



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

REVIEW PETITION NO.587 OF 2025

BETWEEN:

1. SHRI K. GANESH
SON OF LATE M. KRISHNAPPA,
AGED 42 YEARS.
2. SHRI C. MANJU
SON OF SHRI M. CHANNARAYA REDDY,
AGED 42 YEARS,
BOTH ARE RESIDENTS OF NO.329,
'VEERABHADRA NILAYA' 3RD CROSS,
KODIHALLI, AIRPORT ROAD,
BANGALORE-560008.

...PETITIONERS

(BY SRI ARUN B. M., ADVOCATE)

AND:

1. SHRI GOVIND REDDY
SON OF LATE SHRI MUNIYAPPA,
AGED 69 YEARS, REP. BY GPA AND SON
SHRI G. RAVI REDDY,
2. SHRI G. RAVI REDDY,
SON OF SHRI GOVIND REDDY,
AGED 39 YEARS,
BOTH ARE RESIDENTS OF NO.19/1,
THIRUPALYA VILLAGE,
NEXT TO GOVERNMENT SCHOOL,
TOWARDS HULIMANGALA ROAD,
BOMMASANDRA INDUSTRIAL AREA,
BENGALURU-560099.





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NC: 2026:KHC:12942
RP No. 587 of 2025

3. SMT. Y. SUGUNA
WIFE OF LATE M. KRISHNAPPA,
AGED 67 YEARS.
4. SHRI K. MUNIRAJ
SON OF LATE M. KRISHNAPPA,
AGED 50 YEARS.
5. SHRI PRITHVI KRISH
SON OF SHRI K. MUNIRAJ,
AGED 13 YEARS.
6. MASTER ROHAN REDDY
SON OF SHRI K. MUNIRAJ
AGED 10 YEARS.
7. KUMARI NEHA
DAUGHTER OF SHRI K. GANESH,
AGED 18 YEARS.
8. MASTER NITHEN
SON OF SHRI K. GANESH,
AGED 10 YEARS.
9. SMT. K. PADMA
DAUGHTER OF LATE M. KRISHNAPPA,
AGED 49 YEARS.
10. MASTER SHREYASH
SON OF MRS. K. PADMA,
AGED 16 YEARS.
11. SMT. K. BHAGYA
DAUGHTER OF LATE M. KRISHNAPPA,
AGED 47 YEARS.
12. MR. MANISH
SON OF SMT. K. BHAGYA,
AGED 23 YEARS.
13. MR. LOHITH,
SON OF SMT. BHAGYA,
AGED 19 YEARS.
14. KAMARI KAVITHA



- DAUGHTER OF LATE M. KRISHNAPPA,
AGED 39 YEARS.
15. SHRI M. CHANNARAYA REDDY,
SON OF LATE MUNIYAPPA,
AGED 73 YEARS.
 16. SMT. Y. VANALAKSHMI,
WIFE OF SHRI M. CHANNARAYA REDDY,
AGED 64 YEARS.
 17. SHRI C. VIJAYA KUMAR,
SON OF M. CHANNARAYA REDDY,
AGED 45 YEARS.
 18. KUMARI MAHALAKSHMI
DAUGHTER OF SHRI C. VIJAYAKUMAR,
AGED 20 YEARS.
 19. MASTER CHIRAG,
SON OF SHRI C. VIJAYAKUMAR,
AGED 16 YEARS.
 20. SMT. HEMAVATHI
DAUGHTER OF M. CHANNARAYA REDDY,
AGED 49 YEARS.
 21. KUMARI NAVYA
DAUGHTER OF SMT. HEMAVATHI,
AGED 23 YEARS.
 22. MASTER ANKITH
SON OF SMT. HEMAVATHI,
AGED 19 YEARS.
 23. SMT. USHA
DAUGHTER OF SHRI M. CHANNARAYA REDDY,
AGED 40 YEARS.
 24. MASTER GURUSWAROOP
SON OF SMT. USHA, AGED 10 YEARS.
- RESPONDENT NOS.5, 6, 8, 10, 19 & 24
ARE MINORS AND REP. BY THEIR
PARENTS/NATURAL GUARDIANS
4TH RESP. 1ST PETR., 9TH RESP.,



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17TH RESP. AND 24TH RESP.
RESPS. NO.3 TO 24 ARE RESIDENTS
OF NO.329 'VEERABHADRA NILAYA'
3RD CROSS, KODIHALLI, AIRPORT ROAD,
BANGALORE-560008.

25. SMT. CHANNAMMA
DAUGHTER OF SHRI MUNIYAPPA,
AGED 75 YEARS, RESIDENT OF NO. 329
'VEERABHADRA NILAYA' 3RD CROSS, KODIHALLI,
AIRPORT ROAD, BANGALORE-560008.

26. MR. KISHORE KUMAR,
SON OF SHRI SHANTHILAL,
AGED 51 YEARS, RESIDENT AT FLAT NO.102,
1ST FLOOR, NO.432, 30TH CROSS, 7TH 'B' MAIN,
4TH BLOCK, JAYANAGAR, BENGALURU-560011.

27 M/S. METRIK INFRA PROJECTS PVT. LTD.,
A PRIVATE LIMITED COMPANY,
HAVING ITS OFFICE AT FLOOR-11,
'JAIN HEIGHTS SOLUS', NO.2, 1ST CROSS,
J. C. ROAD, BENGALURU-560027,
REPRESENTED BY ITS MANAGING DIRECTOR.

...RESPONDENTS

(BY SRI SUNIL KUMAR H., ADV. FOR R1 AND R2;
SRI PARUSHURAM AJJAMPUR, ADV. FOR R25
NOTICE TO R3 TO R24, R26 AND R27 ARE DISPENSED WITH)

THIS REVIEW PETITION IS FILED UNDER ORDER 47 RULE
1 OF THE CODE OF CIVIL PROCEDURE, 1908, PRAYING TO
REVIEW THE ORDER DATED 05.11.2025 PASSED BY THIS
HON'BLE COURT IN MFA NO.7416/2025, VIDE ANNEXURE-'A'
AND CONSEQUENTIALLY, ALLOW THE APPEAL FILED IN MFA
NO.7416/2025 AND SET ASIDE THE ORDER DATED 17.09.2025
IN O.S.NO.4625/2025 PASSED BY THE XXIV ADDITIONAL CITY
CIVIL JUDGE, BENGALUR CITY (CCH NO.6) IN SO FAR AS
ALLOWING I.A.NO.1 IS CONCERNED AND ETC.

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

CORAM: HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR



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CAV ORDER

This review petition is filed by the review petitioners, who are defendants No.5 and 19 in O.S.No.4625/2025 challenging the order dated 17.09.2025 passed by the Court of XXIV Additional City Civil and Sessions Judge, Bangalore City (C.C.H.No.6). The review petitioners were the appellants in MFA No.7416/2025, which was disposed of by this Court on 05.11.2025. The review petitioners have preferred this petition seeking review of the order dated 05.11.2025 passed by this Court in MFA No.7416/2025.

2. The appeal filed by the review petitioners in MFA No.7416/2025 was allowed in part by modifying the order dated 17.09.2025 passed in O.S.No.4625/2025 on I.A.Nos.1 and 2 filed under Order XXXIX Rules 1 and 2 of CPC. This Court directed that the appellants in MFA No.7416/2025, who are defendants No.5 and 19 in O.S.No.4625/2025 shall reserve 1/4th share in all the suit schedule properties in the name of plaintiffs and defendant



No.25. The appellants/defendants were permitted to utilize other remaining respective shares and were further directed to furnish the details of apartments constructed over suit Item Nos.8 and 9 and to submit such particulars before the Trial Court, as ordered in MFA No.7416/2025.

3. Being aggrieved by the direction to reserve 1/4th share in the name of plaintiffs and defendant No.25, the present review petition is filed. According to the review petitioners, there ought not to have been any direction to reserve 1/4th share in favour of plaintiffs and defendant No.25.

4. This review petition is filed by raising various grounds, which are summarized as follows:

- 4.1 This Court has not taken note of the conduct of plaintiff No.1/respondent No.1 and defendant No.25/respondent No.25;
- 4.2 That the defendant No.25 had filed suit earlier in O.S.No.2085/2021 and was unsuccessful in



obtaining interim order of injunction and in the meantime, the respondents No.1 and 2 herein have filed suit in O.S.No.4625/2025 and in this suit, the plaintiff in O.S.No.2085/2021 is arrayed as defendant No.25 and later on, defendant No.25 has withdrawn the said suit OS.No.2085/2021;

4.3 It is contended that the above fact was suppressed in the subsequent suit in O.S.No.4625/2025. According to the review petitioners, such suppression amounts to misconduct on the part of plaintiffs and defendant No.25. It is further contended that filing of O.S.No.2085/2021 and O.S.No.4625/2025 seeking partition of the suit properties amounts to abuse of process of Court. Further, the review petitioners also contend that this Court while passing the order in MFA No.7416/2025 failed to extract and properly consider the relevant paragraphs of the judgment of the Hon'ble



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Supreme Court in ***MANDALI RANGANNA AND OTHERS vs. T RAMACHANDRA AND OTHERS***¹,

regarding conduct of parties while considering grant of equitable relief of temporary injunction;

4.4 It is further contended that this Court erred in reserving 1/4th share in favour of plaintiffs and defendant No.25 despite there being an inordinate delay of 12 years in challenging the joint development agreement dated 08.08.2013. According to the review petitioners, permitting such reservation despite the delay constitutes an error apparent on the face of the record;

4.5 Further, the review petitioners contend that there is an error apparent on the face of record, inasmuch as, this Court has observed that whatever alienations made would be subject to Section 52 of the Transfer of Property Act, 1882² this alone is sufficient, but proceeded to grant

¹ (2008) 11 SCC 1

² Hereinafter referred to as the 'T.P. Act'



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temporary injunction albeit with modification. According to them, such direction is contrary to the judgment of the Hon'ble Supreme Court in the case of **VINOD SETH Vs. DEVINDER BAJAJ AND ANOTHER³**;

4.6 It is further contended that this Court has wrongly interpreted the said judgment and also the judgment in **MANDALI RANGANNA'S** case (supra) and the said judgment is contrary to the order dated 03.09.2025 passed by this Court in MFA No.2475/2024. It is therefore contended that this Court ought to have confined its observation only to the applicability of Section 52 of the T.P. Act without directing reservation of shares in favour of plaintiffs and defendant No.25.

5. This Court hereby makes clear that whatever observations and discussions made in this order are only passed on the documents produced by both sides and not

³ (2010) 8 SCC 1



more than that. This Court is required to examine whether the order passed in MFA No.7416/2025 suffers from any error apparent on face of the record so as to warrant review of the said order.

6. The Hon'ble Supreme Court in **BOARD OF CONTROL FOR CRICKET IN INDIA AND ANOTHER vs. NETAJI CRICKET CLUB AND OTHERS⁴**, has laid down the principles of law governing the scope of review under Section 114 and Order XLVII Rule 1 of CPC. The relevant paragraphs of the said judgment are extracted hereinbelow:

"88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

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

⁴ (2005) 4 SCC 741



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90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

91. It is true that in *Moran Mar Basselios Catholicos Vs. The Most Rev. Mar Poulouse Athanasius*⁸, this Court made observations as regard limitations in the application of review of its order stating: (SCR p.529)

"Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order XLVII, Rule 1 of our Code of Civil Procedure, 1908, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (i) 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 him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words 'any other sufficient reason' must mean 'a reason sufficient on grounds, at least analogous to those specified in the rule'."

but the said rule is not universal.

92. Yet again in *Lily Thomas (supra)*, this Court has laid down the law in the following terms: (SCC pp. 247-48, para 52)

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It



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cannot be denied that the review is the creation of a statute."

This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error."

(Emphasis supplied)

93. It is also not correct to contend that the court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned senior counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29th September, 2004, the subsequent event may be taken into consideration by the court for the purpose of rectifying its own mistake."

7. Further, the Hon'ble Supreme Court in **SANJAY KUMAR AGARWAL vs. STATE TAX OFFICER AND ANOTHER⁵**, has discussed regarding scope of review and laid down the principles of law, which are extracted below:

"10. It is also well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when

⁵ R.P. (Civil) No.1620 of 2023 in Civil Appeal No.1661/2020 and connected with other matters



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circumstances of a substantial and compelling character make it necessary to do so⁶.

11. In **Parsion Devi and Others vs. Sumitri Devi and Others**⁷, this Court made very pivotal observations: -

"9. Under Order 47 Rule 1 CPC a judgment may be open to review *inter alia* if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 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."

12. Again, in **Shanti Conductors Private Limited vs. Assam State Electricity Board and Others**⁸, a three Judge Bench of this Court following **Parsion Devi and Others vs. Sumitri Devi and Others** (supra) dismissed the review petitions holding that the scope of review is limited and under the guise of review, the petitioner cannot be permitted to reargue the questions which have already been addressed and decided.

13. Recently, in **Shri Ram Sahu (Dead) Through Legal Representatives and Others vs. Vinod Kumar Rawat and Others**⁹, this Court restated the law with regard to the scope of review under Section 114 read with Order XLVII of CPC.

14. In **R.P. (C) Nos. 1273-1274 of 2021 in Civil Appeal Nos. 8345-8346 of 2018 (Arun Dev Upadhyaya vs. Integrated Sales Service Limited & Another)**, this Court reiterated the law and held that: -

"15. From the above, it is evident that a power to review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order XLVII Rule 1 CPC. An error on the face of record must be such an error which, mere looking at

⁶ AIR 1965 SC 845, Sajjan Singh and Ors. Vs. State of Rajasthan and Ors.

⁷ (1997) 8 SCC 715

⁸ (2020) 2 SCC 677

⁹ (2021) 13 SCC 1



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the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions."

15. It is very pertinent to note that recently the Constitution Bench in **Beghar Foundation vs. Justice K.S. Puttaswamy (Retired) and Others**¹⁰, held that even the change in law or subsequent decision/judgment of co-ordinate Bench or larger Bench by itself cannot be regarded as a ground for review.

16. The gist of the afore-stated decisions is that: -

- i) A judgment is open to review *inter alia* if there is a mistake or an error apparent on the face of the record.
- ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.
- iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.
- iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected."
- v) A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."
- vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.
- vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.
- viii) Even the change in law or subsequent decision/judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.

¹⁰ (2021) 3 SCC 1



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Analysis:

17. Keeping in view the afore-stated legal position, let us examine whether the Review Petitioners have been able to make out any case within the ambit of Order XLVII of Supreme Court Rules, read with Order XLVII of CPC, for reviewing the impugned judgment.”

8. Therefore, keeping in view the principles of law laid down by the Hon'ble Supreme Court the present review petition is considered on the materials produced once again in the review petition. The materials produced by the review petitioners through the learned counsel, Sri.B.M.Arun were already submitted during the course of his arguments in MFA No.7416/2025. According to the learned counsel, Sri.B.M.Arun a comment is made on the conduct of the plaintiffs and defendant No.25 in O.S.No.4625/2025. According to learned counsel, Sri.B.M.Arun the defendant No.25 has filed a suit in O.S.No.2085/2021 for partition claiming 1/4th share and was unsuccessful in getting an order of temporary injunction and later on the plaintiffs in O.S.No.4625/2025 (who were parties in O.S.No.2085/2021) have filed the suit O.S.No.4625/2025 and obtained an interim order of



temporary injunction on 02.07.2025 and later on, the defendant No.25 who was plaintiff in O.S.No.2085/2021 has withdrawn the said suit. Therefore, according to learned counsel Sri.B.M.Arun this is misconduct.

9. Further learned counsel Sri.B.M.Arun has contended that rejection of application for temporary injunction in O.S.No.2085/2021 is not disclosed in O.S.No.4625/2025. Therefore, this suppression of fact is misconduct on the part of plaintiffs and defendant No.25 in O.S.No.4625/2025.

10. It is pertinent to mention here that both O.S.Nos.2085/2021 and 4625/2021 are for partition. It is stated that original propositus is Muniyappa, who has four children namely, Govinda Reddy, Channamma, Krishnappa and Channarayana Reddy. The relationship between them is admitted. Smt.Channamma has filed O.S.No.2085/2021 for partition and later on, it was withdrawn on 24.09.2025 with liberty to agitate her right in O.S.No.4625/2025 by



mentioning reasons that she is old aged woman and therefore, could not pursue by engaging lawyer and as such, she will agitate her right through O.S.No.4625/2025. Accordingly, the trial court has dismissed the suit O.S.No.2085/2021 as withdrawn by reserving liberty to Channamma to agitate her legitimate right in O.S.No.4625/2025. When admittedly there are four joint family members/co-sharers, among them two sons have entered into exercise of executing the joint development agreement, general agreement, etc. Here as per the materials produced by the learned counsel Sri.B.M.Arun the same have to be considered, which is apparent on the face of record.

11. There is rival contentions among the members of the joint family whether the suit item Nos.8 and 9 are joint family properties or not. It is one of the contentious issue in the suit and this is yet to be decided in full fledged trial in the suit. There was joint development agreement dated 25.10.2007 in which Govinda Reddy and his wife



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and children are recognized as owners of the suit item Nos.8 and 9 properties, but Channamma (daughter of Muniyappa) is not recognized as joint owner. As why the review petitioners have left out Channamma from the array of joint owners, is best reasons known to the review petitioners. This joint development agreement dated 25.10.2007 with one Kishore Kumar, who is developer. In this agreement, except Channamma all others have been considered as owners. It is not disputed that Channamma (daughter of Muniyappa) is not a sister of Krishnappa and Channarayana Reddy. However, the sister Channamma is given a go-by in this joint development agreement. Thus, prima facie it is nothing but causing deprivation of right of Channamma.

12. Again on 12.04.2011 a supplementary agreement was executed in which also review petitioners have been left out Channamma being made as party as joint owner. Further there is one more joint development agreement with the same developer by the same parties



on 08.08.2013, in which also the review petitioners, other joint family members and plaintiffs, wife and children have been made as parties but Channamma is left out for the best reasons known to the review petitioners. Thus, causing deprivation of right of Channamma.

13. Considering all these three documents, Channamma is left out and admittedly she is a sister review petitioners being daughter of Muniyappa has not at all been considered in all these documentary transactions while executing joint development agreement with developer. Therefore, Channamma has filed suit O.S.No.2085/2021 for partition seeking her 1/4th share in all the properties including item Nos.8 and 9 in the suit schedule properties. But Channamma was unsuccessful in obtaining the order of temporary injunction. The plaintiff in O.S.No.4625/2025 Govinda Reddy, admittedly he is dumb and deaf. Therefore, when these two co-sharers one being physically disabled person and another being old aged woman, being vulnerable at the hands of the review



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petitioners, have filed the suit for partition claiming their legitimate rights of share. Under these circumstances, the suit filed by Channamma in O.S.No.2085/2021 and O.S.No.4625/2025 filed by Govinda Reddy are considered and Channamma has withdrawn the suit O.S.No.2085/2021 by assigning reason that she being old aged woman, she could not pursue the suit independently. Therefore, when her own brother had initiated suit O.S.No.4625/2025 and as such permission sought for to agitate her right in O.S.No.4625/2025 and withdrew the suit O.S.No.2085/2021. But according to learned counsel Sri.B.M.Arun it is misconduct on part of Govinda Reddy and Channamma, but the misconduct by the review petitioners is also to be highlighted here.

14. In the joint development agreements of the year 2007, 2011 and 2013 though plaintiff - Govinda Reddy was shown as owner in joint development agreement of the year 2007 and 2011, but suddenly in the joint development agreement dated 08.08.2013 this



Govinda Reddy has made as confirming party. Furthermore, this joint development agreement executed at the hands of the review petitioners and developer, it is made as Govinda Reddy and his branch have no right, title and interest whatsoever any person over the suit schedule property, which are item Nos.8 and 9 in the suit schedule properties. Therefore, here the review petitioners and developer both have decided the ownership and title of the parties according to their convenient documents. If this is not misconduct, then no other things would be misconduct. Therefore, when this Court while passing order in MFA No.7416/2025 ordered whatever alienations or transactions are subject to Section 52 of T.P. Act, but also protected the rights of plaintiffs of O.S.No.4625/2025 and Channamma just by ordering to reserve their 1/4th share.

15. Sri.B.M.Arun, learned counsel appearing on behalf of review petitioners being aggrieved and also annoyed by this order of reserving 1/4th share, has argued



in high pitch voice that this order of reserving 1/4th share could not have been done according to him. Sri.B.M.Arun while addressing his submissions thinking that this Court has committed a blunder submitted that this order could not have been made and virtually he has dictated the Court to write the order according to his convenience and his whims and fancies. It is not disputed that on item Nos.8 and 9 properties review petitioners with joint development agreement with developer have constructed hundred numbers of flats in apartment.

16. When the two co-sharers have filed the suit for partition and considering the facts and circumstances involved in the case, the review petitioners along with the developer have constructed hundred number of flats and if those flats are sold away entire property consisting of flats then even if decree is passed for partition then there are every possibilities of plaintiffs and defendant No.25 would not get any fruitful share in reality and practically. Then whatever decree would be paper decree. Therefore, when



this Court has ordered with a view to protect the interest of plaintiffs and defendant No.25, that too subject to result in the suit with avowed object that even if a decree is passed the parties must be able to get fruitful of decree otherwise the decree would become a paper decree. Therefore, if all the flats and apartments are sold out even if decree is passed by granting share but for realising the fruits is only nightmares for the decree holders. Therefore, protecting the rights of co-sharers as it is inherent to claim share in joint family properties and such order is made, which is attacked in this review petition. Here when the review petitioners have pointed out conduct on the part of plaintiffs and defendant No.25 in O.S.No.4625/2025 filing suit for partition is abuse of process of Court with a single finger, but other four fingers are pointing towards the review petitioners is lost sight by learned counsel, Sri.B.M.Arun.

17. Upon considering the three documents of agreement of the years 2007, 2011 and 2013, the plaintiff



Govinda Reddy being recognized as the owner in agreement of the years 2007 and 2011, but in the agreement of 2013 suddenly he has been shown as a confirmed parties showing a recital in the agreement that he has no right and title. Therefore, a question comes up in the mind of the Court whether such title or ownership can be changed in any agreement between some parties at their whims and fancies in the family as in the present case by review petitioners is to be considered in the suit in the trial. This is observed because of the fact that admittedly Govinda Reddy is deaf and dumb moreover Channamma is not at all included in the share. This is the conduct and attitude shown by the review petitioners and this is found prima facie apparent on face of the record as submitted by learned counsel Sri.B.M.Arun himself.

18. Just because non granting order of temporary injunction in O.S.No.2085/2021 is not disclosed in O.S.No.4625/2025 is not amounting to suppression of fact prima facie. O.S.No.4625/2025 is filed by Govinda Reddy



and not by Channamma. Though the contents in both the complaints are same, but are having different cause of actions and filed by different members of Joint Family. In the suit for partition the cause of action is continues and concurrent one till the division takes place. Therefore, the review petitioners have found fault that Channamma and Govinda Reddy filing suit for partition is wrong. Therefore, what the review petitioners desire is that other two co-sharers namely, Govinda Reddy and Channamma are being under the mercy of the review petitioners and to see that Govinda Reddy and Channamma would not get any share in reality. This is the conduct shown by the review petitioners. Therefore, in this regard, there is no merit in the grounds urged by the learned counsel Sri.B.M.Arun, Advocate of the review petitioners.

19. Further, one of the document on the face of record produced by the learned counsel for the review petitioners Sri.B.M.Arun a deed of partition executed on 11.07.2018 between Mrs.Y.Suguna, who is wife of late



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M.Krishnappa and M.Channaraya Reddy S/o. Late Muniyappa and other children of M.Krishnappa and Channaraya Reddy entered themselves as first party, second party and third party. This deed of partition is only between wife and children of M.Krishnappa and Channaraya Reddy and his children regarding division of share of residential flats among themselves without taking into consideration Govinda Reddy and Channamma in respect of apartment and flats constructed on item Nos.8 and 9 properties. This is one of the conducts shown by the review petitioners on face of the record itself. Therefore, systematically excluded Govinda Reddy and Channamma in respect of properties item Nos.8 and 9. The suit is filed for partition also in respect of item Nos.8 and 9 properties. Whether this is joint family property or not, is a question to be determined in the trial in the suit. Therefore, if all the flats mentioned in the deed of partition dated 11.07.2018 are sold out and in the event the suit is decreed in respect of item Nos.8 and 9 properties, Govinda



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Reddy and Channamma are compelled once again start litigation against several hundred purchasers to realize the fruit in terms of the decree to be passed in respect of partition against by way of final decree proceedings and execution. Therefore, in order to protect the right of share to get in the share this Court has ordered to reserve 1/4th share. But according to review petitioners filing of suit itself is abuse of process of Court which can be certainly termed as ridicule. Therefore, it is very redicule submission that when Govinda Reddy and Channamma have filed suit for partition for claiming their legitimate share in the properties, is abuse of process of Court. Considering the conduct of the review petitioners that they are making every attempt to deprive the legitimate share of the Govinda Reddy and Channamma on the one hand and submission made by the review petitioners that filing of such suit for partition is abuse of process of Court, the review petitioners are going to make new definitions of what is legitimate exercise of right and abuse of process of



Court. This attempt of the review petitioners on the face of the record produced by the learned counsel Sri.B.M.Arun are considered while observing in the order that the protection under Section 52 of the T.P. Act is weak protection, therefore, ordered to reserve shares till disposal of the suit. Justice must be given really and substantially, but should not be a mere paper decree. Whatever order of reservation in MFA is subject to result in the suit. Therefore, this conduct of the review petitioners on the face of record is also considered. Hence, there is no merit in the grounds urged by the review petitioners through learned counsel Sri.B.M.Arun.

20. The Hon'ble Supreme Court in the case of **MANDALI RANGANNA AND OTHERS vs. T.RAMACHANDRA AND OTHERS¹¹** case it is observed that while granting relief of injunction the conduct of parties also be considered. Learned counsel Sri.B.M.Arun has argued much and taken on this Court that this Court

¹¹ (2008) 11 SCC 1



has not extracted the paragraph 21 in **MANDALI RANGANNA's** case. Non extracting of this paragraph 21 of the judgment according to Sri.B.M.Arun is a misconduct on the part of the Court. This argument is very ridicule and misconceived and untenable when considering the gross misconduct on the part of review petitioners as above discussed. The Hon'ble Supreme Court in the said case at paragraph 21 has held as follows:

"21. While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto viz. existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties."

21. Therefore, the conduct of the review petitioners has to be considered while granting equitable relief of injunction in the order. This Court in MFA No.7416/2025 has ordered by modifying the order of trial court that the review petitioners shall make claims of other share of properties, which they would get in the suit for partition, but reserved shares of plaintiff and defendant No.25 in order to protect their rights. Therefore, when this Court



protects the rights of co-sharers being members of joint family this is being annoyed and aggrieved by learned counsel Sri.B.M.Arun. Therefore, the review petitioners desire the Court shall pass order according to whims and fancies and their convenience, which argument of Sri.B.M.Arun is having found no merit against ethics of advocacy profession. Considering the argument virtually the review petitioners through learned counsel Sri.B.M.Arun is amounting to dictating and browbeating the Court in order to see that the order be passed in their favour. According to learned counsel Sri.B.M.Arun filing of suit for partition by two co-sharers who are Govinda Reddy and Channamma are abuse of process of Court. This attitude of the review petitioners is found with malafide intention having oblique motive just to see that Govinda Reddy and Channamma do not get any fruitful share in reality even if the suit is decreed and making them frustrated and relegating to further litigations in future with purchasers of flats to get share.



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22. According to the learned counsel for the review petitioner Sri.B.M.Arun filing of suits by Channamma and Govinda Reddy as stated above claiming their legitimate right of share is abuse of process of Court. Channamma was not at all party in any of the agreements from 2007 to 2013 as explained above. Therefore, she filed the suit for partition. When Channamma with apprehension that all the suit properties are being sold only by review petitioners who are representing two branches in the family and she may not get any share or fruit in the joint family properties, therefore, she filed a suit but was unsuccessful in obtaining interim order of temporary injunction. Considering the factors that the suit filed for partition, there might have been other documents executed but the main relief is to seeking partition in the joint family/ancestral properties is inherent right of members of joint family/coparceners and that cannot be taken away by any of the documents. Therefore, when considering the main relief is partition, unless there is a



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division/severance in the joint family properties, the cause of action continuous. The review petitioners with a desire to deprive the legitimate share of Govinda Reddy and Channamma have executed the agreements above stated. Channamma is not at all taken into confidence in the agreements, whereas Govinda Reddy is made a party in the agreement of the year 2007 and 2011 as owners and sharers, but suddenly in the agreement of the year 2013 Govinda Reddy and his branch were made as only confirming parties and also by mentioning the recitals that he has no right and title. Therefore, this is an attempt made by the review petitioners apparent on the face of the record. Somehow to exclude the shares to Govinda Reddy and Channamma so far as item Nos.8 and 9 properties are concerned, when this being the facts revealed on the materials placed by the review petitioners itself, observing that whatever transactions made are subject to Section 52 of the T.P. Act, is a weak protection for the reason that suppose if 1/4th share each to plaintiff and defendant



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No.25 is not reserved and the review petitioners and developers would sell all the properties during the pendency of the suit, then, in real terms Section 52 of T.P.Act would not come to give real fruit of decree to plaintiffs and defendant No.25. In such an event, whatever decree would be passed in future would become a mere paper decree. At the most the decree would be paper tiger or cinema tiger. If this protection of reservation is not given and mere if Section 52 of the T.P.Act is made a shield, then this shield is a weak shield unable to protect the interest of the plaintiffs and defendant No.25. In case all the flats are sold out, then, the co-sharers/members of joint family once again will relegate to cumbersome legal proceedings against every purchasers of the review petitioners and developers who are hundred in numbers and in such an event, the rights of plaintiffs and defendant No.25 would be frustrated and rendering virtually impossible to get share practically. Therefore, this Court has modified the order of trial court



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allowing MFA No.7416/2025 in part permitting the review petitioners to utilise the remaining portion, but reserved 1/4th share each to the plaintiffs and defendant No.25. Therefore, this order is completely in protecting the rights and interest of the plaintiffs and defendant No.25. Therefore, the contention taken by the learned counsel Sri.B.M.Arun that filing of suits for partition is abuse of process of Court is nothing but a ridicule and ferocious submission virtually making the plaintiffs and defendant No.25 cannot claim their legitimate share/right. Therefore, virtually the review petitioners are in abuse of process of the entire legal proceedings including the transactions made through agreements above stated. Hence, there is no merit found in the submission of the learned counsel for the review petitioners.

23. There is no bar under law if one member of the joint family files a suit for partition and another member of the joint family cannot maintain the suit for portion.



24. Learned counsel for respondent Nos.1 and 2, who are plaintiff in O.S.No.4625/2025 submitted that the suit filed by Channamma in O.S.No.2085/2021 the cause of action is different and there is no specification of identifying the property with its boundaries, therefore trial court has not granted an order of temporary injunction. Later on, Govinda Reddy has filed the suit O.S.No.4625/2025 for partition as in Channamma's suit there is no order of temporary injunction. Therefore, to protect his right and interest he filed the suit in O.S.No.4625/2025, but the learned counsel Sri.B.M.Arun pointed out that this is abuse of process of Court. Therefore, the review petitioners wanted no share would be given to plaintiff and defendant No.25. Therefore, this desire of review petitioners is nothing but abuse of process of entire legal proceedings and by this trying to engulf entire properties.

25. Learned counsel Sri.B.M.Arun places reliance on the judgment of Hon'ble Supreme Court in the case of



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Y.B.PATIL AND OTHERS v. Y.L.PATIL¹² at paragraph 4,

which reads as follows:

"4. In appeal before us Mr. Gupte on behalf of the appellants has contended that the High Court was in error in not interfering with the order of the Tribunal whereby the revision petition filed by the appellants had been dismissed. It is urged that the Tribunal in affirming the findings of the Assistant Commissioner and the Deputy Commissioner regarding the question of the appellants being strangers qua the land in dispute took a very restricted view of section 79 of the Act dealing with revision. This contention, in our opinion, is not well founded. The High Court at the time of the decision of the earlier writ petition on December 18, 1964 recorded a finding and gave directions to the Tribunal not to reopen the questions of fact in revision. The Tribunal while passing the order dated September 12, 1967 complied with those directions of the High Court. The appellants are bound by the judgment of the High Court and it is not open to them to go behind that judgment in this appeal. No appeal was filed against that judgment and it has become final. It is well settled that principles of *res judicata* can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding. In view of the High Court judgment dated December 18, 1964, the Tribunal while passing the order dated September 12, 1967, disposing of the revision petition filed by the appellant, could not reopen the questions of fact which had been decided by the Assistant Commissioner and the Deputy Commissioner. The High Court, in our opinion, was right in holding in the judgment under appeal that the concurrent findings of fact arrived at by the Assistant Commissioner, the Deputy Commissioner and the Tribunal cannot be set aside in the writ petition. The appeal consequently fails and is dismissed but in the circumstances with no order as to costs."

26. The above said judgment is found to be distinguishable on facts in comparison with the facts

¹² (1976) 4 SCC 66



involved in the present case. Therefore, this judgment is not helpful to the review petitioners.

27. According to the learned counsel Sri.B.M.Arun appearing for the review petitioners making observations that whatever transactions made are subject to Section 52 of the T.P. Act is sufficient and not more than that. He places reliance on the judgment of Hon'ble Supreme Court in the case of **VINOD SETH v. DEVINDER BAJAJ AND ANOTHER**¹³ wherein at paragraphs 41, 42 and 43 it reads as under:

"41. Having found that the direction of the High Court is unsustainable, let us next examine whether we can give any relief to the defendants within the four corners of law. The reason for the High Court directing the plaintiff to furnish an undertaking to pay damages in the event of failure of the suit, is that Section 52 of the Transfer of Property Act would apply to the suit property and the pendency of the suit interfered with the defendant's right to enjoy or deal with the property. Section 52 of TP Act provides that during the pendency in any court of any suit in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings so as to affect the rights of any other party thereto under any decree or order which may be made therein except under the authority of the court and on such terms as it may impose. The said section incorporates the well-known principle of *lis pendens* which was enunciated in *Bellamy v. Sabine* [(1857) 1 De G & J 566] 44 ER 842:

¹³ (2010) 8 SCC 1



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"It is, as I think, a doctrine common to the Courts both of Law and Equity, and rests, as I apprehend, upon this foundation - that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceeding."

42. It is well-settled that the doctrine of lis pendens does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit.

43. The principle underlying section 52 of TP Act is based on justice and equity. The operation of the bar under section 52 is however subject to the power of the court to exempt the suit property from the operation of section 52 subject to such conditions it may impose. That means that the court in which the suit is pending, has the power, in appropriate cases, to permit a party to transfer the property which is the subject-matter of the suit without being subjected to the rights of any part to the suit, by imposing such terms as it deems fit. Having regard to the facts and circumstances, we are of the view that this is a fit case where the suit property should be exempted from the operation of Section 52 of the TP Act, subject to a condition relating to reasonable security, so that the defendants will have the liberty to deal with the property in any manner they may deem fit, in spite of the pendency of the suit."

28. The principle of law laid down regarding *pendente lite* transactions attract Section 52 of the T.P. Act. The Hon'ble Supreme Court in **VINOD SETH's** case



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(supra) has dealt with the challenges made to the order passed by the High Court regarding validity of a novel and innovative direction by the High Court, purportedly issued to discourage frivolous and speculative litigation. The facts in the above case are that the appellant/plaintiff is a builder cum real estate dealer and filed the suit for specific performance upon oral agreement and defendants are the owners of the property. Therefore, the High Court has imposed cost of Rs.25 Lakhs on the appellant as it has brought false and frivolous litigation. In these facts and circumstances, the observations were made at paragraphs 41, 42 and 43 as above stated. Also at paragraph 45, the Hon'ble Supreme Court has highlighted the need for reform for curbing false and frivolous litigations. The High Court and the Hon'ble Supreme Court have expressed concern to protect the right of defendants, who are owners of the property and held several transactions made are subject to Section 52 of T.P. Act. In those circumstances, it is observed that whatever transactions to be made by



defendants conveying the property attracts Section 52 of T.P.Act and observed that imposition of cost is unnecessary. In that case, the High Court both Single Bench and Division Bench have concluded that the suit filed by appellants is vexatious, frivolous and speculative litigation and therefore, imposed cost of Rs.25 Lakhs. But the Hon'ble Supreme Court at paragraph 45 observed that there is need to make reform and if there is no any effective provision to curb frivolous litigations, then the High Courts may impose costs. Therefore, in that case virtually High Court and Hon'ble Supreme Court have arrived to protect the rights of defendant, who is the owner of the property. Therefore, considering the same spirit expressed by the Hon'ble Supreme Court in **VINOD SETH's** case (supra), this Court has also in the same spirit has passed the order protecting the rights and interest of the co-sharers/members of the joint family.

29. In the present case, this Court held that under the facts and circumstances involved in the case ordered



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to reserve 1/4th share to Channamma and Govinda Reddy as the shield of Section 52 of T.P.Act is a weak protection to protect the right and interest of Govinda Reddy and Channamma for the reasons above stated. Also at the cost of repetition why this order is made for the reason that the entire transactions are made by the review petitioners only with builders and if the review petitioners and the builders sell all the flats in the property during the pendency of the suit though those transactions are hit by Section 52 of the T.P.Act, then the real litigation will start between the purchasers who are large in numbers and Govinda Reddy and Channamma on the other side and therefore, it would frustrate Channamma and Govinda Reddy to get their legitimate share and will keep remain litigation in getting fruitful decree even in case the suit is decreed. Therefore, subject to result in the suit and Section 52 T.P.Act this Court has ordered to reserve 1/4th share each. Therefore, there is no merit found in the



submission made by the learned counsel Sri.B.M.Arun for the review petitioners.

30. Here it is worth to refer the judgment of the High Court of Delhi in the case of **MRS DEEPAK KAUR vs. S HARI SIMRAN SINGH & ORS**¹⁴ wherein at paragraph 7 it is observed as follows:

"7. As far as the filing of the earlier suit CS(OS)738/2010 (713/2007) is concerned, it is admitted fact that no decree of partition was passed in that suit. It was agreed that the plaintiff would have 20% undivided share in the land. The plaintiff now seeks partition of the property seeking to have her share of 20% of the suit property determined. The right to seek partition is a recurring cause of action. In Sri. Kishan v. Shir Ram Kishan, 2009 (110) DRJ 323 this court held as follows:—

"17. The right to enforce partition is a legal incident of a co-ownership and as long as such co-ownership subsists, the right to seek partition continues. The mere fact that a co-owner files a suit for partition and then abandons or withdraws it will not deprive him of his right to seek partition of the joint property. The substantive right of a co-owner to seek partition of the joint property will not be extinguished by the provisions of Order XXIII Rule 1. If the plaintiff brings a suit for partition and then, for any reason, decides not to enforce the right immediately and withdraws the suit, then he would be deemed to have chosen to continue the ownership in common for some time more till he would find it necessary again to seek its termination. A suit which is barred by withdrawal of the claim under Order XXIII Rule 1(3) is one which is based on the same cause of action but a suit for partition and separate possession of the share which may be brought subsequently will be on a cause of action arising upon a demand subsequently made and refused [See Radhe Lal v. Mulchand: AIR 1924 ALL 905].

¹⁴ 2019 SCC Online 7487



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18. A Division Bench of this Court in *Jai Devi v. Jodhi Ram*: 6 (1970) DLT 549 has held that the bar of second suit contemplated in Order XXIII, Rule 1(4) is not applicable to a partition suit, as the cause of action in such a suit is a recurring one. In the said case the husband of the appellant therein, Mr. Babu Ram had filed a suit in the Court of Subordinate Judge Ist Class, Delhi for partition of the joint family properties. An application was moved in the said suit by the plaintiff stating that he intended to withdraw the suit and did not want to pursue the same. Liberty was not reserved by the plaintiff either in his application or in his statement in Court to institute a fresh suit in respect of the subject matter of the suit nor was permission granted by the Court to withdraw with liberty to institute a fresh suit. Thereafter the wife of the plaintiff and his sons filed a suit for the partition of the same properties. One of the issues before the Court was whether the subsequent suit was barred by Order XXIII Rule 1 of the Code of Civil Procedure. The Court observed:

(13) Coming to the merits of the appeal the only Issue which require determination is whether the suit out of which the present appeal has arisen was barred by Order 23, Rule 1 of the Code of Civil Procedure. The learned Subordinate Judge came to the conclusion that where a party withdraws a suit without seeking permission to bring a fresh suit on the same cause of action or abandons a part of the claim, he is precluded from claiming the abandoned relief or from bringing a fresh suit on the same cause of action. This proposition, as a general proposition, is correct but it does not apply to suits for partition. In 1967 (1) Mlj 175 in *re: Bajah V. Maheswara Rao v. Bajah V. Bajeswara Rao* it has been held that:

So far as a suit for partition or a suit for redemption is concerned, it is axiomatic that, when the plaintiff withdraws his suit, he will be entitled to file a fresh suit as the cause of action is recurring cause of action. Even if the plaintiff is not granted permission, under Order 23, Rule 1, Civil Procedure Code, he will nevertheless have a right to file a suit for partition at any time he pleases.

(14) To the same effect are the cases reported in AIR 1944. Sindh 192; AIR Mad 112; AIR 1935 Mad 909 and: AIR 1924 All 905. We may only mention one other case reported in AIR 1950 FC In *re: Thota China Subha*



Rao v. Mattapalli Raju where it has been observed:

Provisions like Order 9, Rule 9 or Order 23, Rule 1 will not debar the mortgagor from filing a second suit for redemption because, as in a partition suit the cause of action in a redemption suit is a recurring one.

(15) Even though, therefore, liberty was not reserved while withdrawing the earlier suit, the present suit would not be barred by Order 23, Rule 1 of the Code of Civil Procedure.”

31. Considering the prayers made in both the suits, one is for seeking partition of 1/4th share and other one is seeking relief of declaration to declare that joint development agreement dated 08.08.2013 as null and void. The right of filing suit for partition is having recurring effect and cause of action is continuous one till severance is taken place. Just because in subsequent suit filed in O.S.No.4625/2025 by Govinda Reddy, if he has not mentioned that Channamma has filed O.S.No.2085/2021 and not granted order of temporary injunction that would not amount to abuse of process of Court considering the facts and circumstances involved in the case. The trial court has exercised discretionary power while granting equitable relief of temporary injunction protecting the



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rights of plaintiff and defendant No.25. In such an event where an inherent right is involved in deciding the case, the limitation is to be considered on the main relief of seeking partition but not on any other ancillary documentary transactions.

32. The joint development agreement is dated 08.08.2013, but this joint development agreement is only at the behest of review petitioners having executed to deprive rights of Govinda Reddy and Channamma, considered Govinda Reddy as a confirmed party making recital that he does not have any right, title and Channamma is not made a party. When this being the position, the limitation is counted for main relief of partition and would be dealt in the suit as it is a mixed question of fact and law, such alone cannot make deprivation of claiming legitimate right of partition. Under these facts and circumstances, the judgment relied on by the counsel for the review petitioners in the case ***M.R.VINODA vs. M.S.SUSHEELAMMA (DEAD) BY***



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LEGAL REPRESENTATIVES AND OTHERS¹⁵ could be distinguished and not applicable in the present case. The learned counsel for the review petitioners while highlighting the factual matrix and observations made at paragraphs 4 to 11 (which are extracted below) has submitted that suit filed for partition is bared by limitation.

"4. On 13-3-1969, M.R. Rajashekar, the eldest among five sons of M.C. Rudrappa who had expired in 1967, and M.P. Basavaraju, only son of Mogannagowda alias Puttaswamygowda, who it appears had also expired, executed a relinquishment deed, marked Ext. P-2, of the property admeasuring 6 acres 34 guntas in Survey No. 29, Madenahalli Village (the suit property), in favour of Patel Mallegowda.

5. On 18-11-1994, M.R. Shivakumar (Plaintiff 1), M.R. Mallesha (Plaintiff 2), M.R. Vinoda (Plaintiff 3) and M.R. Chidananda (Plaintiff 4), all younger sons of late M.C. Rudrappa, filed a suit seeking a declaration that the relinquishment deed dated 13-3-1969, Ext. P-2, executed by their eldest brother M.R. Rajashekar, Defendant 4, and their cousin, M.P. Basavaraju, Defendant 3 in favour of their eldest uncle Patel Mallegowda, is null and void. Patel Mallegowda, having expired, his sons M. Shantappa and H. M. Puttappa were impleaded as Defendants 1 and 2.

6. The plaint, in a nutshell, states that Plaintiff 4 being minor on 13-3-1969, their eldest brother M.R. Rajashekar, the fourth defendant, had no right to relinquish their shares. [As per the plaint, all the plaintiffs had attained majority at the time of execution of the relinquishment deed except Plaintiff 4. It is observed that there is some discrepancy with regard to the year of birth of four plaintiffs. However, in the context of the present judgment this would not make any difference.] The relinquishment deed dated 13-3-1969, Ext. P-2, being void, the property remained the joint Hindu family property and should be partitioned equally amongst them.

¹⁵ (2021) 20 SCC 180



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7. The suit was resisted by Defendants 1 to 3 primarily on the ground that the relinquishment deed is valid and the suit is barred by limitation.

8. The trial court dismissed the suit as barred by limitation and that Defendant 4, being the eldest male member, was entitled to execute the relinquishment deed on behalf of his branch of the family.

9. In the regular first appeal, the Additional Sessions Judge decreed the suit inter alia holding that Defendant 4 was not competent to execute the relinquishment deed, which being void, the suit was not barred by limitation.

10. Legal representatives of Defendant 1 preferred Regular Second Appeal No. 1989 of 2006 and have succeeded by the judgment [*M.S. Susheelamma v. M.R. Shivakumar*, 2008 SCC OnLine Kar 548] under challenge passed by the High Court of Karnataka at Bangalore on 19-11-2008 inter alia ruling that the relinquishment deed is not void ab initio and the suit having been filed beyond three years as stipulated under Articles 58 and 59 of the Schedule to the Limitation Act, 1963 was barred by limitation. The prayer for the partition was rejected as the property had ceased to be a joint Hindu family property inter se the three branches.

11. Aggrieved by the decision, Plaintiff 3 has preferred this appeal. Plaintiff 1, who is represented by his legal representative, Plaintiffs 2 and 4, having not preferred this appeal are the pro forma Respondents 8, 9 and 10. Defendant 1, represented by his legal representatives are Respondents 1 to 4, and Defendant 2 represented by his legal representative is Respondent 5, and Defendant 4 is Respondent 7 in the present appeal. Defendant 3, Respondent 6 herein, has been deleted from the array of parties."

33. The facts in the above said case are that on 15.04.1961 there are partition deed dividing the joint hindu family properties *inter-se* between the three



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branches and the validity of legality of the partition deed, is accepted and not under challenge. On 13.03.1969 a relinquishment deed was executed. On 18.11.1994 filed a suit seeking declaration that relinquishment deed dated 13.03.1969 is null and void. The trial court dismissed the suit as barred by limitation. The said suit is for declaration to declare the relinquishment deed dated 13.03.1969 is null and void and the trial court dismissed the suit as barred by limitation. The above said suit is not for partition and the main relief involved in the above stated case is for declaration to declare relinquishment is null and void. The suit was dismissed on the limitation, but in the present case the substantive relief asked is partition. The relief of declaration to declare agreement dated 08.08.2013 is null and void is ancillary one. This makes distinguishment in the facts and circumstances in the above said case and in the present case. Therefore, this judgment is not applicable to the case of the review petitioners.



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34. The learned counsel for the review petitioners has placed reliance on the order passed by this Court in MFA No.1416/2022 dated 25.03.2022 wherein it is observed that the suit is for partition and the facts are that there was already partition on 26.10.2004 and then after 13 years once again the suit is filed for re-partition. Under these factual matrix and circumstances it is observed that while denying to grant the relief of temporary injunction but observed whatever alienations are subject to Section 52 of the T.P. Act. Here in the present case Govinda Reddy and Channamma have not filed the suit for seeking re-partition. Also in the present case it is not the case of review petitioners that there was prior partition. For the first time, the suits are filed for partition but in the above cited stated case there is already a registered partition in the year 2004 and the appellant was party to the said partition deed. This makes difference in the facts and circumstances involved in the above cited case and in the present case. In the present case, it is not sufficient to



safeguard the rights and interest of the Govinda Reddy and Channamma with the aid of Section 52 of the T.P.Act only and prima facie warrants to give more protection.

35. Further, learned counsel Sri.B.M.Arun appearing for the review petitioners argued that the relief prayed in prayer (iii) in the plaint regarding seeking declaration of the joint development agreement 08.08.2013 as null and void by contending that said prayer is barred by limitation and where main relief could not be granted, then interim relief shall also not be granted. He places reliance on the judgment of Hon'ble Supreme Court in the case of **COTTON CORPORATION OF INDIA LIMITED v. UNITED INDUSTRIAL BANK LIMITED AND OTHERS**¹⁶

wherein at paragraph 10, it has held as follows:

"10. Mr Sen, learned counsel for the respondent Bank, contended that Section 41(b) is not at all attracted because it deals with perpetual injunction and the temporary or interim injunction is regulated by the Code of Civil Procedure specially so provided in Section 37 of the Act. Expression 'injunction' in Section 41(b) is not qualified by an adjective and therefore, it would comprehend both interim and perpetual injunction. It is, however, true that Section 37 specifically provides that temporary injunctions which have to continue until a

¹⁶ 1983 (4) SCC 625



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specified time or until further order of the court are regulated by the Code of Civil Procedure. But if a dichotomy is introduced by confining Section 41 to perpetual injunction only and Section 37 read with Order 39 of the Code of Civil Procedure being confined to temporary injunction, an unnecessary grey area will develop. It is indisputable that temporary injunction is granted during the pendency of the proceeding so that while granting final relief the court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. But power to grant temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted. If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted. In *State of Orissa v. Madan Gopal Rungta* [1951 SCC 1024 : AIR 1952 SC 12 : 1952 SCR 28 : 1951 SCJ 764] a Constitution Bench of this Court clearly spelt out the contours within which interim relief can be granted. The Court said that 'an interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on final determination of his rights in a suit or proceeding'. If this be the purpose to achieve which power to grant temporary relief is conferred, it is inconceivable that where the final relief cannot be granted in the terms sought for because the statute bars granting such a relief ipso facto the temporary relief of the same nature cannot be granted. To illustrate this point, let us take the relief which the Bank seeks in its suit. The prayer is that the Corporation be restrained by an injunction of the court from presenting a winding up petition under the Companies Act, 1956 or under the Banking Regulation Act, 1949. In other words, the Bank seeks to restrain the Corporation by an injunction of the court from instituting a proceeding for winding up of the Bank. There is a clear bar in Section 41(b) against granting this relief. The court has no jurisdiction to grant a perpetual injunction restraining a person from instituting a proceeding in a court not subordinate to it, as a relief, ipso facto temporary relief cannot be granted in the same terms. The interim relief can obviously be not granted also because the object behind granting interim relief is to maintain status quo ante so that the final relief can be appropriately moulded without the party's position being altered during the pendency of the proceedings."



36. It is the principle of law laid down in the above said case that if the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly be granted. There is no complete bar for granting an order of temporary injunction. The word used is "*can hardly be granted*". Considering the prayer made in the suit in the present case and also in O.S.No.2085/2021, the substantive relief is seeking partition. Considering the relief claimed by the plaintiffs in both the above said suits filed by Channamma and Govinda Reddy, the substantive relief in the suits is partition of suit properties. Other prayers are ancillary. The right seeking partition cannot be curtailed by any instrument by some of members of joint family. Main relief is to be considered which is partition here and if it is proved the properties are joint family properties then there could be grant of relief of partition as it is prima facie revealed in the present case. On the factual matrix involved in the above said case it can be distinguished from the present case, as above



explained, therefore this judgment is also not applicable to the present case.

37. Therefore, the grounds taken at paragraph 13 in the review petition that interim relief could not be granted is found to be meritless and this Court has not extended undue latches, but this Court by allowing the appeal in-part has safeguarded and protected the interest and right of the co-sharers/members of the joint family for the reasons stated supra during pendency of the suit. Also the court has permitted the review petitioners utilize other portion of properties for consideration. Hence, there is no absolute bar to utilize other portions. There is no merit found in the review petition to review the order and whatever arguments addressed by the learned counsel for the review petitioners in MFA were already canvassed in the appeal and those are considered and as such, there is no error apparent on the face of the record.



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38. Learned counsel for the review petitioners Sri.B.M.Arun has filed a Memo stating that in respect of item Nos.8 and 9 of schedule properties the joint development agreement dated 08.08.2013 is executed with the developer/respondent No.27 stating that the plaintiffs have no claim over the suit schedule properties as they are not parties to the suit and submitted calculation, which reads as follows:

- 1) Total number of Towers: **7**.
- 2) Total number of Flat: **380**.
- 3) **Share of Flats of the Petitioners** and Respondents 3 to 24/Defendants 1 to 24: **129**.
The have sold **69 Flats**, remaining **50 Flats** are available.
- 4) **Share of Flats of the Developer (Respondent No.27) 216**. All 216 sold.
- 5) **Share of Vasudeva Reddy** and family: **31** (nor part of the suit).
- 6) **4 Flats**-kept as vendors Hold in the Sharing Agreement dated 12.08.2013.
- 7) **Estimated Amount towards Completion of the remaining portion of the Share of the 50 Flats of Petitioners** and respondents 3 to 24/Defendants 1 to 24-**Rs.10 Crores (approx)**.



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8) **Settlement with the Appellant Owner's Association amount payable Rs.3 Crores.**

9) **Pending works** (BWSSB, BESCOM, Occupancy Certificate etc., of the entire project), **Petitioners** and Respondents 3 to 24/Defendants 1 to 24 share –**Rs.10 Crores.**

10) It is of note that Maintenance Charges and Electricity Charges may become applicable towards unsold flats.

39. Considering the above said memo with factual figures of the flats is found to be false one for the reason that it is stated that still amount is required for completion of remaining portion of share of the 50 flats of the petitioners and respondent Nos.3 to 24 of Rs.10 Crores by showing pending works as BWSSB, BESCOM, Occupancy Certificate, etc. But at the same time, in the Memo it is stated that the share of flats of developer which are 216 were sold and the share of flats of petitioners and respondent Nos.3 to 24, which are all 129 flats out of which 69 flats were sold and remaining 50 flats are available, but at the same time it is stated some pending works are required. Therefore, without completion of



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pending works and without obtaining completion certificate how the flats were sold out is a question for consideration on the Memo filed by the counsel for the review petitioners. If some works of BWSSB, BESCOM and obtaining occupancy certificate and completion certificate, etc., are pending, how the flats were sold out without there being these essential things to be done. Therefore, this itself falsifies the contention of the review petitioners.

40. Furthermore, it is stated that there are total 7 towers and total number of flats are 380 and the shares are apportioned between the developers, review petitioners and defendant Nos.1 to 24, but there is no allotment of shares to be made to plaintiffs and defendant No.25. Therefore, in this context, if all the flats are sold out then nothing remains for plaintiff and defendant No.25 for getting fruits out of decree in case the suit is decreed for partition. Therefore, the review petition filed is found to be nothing but threatening and dictating the Court to pass such orders according to the convenience of the



review petitioners and at their whims and fancies. In this regard the arguments canvassed by the counsel for the review petitioners in such a way that virtually it is amounting to dictating and threatening the Court. I have my own doubt whether the review petitioners have instructed the learned counsel Sri.B.M.Arun in this regard to make these types of submissions, which are witnessed in the open Court Hall.

41. Therefore, the entire review petition is misconceived one. Apart from vexatious, false and frivolous as present case is one of the example how the mighty people are controlling and dominating the vulnerable sections, vulnerable parties to deprive the legitimate rights of getting share in the properties. The petitioners have entered into an agreement in such a way that there could not be share given to plaintiffs and defendant No.25 hand-to-hand with the developer. Therefore, in these circumstances, this case would be one of the example how the mighty people are causing



deprivation of co-sharers/members of the joint family in giving their legitimate share, who are vulnerable people. Whether suit item Nos.8 and 9 properties are joint family properties or not is the question to be decided in the suit.

42. Therefore, the review petition is found to be misconceived, frivolous and vexatious and thus, liable to be dismissed for the reasons above discussed. Hence, it is dismissed with cost of Rs.25,000/-.

43. Hence, I proceed to pass the following:

ORDER

(i) The review petition is ***dismissed*** with cost of Rs.25,000/-.

ON ADVOCACY:

44. Now let me make observations on the manner in which the learned counsel Sri.B.M.Arun has argued on the review petition is to be observed and considered here.



45. Sri.B.M.Arun, learned counsel argued the matter on review petition in the tone of virtually threatening the Court and with an intention to compel to pass the order according to his whims and fancies what he wants. Just because in MFA No.7416/2025 according to his understanding he failed to get the order according to his wishes and by making certain remarks on the Court he has argued with all vehemence showing his anguish personally to the Court. These submissions are made on three occasions dated 18.12.2026, 09.02.2026 and 06.02.2026. Therefore, this Court is constrained to make some observations, which are as follows:

- (i) There are several duties of an Advocate to the Court and one among prominent is the Advocate shall act in the Court in a dignified manner and respect the court;
- (ii) This court need not make any observations on Sri.B.M.Arun, Advocate but because of his submissions which are virtually threatening and remarking on the Court, compelled this Court to make some observations not with any punitive



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action but to make remembering to the said Advocate. This observation is confined to only learned counsel Sri.B.M.Arun, Advocate.

- (iii) It appears to the Court prima facie by his argument that said advocate has too much personally involved in the case as if it is his own brief and when he is dissatisfied with the order passed by this Court in MFA No.7416/2025 it is an option for him to approach the Hon'ble Apex Court, but without doing so on the guise of filing review petition has browbeaten, threatening and dictating in nature and his submissions are appearing to disrespect the Court and virtually he wanted to get orders according to his wishes. This makes the Court unhappy regarding conduct of the learned counsel Sri.B.M.Arun.

46. The Hon'ble Supreme Court in the case of **CHETAK CONSTRUCTION LTD. vs OM PRAKASH AND OTHERS¹⁷**, reminds the Lawyers and Judges of their duties and functions and towards dispensation of justice. The words expressed by Hon'ble Supreme Court in the above said case at paragraphs 16 and 17 should remind all

¹⁷ (1998) 4 SCC 577



of us the duties of Lawyers' and the Judges' as to how they are important in the voyage of justice. At paragraphs 16 and 17 their Lordships were pleased to observe as follows:

"16. Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and rule of law would receive a setback. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be allowed to "terrorize" or "intimidate" Judges with a view to "secure" orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it. We certainly, cannot approve of any attempt on the part of any litigant to go "forum-shopping". A litigant cannot be permitted "choice" of the "forum" and every attempt at "forum-shopping" must be crushed with a heavy hand.

17. At the same time, it is of utmost importance to remember that Judges must act as impartial referees and decide cases objectively, uninfluenced by any personal bias or prejudice. A Judge should not allow his judicial position to be compromised at any cost. This is essential for maintaining the integrity of the institution and public confidence in it. The credibility of this institution rests on the fairness and impartiality of the Judges at all levels. It is the principle of highest importance for the proper administration of justice that judicial powers must be exercised impartially and within the bounds of law. Public confidence in the judiciary rests on legitimacy of judicial process. Sources of legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices. Judges must always ensure that they do not allow the credibility of the institution to be eroded. We must always remember that justice must not only be done but it must also be seen to be done."



47. The Hon'ble Supreme Court in the case of ***RAMESHWAR PRASAD GOYAL, ADVOCATE, IN RE***¹⁸ has observed that an Advocate being an Officer of the Court has a duty to ensure smooth functioning of the Court and also Lawyers are equal partners with the Judges in the administration of justice.

48. The Lawyers play an important and pivotal role in the administration of justice. The profession itself requires the safeguarding of high moral standards. Since the main job of lawyer is to assist the Court in dispensation of justice, therefore, the Advocate cannot behave with the Court in a disrespectful manner. But, in the present case, the way in which Sri.B.M.Arun, Advocate has argued is nothing but shouting to the Court derogative to the dignity and decorum of the Court, which is witnessed by the Officials of the Court as well as Advocates, who were present in the Court Hall at Dharwad Bench.

¹⁸ AIR 2014 SC 850



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49. It is worthwhile to mention here in what way the order is passed in MFA No.7416/2025. The suit is filed for partition. This Court has ordered to protect the interest of co-sharers by passing the orders of reserving the shares to plaintiff and defendant No.25 on the reason that the other co-sharers have played dominant role virtually causing deprivation of giving a share to defendant No.25 and to the plaintiff both who are old aged woman and deaf & dumb respectively. The agreement of the year 2007, 2011, 2013 and 2018 above stated are the example that protection by mere Section 52 of the T.P. Act is not sufficient, also compelled this Court to make order for reserving shares of plaintiff and defendant No.25. The reason is, if all the flats and apartments are sold out during the pendency of the suit though Section 52 of T.P.Act is applicable, but virtually plaintiff and defendant No.25 would be relegated to more litigations with hundred number of persons who are purchasers of flats in future that frustrate the parties who seeks justice at the hands of



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the Court. Dispensation of justice must be real and practical but shall not be a mere paper decree. Therefore, in this context, the observations are made in MFA No.7416/2025 but learned counsel Sri.B.M.Arun Advocate became angry and made remarks in the Court, which are unwarranted.

50. The Court has witnessed that Sri.B.M.Arun has frustrated himself by the order passed in MFA NO.7416/2025. Even this Court has expressed its view if being aggrieved by the order passed in MFA No.7416/2025, then the parties are at liberty to approach the Hon'ble Supreme Court. Filing of review petition is statutory right of the parties and let them file, but on the guise of filing review petition no one should threaten or defame or browbeat the Court, just because they did not receive the order what they want. Therefore, this Court is constrained to make above observations.

51. The Hon'ble Supreme Court in the case of ***MAHABIR PRASAD SINGH v. M/S. JACKS AVIATION***



PVT. LTD.¹⁹ has observed that the judicial function cannot and should not be permitted to be stonewalled by browbeating or bullying methodology either it is by litigants or by counsel. Therefore, this Court is compelled to make the above observations what it transpired in the Court while hearing the review petition.

52. A client engages a lawyer for addressing his grievances. The lawyer is not an agent of his client, but he is dignified, responsible spokesman. The lawyer cannot wear shoes of his client. The Court cannot satisfy both parties; one party obviously being dissatisfied and the Advocate - Sri.B.M.Arun could not have stepped into the shoes of the client to express his dissatisfaction as if it is a personal case and ought not to have addressed the Court in the conduct disrespecting the Court and harming dignity and decorum of the Court. In this review this Court observed the learned Advocate - Sri.B.M.Arun has

¹⁹ AIR 1999 SC 287



exceeded his limits while addressing the Court on the review petition.

53. Though this may be one of the factors to request the Bar Council to take necessary disciplinary action against said Advocate - Sri.B.M.Arun, but this court has restrained itself not to take such excessive steps as the Court has highest regard to Advocates.

54. For the aforesaid reasons discussed from paragraph Nos.1 to 43, the review petition is ***dismissed*** on its merit. It is made clear that the observations made at paragraph Nos.44 to 53 are only regarding the manner in which the arguments are canvassed by the learned counsel Sri.B.M.Arun and these observations are nothing to do with the merit and result in the review petition.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE

DR
List No.: 19 Sl No.: 1