

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7<sup>TH</sup> DAY OF FEBRUARY 2024

BEFORE

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

**REVIEW PETITION No.235 OF 2023**

**BETWEEN:**

1. SMT. KAUSALYA THIRUPUVANAM  
DAUGHTER OF SRI V RAMALINGAM AND  
WIFE OF SRI THIRUPUVANAM  
AGED ABOUT 101 YEARS  
RESIDING AT NO.10/5-1, 3<sup>RD</sup> CROSS  
JAI BHARATH NAGAR  
BENGALURU-560 033
2. MURUGA MANICKAM  
SON OF SRI SEEVAN MANICKAM  
AGED ABOUT 60 YEARS  
RESIDING AT NO.10/5-1, 3<sup>RD</sup> CROSS  
JAI BHARATH NAGAR  
BENGALURU-560 033.
3. COMMANDY MANICKAM  
SON OF SRI SEEVAN MANICKAM  
AGED ABOUT 57 YEARS  
RESIDING AT NO.10/5-1, 3<sup>RD</sup> CROSS  
JAI BHARATH NAGAR  
BENGALURU-560 033.

... PETITIONERS

(BY SRI.K.G. RAGHAVAN, SENIOR COUNSEL FOR  
SRI. S.V. BHAT, ADVOCATE)

**AND:**

1. K RAGHAVA REDDY AND ASSOCIATES  
HAVING ONE OF ITS OFFICES AT  
ROYAL RESIDENCY G-1, BLOCK 1  
NO.08, BRUNTON ROAD  
BENGALURU 560 025.  
REPRESENTED BY ONE OF ITS  
PARTNER SRI K RAGHAVA REDDY
  
2. PEOPLE CHARITY FUND  
ALSO CALLED THE PEOPLE CHARITY FUND  
A TRUST HAVING ITS OFFICE AT  
NO.97 DR. ALAGAPPA ROAD  
CHENNAI.  
REPRESENTED BY TRUSTEE.
  
3. MRS. NALINI SABARTNAM  
WIFE OF SRI SABARTNAM  
AGED ABOUT 62 YEARS  
RESIDING AT NO.6468  
BAYVIEW DRIVE  
OAKLAND, CA 94605, USA.

... RESPONDENTS

(BY SRI.S.S.NAGANANDA, SENIOR COUNSEL FOR  
SRI. DEVARAJ K.S., ADVOCATE FOR R1:  
SRI. UDAY HOLLA, SENIOR COUNSEL FOR  
SRI. M.D. RAGHUNATH, ADVOCATE FOR R2 & R3)

THIS REVIEW PETITION IS FILED UNDER SECTION  
114 READ WITH ORDER XLVII RULE 1 OF THE CODE OF  
CIVIL PROCEDURE 1908 PRAYING TO REVIEW THE  
JUDGMENT DATED FEBRUARY 15, 2023 PASSED BY THIS  
COURT IN RFA NO.1294/2022.

THIS REVIEW PETITION, HAVING BEEN HEARD AND  
RESERVED FOR ORDERS ON 12.01.2024, COMING ON FOR  
PRONOUNCEMENT, THIS DAY, THE COURT, MADE THE  
FOLLOWING:

**ORDER**

This review petition is filed under Section 114 r/w. Order XLVII Rule 1 of Civil Procedure Code challenging the judgment dated 15.02.2023 passed in RFA No.1294/2022, whereby this Court disposed of the RFA based on the compromise petition filed by the parties.

2. The brief facts of the case are that the first petitioner is the daughter and the second and third petitioners are the great-grandsons of late V.Ramalingam Mudaliyar. The second respondent is a Trust created as per the order under the Probate, Will and Testament of late V.Ramalingam Mudaliar dated 10.09.1942. In the said Will, late V.Ramalingam Mudaliar, settler of the second respondent had detailed the charitable activities that are to be undertaken by the Trust. Later, the Trust was registered under the Trust Deed dated 13.06.2012

and got renamed the "People Charity Fund Trust" as "People Charity Fund". In addition to the original object, the power to sell or otherwise transfer the property of the Trust is included as an object of the Trust.

3. The case of the first respondent is that the original Board of Trustees entered into an agreement of sale dated 13.06.1984 agreeing to sell 16,000 sq.ft. immovable property bearing No.28 situated at Dickenson Road, Civil Station, Bangalore - 560004 to the first respondent for a sale consideration of Rs.10,00,000/- (rupees ten lakhs only), out of which Rs.2,00,000/- (rupees two lakhs only) has been paid on the date of the agreement and the balance sale consideration has to be paid at the time of the registration of the sale deed. Since the representatives of the Trust have failed to perform their part of the contract, the first respondent herein

filed a suit in O.S.No.2495/1987 seeking specific performance of the contract against the Trust and seeking a direction to the Trust to execute the sale deed. After the contest, the said suit was decreed by the trial court by judgment and decree dated 21.02.1997. The same has been challenged by the Trust by filing a regular first appeal before this Court in RFA No.306/1997. This Court, by judgment and decree dated 13.06.2008 allowed the appeal and dismissed the suit. Being aggrieved by the same, the first respondent herein approached the Supreme Court in SLP No.250/2009. Subsequently, the Supreme Court granted leave, it was renumbered as Civil Appeal No.5122/2009. The Supreme Court vide its order dated 25.10.2016 dismissed the first respondent's appeal. After the firm had been registered, the first respondent filed a fresh suit before the City Civil Court, Bangalore in

O.S.No.7566/2016. On appearance, the first defendant in O.S.No.7566/2016 filed a written statement and also filed IA for rejection of the plaint under Order VII Rule 11(a) of CPC. The trial court, by order dated 14.07.2022 rejected the plaint for want of cause of action and barred by law. Being aggrieved by the same, first respondent herein filed a regular first appeal before this Court in RFA No.1294/2022. This Court, on 20.07.2022 admitted the appeal and counsel represented the respondents. Thereafter, on 15.02.2023, the parties filed a compromise petition under Order 23 Rule 3 r/w. Section 151 of CPC, before this Court. This Court, accepting the compromise petition, disposed of the appeal on 15.02.2023. Being aggrieved by the order dated 15.02.2023 passed in RFA No.1294/2022, the petitioners herein have filed this review petition.

4. Sri K.G.Raghavan, the learned Senior Counsel appearing for Sri S.V.Bhat for the petitioners has raised the following contentions:

(i) Firstly, the first petitioner is the daughter and the second and third petitioners are the great-grandsons of late V.Ramalingam Mudaliar. They are the persons interested in the Trust. The Trustees of the second respondent -Trust, acting contrary to the object of the Trust, were transferring the properties of the Trust, they were misappropriating the funds of the Trust. Therefore, the second and third petitioners have filed a suit before the Principal City Civil Judge, Bengaluru seeking the removal of the Trustees and appointment of new Trustees. They have also filed Misc.Petition under Section 92 of CPC seeking leave of the Court on 04.07.2022. When the same was pending, the respondents herein filed the compromise petition in RFA No.1294/2022, contrary to the object

of the Trust. Hence, the petitioners have filed this review petition.

(ii) Secondly, the petitioners are the persons interested in the Trust and they are aggrieved by the order passed by this Court in RFA No.1294/2022 dated 15.02.2023, hence they filed this review petition, since they cannot file a suit challenging the compromise petition as the same is barred under Order 23 Rule 3A of CPC. In support of his contentions, he relied on the judgment of the Apex Court in the case of **UNION OF INDIA vs. NARESHKUMAR BADRIKUMAR JAGAD AND OTHERS** reported in **(2019) 18 SCC 586** and contended that any person considering himself aggrieved, shall have locus to file a review petition.

(iii) Thirdly, in the suit filed by the first respondent, the application is rejected as, not

disclosed the cause of action and barred by limitation. Hence, the Court, without deciding as to whether the suit is barred by limitation or not, cannot entertain a compromise petition. The order under review passed by this Court is without jurisdiction. He has also relied on Section 3 of the Limitation Act and contended that if the claim is barred by limitation, it touches on the jurisdiction of the Court unless this Court holds that the suit is filed within time. Even though parties have agreed to the settlement, compromise decree cannot be passed. In support of his contention, he relied on the judgments of the Apex Court in the case of **PANDURANG DHONDI CHOUGULE AND OTHERS vs. MARUTI HARI JADHAV AND OTHERS** reported in **AIR 1966 SC 153** and in the case of **NATIONAL THERMAL POWER CORPORATION LTD. Vs. SIEMENS ATKEINGESELSCHAFT** reported in **AIR 2007 SC 1491**.

(iv) Fourthly, while filing the compromise petition, the respondents have suppressed the material facts from this Court. Even though it is stated in the compromise petition that after executing the sale agreement dated 13.06.1984 in respect of 6,000 sq. ft. in favour of the first respondent, the remaining extent of the land will be retained by the Trust, they have not disclosed to this Court that they are going to alienate the remaining extent of the land to a third party. On the same day, i.e., on 15.02.2023, the respondent Nos. 2 and 3 alienated the remaining portion of the property in respect of third parties. Hence, he contended that the compromise petition was filed with a malafide intention to misappropriate the funds of the Trust and it is against the interest of the Trust. Hence, he sought for allowing the petition.

5. Sri Udaya Holla, learned Senior Counsel appearing on behalf of Sri M.D.Raghunath for

respondent Nos. 2 and 3 raised the following contentions:

(i) Firstly, under the Trust Deed, there is a clear provision that the trustees have powers to acquire, build upon, pull down, re-build and to alter, repair, improve, sell or dispose off or otherwise deal with any land, building or premises or property for the use of the Trust and also they can enter into any contracts on behalf of the Trust. Therefore, the Trustees have the right to alienate the trust property for the interest of the Trust. For the benefit of the Trust, they have settled the matter and filed a compromise petition.

(ii) Secondly, there are more than six cases pending between the parties. In view of the pendency of the cases, they cannot utilize the trust property. For the object of the trust and for the better interest of the trust, they have entered into a compromise.

Hence, the petitioners cannot have any grievance against the compromise decree. Therefore, the petitioners are not aggrieved parties, they have also not taken permission from the Advocate General. Hence, the review petition is not maintainable.

(iii) Thirdly, there is no error apparent on the face of the record. It is not permissible for the erroneous decision to be re-heard and corrected. In the guise of review, petitioners cannot be permitted to re-agitate the matter on merits. In support of his contention, he has relied on the judgment of the Apex Court in the case of **SANJAY KUMAR AGARWAL AND OTHERS vs. STATE TAX OFFICER AND OTHERS (Review Petition (Civil) No.1620/2023 decided on 31.10.2023)**

(iv) Fourthly, it is not necessary for the court to say in express terms that it is satisfied that the

compromise was lawful one. Once the compromise petition has been accepted by the Court, it is the presumption that the Court was satisfied, unless the contrary is proved. In support of his contention, he relied on the judgment of the Apex Court in the case of **AMTESHWAR ANAND vs. VIRENDER MOHAN SINGH AND OTHERS** reported in **(2006) 1 SCC 148**. Hence, he sought for dismissal of the petition.

6. Sri S.S.Naganand, learned Senior Counsel appearing on behalf of Sri Devaraj K.S., for respondent No.1 has raised the following contentions:

(i) Firstly, the review petition filed by the petitioners is not maintainable, they are not the persons interested in the Trust. There is no pleading in the petition as to how the petitioners are related to the Trust and the Trust was created in the year 1942, no material has been produced to show that the

petitioners have made any contribution to the Trust. Therefore, they are not aggrieved persons.

(ii) Secondly, the compromise petition filed by the parties is for the interest of the Trust. As per the agreement of sale dated 13.06.1984, 16,000 sq. ft. of the suit schedule property has been agreed to sell to respondent No.1 for a total sale consideration of Rs.10,00,000/- (rupees ten lakhs only). Later, possession also has been handed over to the first respondent and they are in possession of the property. Since there are number of litigations between the parties, the Trustees, for the better interest of the Trust, have decided to settle the matter with the first respondent and have filed a compromise petition, as per the terms of which, the first respondent herein had agreed to purchase 6,000 sq. ft. and the remaining extent of 10,000 sq. ft. has been given back to the Trust. Therefore, the compromise is

in the interest of the Trust. The petitioners have no interest in the Trust and have filed this petition and the same is not maintainable.

(iii) Thirdly, the compromise petition has been signed by both the Managing Trustee and the Trustees. The allegation of the petitioners is that only one person has signed, which is contrary to the materials available on record.

(iv) Fourthly, as per the Trust Deed and also the Supplemental Trust Deed, the trustees have the right to alienate the trust property for the interest of the Trust. Hence, after prolonged deliberations, parties have settled the matter and filed the compromise petition. In support of his contention, he has relied on the judgment of the Apex Court in the case of **MAHANT HARNAM SINGH vs. GURDIAL SINGH AND ANOTHER** reported in **AIR 1967 SC 1415**

**(paragraph 6)**, judgment of Madras High Court in the case of **T.R.RAMACHANDRA AIYAR AND ANOTHER vs. PARAMESWARAN UNNI AND OTHERS** reported in **(1919) 9 LW 492** and the judgment of the Delhi High Court in the case of **VINAY RAI AND ANOTHER vs. RAM KRISHAN AND SONS CHARITABLE TRUST AND OTHERS** reported in **2009 SCC Online Del 3760 (paras 10, 11 & 25)**.

(v) Fifthly, even though there is no specific order for condonation of delay, when the Court has accepted a compromise petition and passed an order, the presumption is that the Court has passed an order on limitation. Even, for the sake of argument, assuming that the suit is barred by time, it is well settled law that the court having jurisdiction over the subject-matter of the suit and over the parties, merely it made an error in deciding the vital issue in the suit, it

cannot be said that the order is passed beyond its jurisdiction. In support of his contention, he has relied on the judgments of the Apex Court in the cases of **ITTIYAVIRA MATHAI vs. VARKEY VARKEY AND ANOTHER** reported in **AIR 1964 SC 907**, **NUSLI NEVILLE WADIA vs. IVORY PROPERTIES AND OTHERS** reported in **(2020) 6 SCC 557 (paras 80 and 88)** and **CHAIRMAN MADAPPA vs M.N.MAHANTHADEVARU AND OTHERS** reported in **AIR 1966 SC 878 (para 10)**.

(vi) Lastly, the second and third respondents have settled the matter with respondent No.1 for the interest of the Trust. The parties have not played any fraud. Since number of litigations have been pending in different courts, the Trust is unable to achieve the object of the Trust, for the better interest of the Trust, the parties have settled the matter. The parties have not played any fraud, much less, there is no pleading

in the petition regarding the fraud. Hence, he sought for dismissal of the petition.

7. Heard the learned Senior Counsels appearing for the parties. Perused the petition papers.

8. It is not in dispute that late V.Ramalingam Mudaliyar created a Trust under the Will dated 10.09.1942. In the said Will, late V.Ramalingam Mudaliyar, settler of the second respondent had detailed the charitable activities that are to be undertaken by the Trust. Later, the Trust was registered under the Trust Deed dated 13.06.2012 and got renamed the "People Charity Fund Trust" as "People Charity Fund". In addition to the original object, the power to sell or otherwise transfer the property of the Trust is included as an object of the Trust. The first petitioner is the daughter and the second and third petitioners are the great-grandsons

of late V.Ramalingam Mudaliar. They are persons interested in the Trust and they are the beneficiaries of the aforesaid first respondent Public Charitable Trust.

9. The Section 539 of CPC of 1877 is substantially the same as sub-section (1) of Section 92 of CPC of 1908. The effect of the amendment of Section 539 of the Code of 1877 where the words "a direct interest" was substituted by the words "an interest" by Act No.7/1888 is to widen the class of persons who are entitled to institute a suit under the said Section. No "direct interest" is necessary as the word "direct" has been omitted. It is enough if a person has "an interest" in the trust. "Interest" denotes a present and substantial interest. In Section 92 of the Code of Civil Procedure, 1908, the legislature has used the words "person having an interest in the trust" in order to exclude frivolous and mischievous applications by

busybodies, members of the public and persons who do not have a specific interest in the trust. The “present interest” means, an interest in the present or in future likely to be affected by the way in which property is being managed and mismanaged.

10. The first petitioner is the daughter of late V.Ramalingam Mudaliar, who is the settler of the second respondent. Through a Will dated 10.09.1942, the first petitioner is also a beneficiary in the Will. Petitioner Nos. 2 and 3 are the great-grandsons of late V.Ramalingam Mudaliar. They have filed a suit before the Principal City Civil Judge, Bengaluru, seeking the following reliefs:

*“(a) Removing the 2<sup>nd</sup> defendant as a trustee of the 1<sup>st</sup> defendant trust.*

*(b) Appoint new trustees to manage and administer the 1<sup>st</sup> defendant trust.*

*(c) Direct to hold an enquiry in respect of accounts and affairs of the 1<sup>st</sup> defendant trust.*

*(d) Direct the 2<sup>nd</sup> defendant to handover all the trust properties belonging to the 1<sup>st</sup> defendant trust to the newly appointed trustees, and*

*(e) Settling a scheme for proper administration of the 1<sup>st</sup> defendant trust.”*

They have also filed Misc.Petition under Section 92 of the CPC before the Principal City Civil Judge, Bengaluru. The petitioners are the heirs of the original creator of the Trust and also they are the beneficiaries of the second respondent Public Charitable Trust. They have an interest in the Trust. Therefore, the petition filed by the petitioners is maintainable. The Apex Court in the case of **NARESHKUMAR BADRIKUMAR JAGAD (supra)** held that any person considering himself aggrieved, would have the locus to file a review petition. The relevant paragraph is extracted below:

"19. Reverting to the question of whether Union of India has locus to file the review petition, we must immediately advert to Section 114 of the Code of Civil Procedure ("CPC") which, inter alia, postulates that "any person considering himself aggrieved" would have locus to file a review petition. Order XLVII of CPC restates the position that any person considering himself aggrieved can file a review petition. Be that as it may, the Supreme Court exercises review jurisdiction by virtue of Article 137 of the Constitution which predicates that the Supreme Court shall have the power to review any judgment pronounced or order made by it. Besides, the Supreme Court has framed Rules to govern review petitions. Notably, neither Order XLVII of CPC nor Order XLVII of the Supreme Court Rules limits the remedy of review only to the parties to the judgment under review. Therefore, we have no hesitation in enunciating that even a third party to the proceedings, if he considers himself an aggrieved person, may take recourse to the remedy of review petition. The quintessence is that the person should be

*aggrieved by the judgment and order passed by this Court in some respect.”*

11. Under Order 47 Rule 1 of CPC, any person who is aggrieved by the order can file a review petition. Under Order 23 Rule 3 of CPC, there is a bar to file a suit seeking for setting aside the compromise petition on the ground that it was not lawful. The only remedy available for the aggrieved party is to approach the very same court for recalling the compromise petition. Hence, the petition filed by the petitioners is maintainable.

12. The specific contention of the petitioners is that, without deciding the question of limitation, the Court will not get any jurisdiction to accept the compromise petition. When the suit itself is dismissed for want of cause of action and barred by law, it would oust the jurisdiction of the Court. In support of his contention, he relied on the judgments of the Apex

Court in the cases of **PANDURANG DHONDI CHOUGULE (supra)** and **NATIONAL THERMAL POWER CORPORATION LTD. (supra)**. The learned counsel for respondents have contended that once the Court has accepted the compromise petition and passed an order, the presumption is that the court has considered the aspect of limitation as well as the point of jurisdiction. It is not necessary for the court to say in express terms that it is satisfied that the compromise was lawful. They have also relied on the judgment of the Apex Court in the cases of **AMTESHWAR ANAND (supra)** and **ITTYAVIRA MATHAI (supra)**.

13. The case of the first respondent is that the original Board of Trustees entered into an agreement of sale dated 13.06.1984 agreeing to sell 16,000 sq.ft. immovable property of the Trust in favour of the first respondent. Since the representatives of the Trust

have failed to perform their part of the contract, the first respondent herein filed a suit in O.S.No.2495 /1987 seeking specific performance of the contract against the Trust. The said suit was decreed on 21.02.1997. The same has been challenged by the Trust by filing a regular first appeal before this Court in RFA No.306/1997. This Court, by judgment and decree dated 13.06.2008 allowed the appeal and dismissed the suit. Being aggrieved by the same, first respondent approached the Supreme Court in SLP No.250/2009. Subsequently, the Supreme Court granted leave, it was renumbered as Civil Appeal No.5122/2009. The Supreme Court vide its order dated 25.10.2016 rejected the civil appeal. Thereafter, the first respondent filed a suit before the City Civil Court, Bangalore in O.S.No.7566/2016. On appearance, the second respondent Trust filed an application under Order VII Rule 11(a) of CPC seeking

rejection of the plaint. The trial court, by order dated 14.07.2022 rejected the plaint for want of cause of action and barred by law. Being aggrieved by the same, first respondent herein filed a regular first appeal before this Court in RFA No.1294/2022. This Court, on 20.07.2022, admitted the appeal and called for trial court records. On 15.02.2023, the parties have filed a compromise petition under Order 23 Rule 3 r/w. Section 151 of CPC, before this Court. This Court, accepting the compromise petition, disposed of the appeal on 15.02.2023. While accepting the compromise petition on 15.02.2023, this Court has not decided whether the suit filed by the first respondent herein is barred by limitation or is within time.

14. The Apex Court in the case of **PANDURANG DHONDI CHOUGULE (supra)** has held as follows:

*"10. The provisions of S.115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under S.115, it is not competent to the High Court to correct errors of fact, however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of S.115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to question of jurisdictions. It is well-settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the Court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these*

*pleas can be said to be concerned with questions of jurisdiction which fall within the purview of S.115 of the Code. But an erroneous decision on a question of law reached by the subordinate Court which has no relation to questions of jurisdiction of that Court, cannot be corrected by the High Court under S.115."*

The Apex Court in the case of **NATIONAL THERMAL POWER CORPORATION LTD. (supra)** has this to say:

*"12. In the larger sense, any refusal to go into the merits of a claim may be in the realm of jurisdiction. Even the dismissal of the claim as barred by limitation may in a sense touch on the jurisdiction of the court or tribunal. When a claim is dismissed on the ground of it being barred by limitation, it will be, in a sense, a case of the court or tribunal refusing to exercise jurisdiction to go into the merits of the claim. In Pandurang Dhoni Chougule v. Maruti Hari Jadhav [(1966) 1 SCR 102) this Court observed that:*

*"It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code."*

*In a particular sense, therefore, any declining to go into the merits of a claim could be said to be a case of refusal to exercise jurisdiction.*

In the case of **MANICK CHANDRA NANDY**

**(supra)**, the Apex Court has held as under:

*"5. We are constrained to observe that the approach adopted by the High Court in dealing with the two revisional applications was one not warranted by law. The High Court treated these two applications as if they were first appeals and not applications invoking its jurisdiction under Section 115 of the Code of Civil Procedure. The nature, quality and extent of appellate jurisdiction being exercised in first appeal and of revisional jurisdiction are very*

*different. The limits of revisional jurisdiction are prescribed and its boundaries defined by Section 115 of the Code of Civil Procedure. Under that section revisional jurisdiction is to be exercised by the High Court in a case in which no appeal lies to it from the decision of a subordinate court if it appears to it that the subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law or has acted in the exercise of its jurisdiction illegally or with material irregularity. The exercise of revisional jurisdiction is thus confined to questions of jurisdiction. While in a first appeal the court is free to decide all questions of law and fact which arise in the case, in the exercise of its revisional jurisdiction the High Court is not entitled to reexamine or reassess the evidence on record and substitute its own findings on facts for those of the subordinate court. In the instant case, the respondents had raised a plea that the appellant's application under Rule 13 of Order IX was barred by limitation. Now, a plea of limitation concerns the jurisdiction of the court which tries a proceeding, for a finding on this plea in favour of the party raising it*

*would oust the jurisdiction of the court. In determining the correctness of the decision reached by the subordinate court on such a plea, the High Court may at times have to go into a jurisdictional question of law or fact, that is, it may have to decide collateral questions upon the ascertainment of which the decision as to jurisdiction depends. ....”*

The Apex Court in the case of **KAMLESH BABU**

**(supra)** has held as hereinbelow:

*“22. Apart from Section 3(1) of the Limitation Act, even Order 7 Rule 11(d) of the Code of Civil Procedure casts a mandate upon the court to reject a plaint where the suit appears from the statement in the plaint to be barred by any law, in this case by the law of limitation. Further, as far back as in 1943, the Privy Council in Lachhmi Sewak Sahu v. Ram Rup Sahu [AIR 1944 PC 24] held that a point of limitation is prima facie admissible even in the court of last resort, although it had not been taken in the lower courts.*

*23. The reasoning behind the said proposition is that certain questions relating to the jurisdiction of a court, including limitation, goes to the very root of the court's jurisdiction to entertain and decide a matter, as otherwise, the decision rendered without jurisdiction will be a nullity. However, we are not required to elaborate on the said proposition, inasmuch as in the instant case such a plea had been raised and decided by the trial court but was not reversed by the first appellate court or the High Court while reversing the decision of the trial court on the issues framed in the suit. We, therefore, have no hesitation in setting aside the judgment and decree of the High Court and to remand the suit to the first appellate court to decide the limited question as to whether the suit was barred by limitation as found by the trial court. Needless to say, if the suit is found to be so barred, the appeal is to be dismissed. If the suit is not found to be time-barred, the decision of the first appellate court on the other issues shall not be disturbed.”*

In this background, let me consider this case. In the case on hand, the trial court has rejected the plaint

under Order VII Rule 11 on the grounds of want of cause of action and barred by law. When the suit is dismissed as barred by limitation, it touches on the jurisdiction of the court, the appellate court, without deciding the question as to whether the suit is filed within time and it is maintainable, has no jurisdiction to pass a compromise decree. Therefore, the order under review requires to be recalled. In the judgment relied upon by the respondent No.1 in the case of **ITTYAVIRA MATHAI (supra)**, the Apex court held that if the aggrieved party does not take steps to challenge the erroneous decree, the erroneous decree holds good. In this case, compromise decree has been challenged. Hence, this judgment is not applicable to the facts of this case. In the case of **AMTESHWAR ANAND (supra)**, relied upon by the respondent Nos. 2 and 3, the Apex Court has held that it was not necessary for the Court to say

in express terms that it was satisfied that the compromise was a lawful one. There is a presumption that the Court was so satisfied unless the contrary is proved. In this case, the compromise decree was challenged on the ground that it was not for the interest of the Trust. Hence, this judgment is not applicable to the facts of this case.

15. It is the contention of the respondents that the parties have settled the suit in the interest of the Trust and there were number of litigations pending between the parties, in view of the pendency of the case, the trust cannot achieve the object of the trust and for the interest of the Trust, the parties have settled and filed the compromise petition. In this regard, the Apex Court in the case of **CYRUS RUSTOM PATEL vs. CHARITY COMMISSIONER** reported in **(2018) 14 SCC 761** has laid down the principle in respect of the property belonging to the

public charitable trust, which is sought to be sold. The relevant paragraphs are extracted hereinbelow:

*"17....This Court held [Chenchu Rami Reddy v. State of A.P., (1986) 3 SCC 391] that in view of the provisions contained in Section 74(1) of the Andhra Pradesh Charitable and Hindu Religious and Endowments Act, 1966, the Government must be satisfied that it was in the interest of the institution or endowment to permit the sale of the lands concerned otherwise than by a public auction, and then reasons to reach that satisfaction must be recorded in the order.*

*18. It was also observed by this Court in Chenchu Rami Reddy [Chenchu Rami Reddy v. State of A.P., (1986) 3 SCC 391] that public officials and public-minded citizens entrusted with the care of "public property" have to show exemplary vigilance; the property of religious and charitable institutions or endowments must be jealously*

*protected. The sale of such a property by private negotiations which will not be visible to the public eye, and may even give rise to public suspicion, should not be, therefore, made, unless there are reasons to justify the same...*

*19. Again, in R. Venugopala Naidu [R. Venugopala Naidu v. Venkatarayulu Naidu Charities, 1989 Supp (2) SCC 356], this Court observed that fraudulent sale of the property of public charities by way of private negotiations should not be permitted. This Court further held that reserved price should be fixed after ascertaining the market value and offer of higher price by filing an affidavit... This Court had considered the fact that the value of the property which the Trust got was not the market value, and quashed and set aside the sale order of the subordinate court and the consequent sale.....*

*20. In Bhaskar Laxman Jadhav [Bhaskar Laxman Jadhav v. Karamveer Kakasaheb*

*Wagh Education Society, (2013) 11 SCC 531], this Court considered the alienation of the immovable properties of public trust under Section 36 of the Bombay Public Trusts Act, 1950; sanction was sought from the Charity Commissioner to alienate the property of the public trust, there was continuation of negotiations between trustees of public trust and prospective purchasers. There were successive applications submitted, seeking permission to alienate after each negotiation. This Court held [Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh Education Society, (2013) 11 SCC 531] that it would tantamount to an abuse of the process of law and that such an act of the party meant that they were trying to take advantage of the absence of any clear-cut provisions under the Act relating to the sale. To prevent the abuse, this Court considered the factual scenario that trustees and the petitioners had been indulging in a flip-flop, and in a sense taking advantage of the absence of any clear-cut statutory*

*measures designed to prevent abuse of the process of law in the Act. It was held by this Court that the Charity Commissioner had rightly rejected the first application for two reasons, firstly since the trustees were not voluntarily selling the trust land and secondly, in the given circumstances, the sale transaction was not for the benefit, and in the interest of, the Trust. This Court also considered the background facts, as also the compromise effected between the trustees and the petitioners in the High Court on 28-8-2008, which appeared to this Court to be suspicious. On an overall consideration of the facts and circumstances of the case, it observed that it was not possible to rule out the possibility of collusion between the trustees and the petitioners.*

*21. This Court in Bhaskar Laxman Jadhav [Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh Education Society, (2013) 11 SCC 531] further observed that the lack of bona fide of trustees and*

*the petitioners could not have been overlooked by the High Court. Therefore, the safest course was to sell off the trust land through auction. It was also observed that it was quite clear that due to the passage of time, the value of the trust land had increased considerably, and that it would be in the best interest of the Trust if the maximum price is made available for the trust land from the open market. This Court also observed that Section 36 of the Act enjoins duties on the Charity Commissioner to consider the sale of immovable property of the Trust, with regard being had to the "interest, benefit or protection" of the Trust..."*

16. In the case on hand, the compromise petition has been filed on 15.02.2023. It is mentioned that they have agreed to execute the sale deed in favour of the first respondent in respect of 6,000 sq. ft. and the remaining extent will be retained by the Trust. Now, it is brought to the notice of this Court that, on the very

same day, the remaining extent of the property has been sold in favour of the third parties by the trustees. This was not brought to the notice of the court. Before passing the compromise decree, the trustees have already identified the buyers, but it was not forthcoming in the compromise petition. Any transfer of trust property should be only in the interest, benefit and protection of the trust. Since the sale of the trust properties by private negotiation not verified or disclosed the market value, it is not in the interest of the trust. Therefore, this Court is of the opinion that the order dated 15.02.2023 requires to be recalled.

17. Accordingly, I pass the following order:

- (i) The review petition is allowed.
- (ii) The judgment dated 15.02.2023 passed in RFA No.1294/2022 is recalled.

- (iii) RFA No.1294/2022 is restored to file.
- (iv) In view of disposal of the main petition, all the pending applications stand disposed of.

**Sd/-  
JUDGE**

Cm/-