaded Hon'ble Supreme Court to add the word 'graduate' before the word 'qualification' in its order dated 24.07.1990. For implementing orders of Hon'ble Supreme Court and absorbing the stipendiary graduates in posts carrying graduate qualification, the Government now decided that absorption could be both against First Division and Second Division Assistants. For this, the stipendiary graduates, who by now had become armed not only with orders of absorption and regularisation but absorption against posts carrying graduate qualification, were not willing. They were not agreeable to accept the post of Lower Division Assistant in group 'C' as the minimum qualification for this was only SSLC and they being graduates and post graduates could not be asked to accept a post meant for matriculates. Vide order dated 30.10.1991, Hon'ble Supreme Court directed the Government to absorb all stipendiary graduates as First



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Division Assistants. It was after both administrative and financial difficulty, the Government sought for clarification of the order dated 30.10.1991 as it was beyond the scope of the order dated 24.07.1990. Hon'ble Supreme Court modified its order dated 30.10.1991 with a direction that stipendiary graduates can be appointed as Second Division Assistants. In this S.Nagaraj case, Hon'ble Supreme Court has dealt with the issue relating to review of an order.

Relevant paragraphs in **S. Nagaraj** are 18 and 19 which read as follows:

'18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the



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State cannot be permitted to continue.

19. Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* [AIR 1941 FC 1, 2 : 1940 FCR 78 : (1941) 1 MLJ Supp 45] the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* [(1836) 1 Moo PC 117 : 2 MIA 181 : 1 Sar 175] that an order made by the Court was final and could not be altered:

“... nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.”

Basis for exercise of the power was stated in the same decision as under:

“It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been



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inadvertently made as if the party had been heard.”

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, ‘for any other sufficient reason’ in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.’

The facts in **Beghar Foundation** are that a batch of petitions sought a review of the decision of the Constitution Bench of Hon’ble Supreme Court in **K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India, (2019) 1 SCC 1**. Hon’ble Supreme Court had to answer, whether the decision of the Speaker of the House of People under Article 110(3) of the Constitution, to certify a bill as a ‘Money Bill’ under Article 110(1) is subject to judicial review; and if subject to judicial review, whether the Aadhaar (Targeted Delivery of



Financial and Other Subsidies, Benefits and Services) Act, 2016 was correctly certified as a 'Money Bill' under Article 110(1) of the Constitution. Hon'ble Supreme Court has considered in this case / has dealt with the power of the Court to review its own order. Relevant paragraph in **Beghar Foundation** is paragraph 19 which reads as follows:

'19. In Kantaru Rajeevaru (Right to Religion, In re-9 J.) (2) v. Indian Young Lawyers Assn. [Kantaru Rajeevaru (Right to Religion, In re-9 J.) (2) v. Indian Young Lawyers Assn., (2020) 9 SCC 121], a nine-Judge Bench of this Court had to determine whether a reference could be made to a larger Bench in a pending review petition. Answering this in the affirmative, the Court held that it need not admit the review petitions before referring the question to a larger Bench. Further, the Court noted that such a question could also be a pure question of law. In explaining the power of this Court to review its own judgments, S.A. Bobde, C.J., speaking for the Bench, held thus : (SCC pp. 133-34, para 29)

“29. Order LV Rule 6 makes it crystal clear that the inherent power of this Court to make such orders as may be necessary for the ends of justice shall not be limited by the Rules. In S. Nagaraj v. State of Karnataka [S. Nagaraj v. State of Karnataka, 1993 Supp (4) SCC 595 : 1994 SCC (L&S) 320] , it was observed that even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its orders, the courts culled out such power to avoid abuse of process or miscarriage of justice. It was further held that this Court is not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for the sake of justice. The logical extension to the above is that reference of questions of law can be made in any pending proceeding before this Court, including the instant review proceedings, to meet the ends of justice.” '

(ii) Now that we have made it clear that review is



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imperative, we now proceed to consider the question as to what happens to Order XLI Rule 27 of CPC applications which never saw the light of the day.

As regards applications filed under Order XLI Rule 27 of CPC, we are of the considered view that owing to dismissal of declaration suit lock, stock and barrel and the same being given legal quietus now, at this distant point of time, dismissal of declaration suit having been given legal quietus, it is really not necessary to take up Order XLI Order 27 applications which have lost steam and relevance as the entire position regarding Bishop Garden house and Bombay furnished flat properties is clear as day light. However, we make it clear that not taking up the applications filed under Order XLI Rule 27 of CPC when the main appeal was heard out is also clearly 'other sufficient reason' for review and we are only saying that review can now be heard without recourse to/resorting to additional evidence in the light of legal quietus given to declaration suit dismissal and confirmation of same in appeal (OSA).

As already alluded to *supra*, the judgment that is sought to be reviewed, is common judgment in three



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OSAs. In this common judgment, OSA No.237 of 1996 is directed against dismissal of declaration suit *viz.*, C.S.No.442 of 1983. When the OSAs were pending or to put it as metaphor, when the pot was boiling, Order XLI Rule 27 of CPC applications were relevant but thereafter (continuing the metaphor) now when the rice has been cooked in the pot and that the pot has nicely settled down, additional evidence applications have lost steam and therefore, we are writing that these applications for additional evidence in Order XLI Rule 27 are really not necessary. To add clarity and specificity, we deem it appropriate to write that when the correctness or otherwise of the dismissal decree in the declaration suit *viz.*, CS.No.442 of 1983 was subjected to intra-Court appeal legal drill, the applications for additional evidence were filed but dehors these applications, the decree of dismissal in the declaration suit has been confirmed as OSA.No.237 of 1996 against the same has been dismissed. We are not disturbing the dismissal of OSA.No.237 of 1996 as would be evident from the operative portion *infra*. There is also no disputation or contestation before us that the dismissal decree in the declaration suit *viz.*, OSA.No.237 of 1996 has attained



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finality *i.e.*, given legal quietus by contesting parties also as declaration sought by Somasundaram Chettiar *qua* two immovable parties *viz.*, Bishop Garden house and Bombay furnished flat properties has been negatived, additional evidence to hammer home the point that Somasundaram Chettiar himself has not claimed the two properties to be his own is really not necessary as the point is clear as day light owing to confirmation of declaration suit in appeal being given quietus. It is in this view of the matter, we write that additional evidence applications have outlived their purpose at this distant point of time as much water has flown under the bridge and the dismissal decree in the declaration suit has crystallized the attained legal points.

Now that we have held that review is imperative, the narrative navigates itself towards the ground 89 point which has been described as the epicentre of the review application, which in turn assails the nucleus *viz.*, paragraph 269 of the common judgment dated 07.10.1994.

The grounds *qua* paragraph 269 *viz.*, grounds 84 to 90 in the memorandum of grounds of OSA have also



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passed *sub silentio* and therefore, in the review which we have held to be imperative, we would consider these grounds.

As it is clear as day light that Bishop Garden house property and Bombay furnished flat property are subject matter of declaration suit, as declaration suit which seeks a declaration that Somasundaram Chettiar is the absolute owner and that Sathappan has no right of succession either by birth or in any other manner has been dismissed lock, stock and barrel and as the same has been confirmed in (OSA) appeal which has been given legal quietus, we are of the view that aforesaid paragraph 269 becomes a precipitate which does not gel nay runs contrary to the dispositive reasoning qua rest of the common judgment in C.S.Nos.188 of 1972, 366 of 1976 and 442 of 1983.

Therefore, we are of the considered view that paragraph 269 of the common judgment dated 07.10.1994 in C.S.Nos.188 of 1972, 366 of 1976 and 442 of 1983 deserves to be set aside, we do so (without the need to resort to / taking recourse to additional evidence) and hold that paragraph 269 is set aside and that paragraph 269 being set aside, will now be read as an addendum to the



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judgment dated 13.11.2002 in the three OSAs which now stands reviewed by the instant order in the captioned review application.

34. Though obvious, we make it clear that final decree proceedings will now stand governed by this order in the review application which reviews the judgment dated 13.11.2002 made in O.S.A. No.261 of 1995.

35. When this Court writes that paragraph 269 of the common judgment confirmed in appeal judgment that is sought to be reviewed is set aside, we deem it appropriate to set out with enhanced clarity and specificity the impact of deletion of paragraph 269 and the same is as follows:

(a)Two properties, viz., Bishop Garden house and Bombay furnished flat properties are not available for partition;

(b)As regards aforesaid two immovable properties, the legal consequence / impact of dismissal of declaration suit will govern the same;

(c)In the three decrees, there is no mention about aforesaid two immovable properties, viz., Bishop Garden house and Bombay furnished flat properties. Therefore,



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decrees do not present any problem;

(d) However, the manner in which difficulty may present itself is the observation in common judgment, one such observation is paragraph 269 and the same is now set aside. Therefore, we make it clear that any other observation in the common judgment as confirmed in appeal judgment that is sought to be reviewed which is in tune and tandem with paragraph 269 will now be treated as not binding on either of the parties or any one for that matter. We also make it clear that rest of the common judgment dated 07.10.1994 in C.S.Nos.188 of 1972, 366 of 1976 and 442 of 1983 and obviously decrees flowing from the same remain unamended / untouched ;

(e) Likewise, axiomatically, any other paragraph/s running contrary to aforesaid clarification, *i.e.*, clarification that Bishop Garden house and Bombay furnished flat properties are not available for partition will also be treated as not binding on either of the parties and / or any other person concerned.

(f) In all other aspects, the common judgment confirmed in appeal judgment that is sought to be reviewed being judgment dated 13.11.2002 and three decrees flowing from the same stand unamended,



unaltered and untouched.

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36. As we mentioned at the very outset, the entire matter is over half a century old and therefore, we are of the view that the parties will do well to give a closure to the final decree proceedings as expeditiously as possible by rendering assistance to the Hon'ble Court concerned so that this ancient matter is concluded.

The captioned review application is allowed and ordered in the aforementioned manner. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
03.09.2024

cad/vvk
Index : Yes
NC : Yes

M. SUNDAR, J.

and

R. SAKTHIVEL, J.



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Review Application No.104 of 2003

cad/vvk

Review Application No.104 of 2003

03.09.2024

ADDENDA

Review Application No.104 of 2003

M.SUNDAR, J.
and
R.SAKTHIVEL, J.

<https://www.mhc.tn.gov.in/judis>



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(Order of the Court was made by M.SUNDAR, J.)

Captioned matter is listed under the cause list caption 'FOR BEING MENTIONED' at the instance of Ms.R.Ramya, counsel on record for review applicants.

2. Today, Ms.R.Ramya, counsel on record for review applicants along with Ms.Riktha Muralidhar, learned counsel and Ms.S.Rekha and Ms.R.Supraja, learned counsel for respondents 26 to 28 are before us.

3. In paragraph No.9, in the first sentence, a typographical error has occurred. What should read as '**paragraph 13** of the plaint' has been erroneously typed as '**paragraph 3** of the plaint'. To be noted, paragraph 9 of the order pronounced in open court on 03.09.2024 and uploaded in the website reads as follows:

'9.As already alluded to *supra*, as regards declaration suit, though there is a mention about two immovable properties in the plaint, *viz.*, Bishop Garden house and Bombay furnished flat properties in paragraph 3 of the plaint, there is no schedule and this suit was dismissed lock, stock and barrel. It is also necessary to write (for better appreciation of this order) that in the common judgment, the partition suit in C.S. No.188 of 1972 was the lead suit as the evidence let in and the documents marked as exhibits in the partition suit were taken as deposition and documents respectively as regards the common judgment.'

(Underlining made now for ease of reference)



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4. We correct the aforementioned typographical error in paragraph 9 and paragraph 9 will now read as follows:

'9.As already alluded to *supra*, as regards declaration suit, though there is a mention about two immovable properties in the plaint, viz., Bishop Garden house and Bombay furnished flat properties in paragraph 13 of the plaint, there is no schedule and this suit was dismissed lock, stock and barrel. It is also necessary to write (for better appreciation of this order) that in the common judgment, the partition suit in C.S. No.188 of 1972 was the lead suit as the evidence let in and the documents marked as exhibits in the partition suit were taken as deposition and documents respectively as regards the common judgment.'

(Underlining is for ease of reference)

5. As regards sub paragraph (e) of paragraph 35, both sides submitted that it would be desirable to enhance clarity by saying that paragraph/s similar or akin to paragraph 269 will not bind any one, which would mean that Bishop Garden house and Bombay furnished flat properties are not available for partition. To be noted, sub paragraph (e) of paragraph 35 in the order pronounced in open court on 03.09.2024 and uploaded in the website reads as follows:

'(e)Likewise, axiomatically, any other paragraph/s running contrary to aforesaid clarification, *i.e.*, clarification that Bishop Garden house and Bombay furnished flat properties are not available for partition will also be treated as not binding on either of the parties and / or any other person concerned.'

6. The embellished version of sub paragraph (e) of paragraph



35 will now read as follows:

'(e)Likewise, axiomatically, any other paragraph/s which is/are similar / akin to aforementioned paragraph 269 and running contrary to aforesaid clarification, will not bind on either of the parties and / or any other person concerned.'

7. All the aforereferred counsel on either side agreed to have the aforementioned correction / embellishment made. To be noted, this consent will not denude the rights of parties (either to assail or press into service) the corrected order, i.e., order with Addenda. In all other aspects, the order dated 03.09.2024 remains the same. Therefore, this order will now be made as 'Addenda' and Corrigendum / Errata to 03.09.2024 order already pronounced in open court and already uploaded. This order as 'ADDENDA' will now be uploaded again and this uploaded order with Addenda will replace the earlier 03.09.2024 order already uploaded.

**(M.S.,J.) (R.S.V.,J.)
20.09.2024**

vvk

M. SUNDAR, J.

and



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Review Application No.104 of 2003

R. SAKTHIVEL, J.

vvk

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20.09.2024