REPORTABLE

2025 INSC 1080

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
[@ SLP (C) NO. 12787 OF 2025]

MALLEESWARI **... APPELLANT(S)**

VERSUS

K. SUGUNA AND ANOTHER **... RESPONDENT(S)**

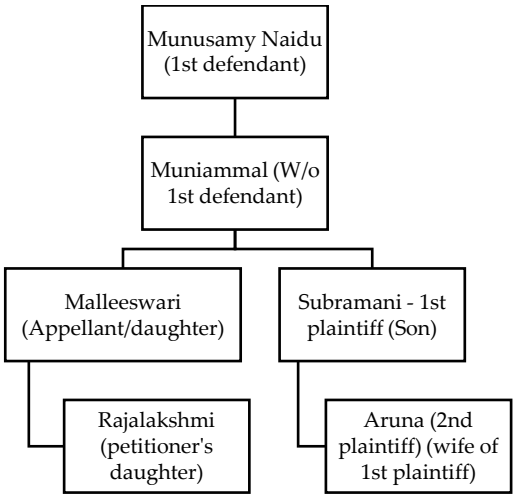
J U D G M E N T

S.V.N. BHATTI, J.

1. Leave granted.

2. Subramani, the husband of the second Respondent, filed OS No. 192 of 2000 in the Court of the District Munsiff at Ponneri for partition of the suit schedule properties into two equal shares and allot one such share to him. The suit in question was filed against Munasamy Naidu, the father of the plaintiff.

3. The original plaintiff and the defendant, since no more, are being represented by the respective heirs and successors in interest. To appreciate the relationship of the present array of parties, the genealogy is stated hereunder:



4. The plaint avers that the suit schedule properties are ancestral properties and are available for partition between the first plaintiff and the first defendant, being members of the Hindu Undivided Family. To attribute the character of joint Hindu family property, the plaint refers to the registered partition deed dated 22.11.1991 executed between the deceased first defendant and his brother. The suit was filed admittedly without impleading Malleeswari/Appellant in this civil appeal, who is the daughter of Munusamy Naidu and Muniammal. On 25.02.2003, the learned Trial Court passed the ex-parte preliminary decree as prayed for. The first defendant, post the preliminary decree, executed a registered sale deed dated 27.12.2004 in favour of K Suguna/first Respondent for item nos. 4 to 7 of the suit property, and also a settlement deed for item nos. 1 to 3, and 8 to 10 in favour of the Appellant.

5. On 24.01.2005, the second Respondent filed I.A no. 140 of 2006 to pass a final decree in terms of the preliminary decree dated 25.02.2003. The first defendant executed a will bequeathing his share to the Appellant. On 13.05.2011, the first defendant died, and the Appellant has been impleaded as the legal heir and successor to the first defendant.

6. The first Respondent, pursuant to final orders in IA nos. 130 and 135 of 2013, has been impleaded as one of the Respondents in the pending final decree proceedings. The subject matter of the appeal arises from the steps taken by the Appellant in I.A no. 1199 of 2018, praying for amending the preliminary decree in terms of her status as one of the co-parceners and entitling her to an equal share along with the father and the brother. The application for amendment of the preliminary decree was opposed by the first and second Respondents. The Appellant's case is that the Hindu Succession

(Amendment) Act, 2005 ('HSA 2005'), grants daughters equal coparcenary rights by birth. As a daughter of a living coparcener at the time the act came into force, she is entitled to a 1/3rd share. Thus, she claimed her father's 1/3rd share through the Will dated 23.04.2008, bringing the total to 2/3rd share. The Appellant further contended that the sale to the first Respondent on 27.12.2004 is invalid as it occurred after the amendment's cut-off date of 20.12.2004; thus, violating the court's injunction order.

7. In the objection to the reopening of the preliminary decree, it is contended by the Respondent that the application is barred by limitation, having been filed over 15 years after the preliminary decree and 7 years after the petitioner admittedly became aware of the suit. Further, the Appellant is estopped from challenging the sale to the first Respondent, as she was an attesting witness to the sale deed. Moreover, the preliminary decree had already ascertained and finalized the shares in 2003, before the 2005 amendment came into force. Consequently, the sale was valid and based on prior agreements, and the petitioner's remedy was to appeal the preliminary decree and not to seek its amendment. Lastly, the settlement deed and Will favouring the Appellant are invalid as they were executed during the pendency of the suit, *lis pendens*, in violation of the injunction.

8. On 08.03.2019, the Trial Court dismissed IA no. 1199 of 2018 – a petition to amend the preliminary decree dated 25.02.2003.

8.1 It noted that the Appellant was impleaded only as the legal representative of her deceased father, and that she merely stepped into his shoes and was only entitled to the share as determined by the decree dated 25.02.2003.

8.2 It also held that the HSA 2005 was inapplicable, since it could not be applied retroactively.

8.3 Further, the Settlement Deed dated 27.12.2004 was void since the deed was created after the suit had been filed and a decree had been passed. The father was also under a court injunction not to transfer the property.

8.4 She was also barred by the principle of estoppel since her own signature was there on the sale deeds as a witness. This proves that she was aware of and had consented to the transactions.

8.5 Lastly, the Trial Court notes that a preliminary decree is a final determination of rights, and can only be amended for clerical errors, and not to change the outcome fundamentally. It also notes that the proper legal remedy was to file an appeal against the original decree.

9. The Appellant filed CRP No. 1439 of 2019 in the High Court of Judicature at Madras against the order dated 08.03.2019. The CRP was allowed on 23.09.2022, and the order dated 08.03.2019 was set aside. The first Respondent filed review application no. 227 of 2023 to review the order dated 23.09.2022. Through the impugned order dated 19.10.2024, the review application was allowed. The High Court remanded the matter to the Trial Court for fresh consideration. Hence, the civil appeal at the instance of the Appellant.

10. Mr. V Prabhakar, learned Senior Advocate, appearing for the Appellant, contends that the High Court fell into a grave and serious error in not appreciating the review jurisdiction conferred on the Courts by Section 114 and Order 47 Rule 1 of the Civil Procedure Code, 1908 ('CPC'). The consideration and conclusion in the impugned order are not available to a

review court. The scope of judicial review of an interlocutory order under Article 227 of the Constitution of India is extremely narrow and limited. The review of an order under Article 227 is further conditioned by very few and limited grounds. The order impugned has recorded fresh findings on facts by overturning the earlier findings of fact recorded by the High Court. Though the matter is remitted to the Trial Court, the illegality of the order goes to the root of the matter and warrants the interference of this Court. The Appellant is entitled to a share both in terms of Section 29A of the Hindu Succession Act (Tamil Nadu Amendment Act), 1989 and also HSA 2005. The prayer in I.A 1199 of 2018 is to pass a preliminary decree answering the rights of all the eligible co-parceners.

11. Ms. Shobha Ramamoorthy contends that the order impugned does not transgress the review jurisdiction. The matter is remanded to the Trial Court. The consideration of a fact or reversing an earlier finding, if examined carefully by this Court, cannot be termed as in any manner exceeding the review jurisdiction. The Appellant has been a silent spectator and cannot reopen the preliminary decree to claim the settled share of late Munusamy Naidu or her 1/3rd share.

12. Dr. Sivabalamurugan argues that the order dated 23.09.2022 was patently illegal and erroneous. The Appellant cannot expand the preliminary decree and should have acted promptly during the pendency of OS No. 192 of 2000. He prays for the dismissal of the Civil Appeal.

13. Having heard the learned counsel and perusing the record, the civil appeal examines whether the order impugned conforms to the scope of review of an order under Section 114 and Order 47 of CPC. The exercise or excess of jurisdiction is determinative on the order under review and the review order.

It is convenient to compare the consideration before the jurisdictional limitations of review are considered by this Court.

CIVIL REVISION PETITION	**REVIEW ORDER (IMPUGNED ORDER)**
The issue was whether the Appellant-daughter's right to claim a share as a co-parcener following the HSA 2005.	The issue centred on whether the CRP order unfairly denied the Respondent, *pendente lite*-transferee, the right to defend her title against the Appellant's claim.
The court accepted her claim, stating that she was entitled to a 1/3rd share in ancestral properties based on *Vineeta Sharma v. Rakesh Sharma.*[1]	Acknowledged the claim but renamed it as a third-party claim. This was done in relation to the original suit structure, which warranted a fresh inquiry at the trial court level.
As a pendente lite transferee, Suguna could not have challenged the ancestral nature of the properties. She would have had to settle for whatever share her vendor (the Appellant's father) was allotted. Her rights were subordinate to the co-parceners' shares and flows from the vendor.	The finding of the CRP would prevent Suguna from defending her title. Review order affirms her right to raise possible defences in Trial. These defences may include challenging the ancestral nature of the property.
The plea that the properties were not ancestral is not a defence available to the Respondent-*pendente lite*. The Property is treated on the admission made by the original plaintiff.	The Review order notes that the ancestral nature of the property, while asserted by the plaintiff, was not contested by the defendant (deceased father). It held that an uncontested

[1] (2020) 9 SCC 1.

	assertion should not bind the Purchaser in the face of the Appellant's new claim. Thus, this question is to be re-examined.
The order explicitly stated that Appellant's 1/3rd share would diminish Respondent's interest in the properties she purchased to the 1/3rd share belonging to her vendor, the deceased father.	Held that the Appellant's claim directly challenges the minimum interest Respondent had acquired. Moreover, the review order allows the Respondent to adjust equities.
CRP was allowed. The Trial Court order dismissing the Appellant's application was set aside. The Appellant was permitted to pay the required court fee for her 1/3rd share.	The Review Application was allowed. The CRP order was set aside. The entire matter was remanded to the trial court for a fresh enquiry, allowing the Respondent to raise all contentions to defend her purchase.

14. In summing up precedents on the point, the judgment may not be understood as though we are putting an old spin on a classic. The court notes that there is no infirmity or illegality in entertaining the review petition; however, the approach to the error pointed out warrants a review of the precedents on the point.

15. It is axiomatic that the right of appeal cannot be assumed unless expressly conferred by the statute or the rules having the force of a statute. The review jurisdiction cannot be assumed unless it is conferred by law on the authority or the Court. Section 114 and Order 47, Rule 1 of CPC deal with the power of review of the courts. The power of review is different from

appellate power and is subject to the following limitations to maintain the finality of judicial decisions:

15.1 The 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 of CPC.[2]

15.2 Review is not to be confused with appellate powers, which may enable an appellate court to correct all manner of errors committed by the subordinate court.[3]

15.3 In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered, has a limited purpose and cannot be allowed to be an appeal in disguise.[4]

15.4 The power of review can be exercised for the correction of a mistake, but not to substitute a view. Such powers can be exercised within the limits specified in the statute governing the exercise of power.[5]

15.5 The review court does not sit in appeal over its own order. A rehearing of the matter is impermissible. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered.[6] Hence, it is invoked only to prevent a miscarriage of justice or to correct grave and palpable errors.[7]

16. To wit, through a review application, an apparent error of fact or law is intimated to the court, but no extra reasoning is undertaken to explain the said error. The intimation of error at the first blush enables the court to

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[2] *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170.
[3] *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, (1979) 4 SCC 389.
[4] *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715.
[5] *Lily Thomas v. Union of India*, (2000) 6 SCC 224.
[6] *Inderchand Jain v. Motilal*, (2009) 14 SCC 663.
[7] *Shivdev Singh v. State of Punjab*, AIR (1963) SC 1909.

correct apparent errors instead of the higher court correcting such errors. At both the above stages, detailed reasoning is not warranted.

17. Having noticed the distinction between the power of review and appellate power, we restate the power and scope of review jurisdiction. Review grounds are summed up as follows:

17.1 The ground of discovery of new and important matter or evidence is a ground available if it is demonstrated that, despite the exercise of due diligence, this evidence was not within their knowledge or could not be produced by the party at the time, the original decree or order was passed.

17.2 Mistake or error apparent on the face of the record may be invoked if there is something more than a mere error, and it must be the one which is manifest on the face of the record.[8] Such an error is a patent error and not a mere wrong decision.[9] An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.[10]

17.3 Lastly, the phrase 'for any other sufficient reason' means a reason that is sufficient on grounds at least analogous to those specified in the other two categories.[11]

18. Courts ought not mix up or overlap one jurisdiction with another jurisdiction. Having noted the appellate and review jurisdiction of the Court, we will apply these principles to the impugned order to determine whether the

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[8] *Hari Vishnu Kamath v. Syed Ahmad Ishaque*, (1955) 1 SCR 1104.
[9] *T.C. Basappa v. T. Nagappa*, AIR (1954) SC 440.
[10] *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale*, AIR (1960) SC 137.
[11] *Chhajju Ram v. Neki*, 1922 SCC OnLine PC 11 and approved in *Moran Mar Basselios Catholicos v. Mar Poulose Athanasius*, AIR (1954) SC 526.

High Court was within its power of review jurisdiction or had exceeded it by reversing the findings, as if the High Court were sitting in appeal against the order dated 23.09.2022. We appreciate the above tabulated summary of the view taken in the impugned order while doing so.

19. The impugned order has not adverted to an error apparent on the face of the record, but has taken up an error on reappreciation of the case and counter case of the parties. The review order records a few findings extending far beyond the actual working out of prayers in a suit for partition. The order impugned has exceeded the jurisdiction of review by a court.

20. For the above reasons, the order impugned is set aside, and consequently, the order dated 23.09.2022 in CRP is restored. Civil Appeal allowed. No order as to costs.

20.1 The Trial Court is directed to expeditiously dispose of all the pending applications, preferably within three months from the date of receipt of this judgment.

.....J.
[AHSANUDDIN AMANULLAH]

.....J.
[S.V.N. BHATTI]

New Delhi;
September 8, 2025.