

IN THE COURT OF THE SENIOR CIVIL JUDGE AND ACJM,
KARKALA

Present: Smt.Sharmila C.S., B.A.L., LL.M.,
Senior Civil Judge and ACJM, Karkala.

Dated: This the 27th day of November, 2025.

O.S.No.70/2016

Smt. Suguna Nayak ..Plaintiff
Versus -
Smt. Iren Nazarath and others ..Defendants

PARTIES TO I.A.No.30

S. Marthappa Nayak,
Aged about 73 years,
S/o. Late Manjunatha Nayak,
R/at. 'Vasista',
taluk Gudde, Kukkundoor Village,
Karkala Taluk, Udupi District. ..Applicant//3rd
defendant

- Vs. -

Smt. Suguna Nayak,
Aged about 46 years,
W/o. K. Umakanth Nayak,
Residing at 'Sinchana',
Mallibettu Road, Ninjoor Village
and Post, Karkala Taluk, Udupi District. ..Opponent/plaintiff

i.	Provision under which the application is filed	Order XLVII and Section 114 of CPC
ii.	Relief sought for	To review the order
iii	The date on which the application is filed	10-10-2025
iv	Number of the application	I.A.No.30
v	The date on which the objections are filed by different opponents	14-10-2025
vi	The date on which the orders were passed on the said application.	27-11-2025

ORDER ON I.A.NO.30 FILED UNDER ORDER XLVII AND
SECTION 114 OF C.P.C.

Application is filed by 3rd defendant seeking to review of the order passed by this court on I.A.No.29 on 18-09-2025,

2. In the memo of facts, the counsel for defendants No.2 and 3 submits that this court overlooked the factual aspects and committed legal error by considering the merits of the case while passing orders on IA 29. Thus prays to allow the application.

3. Counsel for the plaintiff objects that the order passed by this court is proper and if aggrieved, the defendant No.3 ought to have challenged it before the proper court. Accordingly prays to reject the application.

4. Heard from the counsel for plaintiff and counsel the defendant No. 3.

5. The following point arise for my determination.

“Whether the order passed by this court on IA No.29 dated 18-09-2025 is liable to be reviewed?”

6. My answer to the above point is in 'negative',
for the following

REASONS

7. Before going into detail of the case, it is relevant to note the Order VI Rule 17 of C.P.C. and the provision, which is as under

“Amendment of pleadings: The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

8. The power of review of this court is explained in the authority relied upon by the counsel for the plaintiff which is reported in

1) 2019 0 Supreme (SC) 1398 in ‘M/s. Shanti Conductors (P) Ltd. Vs. Assam State Electricity Board and others”

2) 2019 0 Supreme (SC) 174 in 'Perry Kansagra Vs. Smriti Madan Kansagra',

The sum and substance of the above authorities is that the review jurisdiction is not appellate jurisdiction. That review court cannot sit in appeal over the main judgment. That in case of no correct appreciation of facts and law in the earlier judgment, remedy lies in appeal and not review. That the review is not a proper remedy and under the guise of review, petitioner cannot be permitted to re-agitate and re-argue questions which have already been addressed and decided.

9. As against these authorities, the counsel for the plaintiff relied upon Order 47 Rule 1 of C.P.C., which gives the power of review to this court, where it is held that -

"Application for review of judgment: - (1) Any person considering himself aggrieved,

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

10. On going through the above authorities and the provision of law, this court could note that the power to review is not only with respect to the errors committed by it on clerical ground, but on the facts and circumstances of the case.

11. As per defendant No.3, the suit is one for declaration that the plaintiff is the absolute owner of the suit property and for permanent injunction. That the plaintiff has purchased the suit property vide registered sale deed dated 04-04-2007,

wherein the 5 meter width reserved road has been reserved to reach the property of the 2nd defendant. The court commissioner appointed has submitted his further report on 16-10-2024 and reported about the existence of the toilet pit and flower plants in the reserved road . That the sketch discloses that ½ meter property reserved for road has been encroached by the plaintiff and has put up the residential building. That the 3rd defendant came to know about the encroachment made over the reserved road only after submission of the further commissioner's report dated 16-10-2024. That the 3rd defendant had filed I.A.No.29 seeking amendment of the written statement, which was dismissed by this court vide order dated 18-09-2025. That the said order is not appealable and no appeal is allowed against the said order. That the said order consists of error and mistake and also overlooked the ratio laid down in the ruling submitted by the 3rd defendant. That the observation of the court in the order at para No.12, 13 regarding the limitation is an error and mistake. That the court has also committed error and has overlooked the ratio laid down in the rulings produced by the defendants No.2 and 3,

which results in patent error in the order passed on I.A.No.29. That the court also has committed legal error by considering the merits of the case , which is against the ratio laid down by the Hon'ble Supreme Court of India in the rulings. That the said error is to be rectified by considering the facts and circumstances of the case. That if the application is not allowed and the order on I.A.No.29 is not reviewed , the defendant No.3 will be putto hardship and inconvenience. Accordingly prays to allow the application.

12. It is definite consideration of this court that amendment sought for is barred by limitation. This court has clearly held while passing order on I.A. No.29 that the report was furnished as of in the year 2022, and a fresh report was submitted in the year 2024. This court has pointed out by considering the report that the report submitted in the year 2022, clearly bears the note regarding the construction of house and that there was no road as alleged in the sale deed. It was argued by the counsel for the defendant No.3 that he is staying at Taluk Gudde, Kukkundoor Village, where the property is situated at Ninjoor Village and cannot visit the suit

property regularly . This cannot be a ground for considering the claim of the plaintiff for the relief of mandatory injunction. When the report has been furnished in the year 2022 stating that there is no road, the defendants No.2 and 3 could have sought for the relief within a period prescribed immediately as and when the commissioner's report was furnished. Even otherwise, this court has also considered the cause of action for filing of the suit as per the report furnished in the year 2024. The court also has held that defendants No.2 and 3 were negligent in adjourning the matter till 2025 and never filed the said application seeking amendment of the relief, even prior to the cross-examination of the plaintiff , but has got adjourned the matter and filed the said application. Therefore, this court has rejected I.A.No.29 filed by defendants No.2 and 3.

13. Review is permitted when there can be no appeal from the said order. The order passed by this court is not an appealable order. But, however the defendants No.2 and 3 always have the right to challenge the same by invoking writ jurisdiction. The defendants No.2 and 3 have not made any efforts in this regard. When this court is of the opinion by considering the

facts of the case, that the amendment cannot be permitted, the court cannot again go into the said facts in detail and consider the application of the defendants No.2 and 3. Any erroneous order passed by this court is liable to be challenged before the proper authority by invoking the proper jurisdiction. Therefore, at this stage, in my opinion there are no grounds to entertain the present application seeking review of the order passed by this court. Accordingly the above point is answered in negative.

14. In view of the above reasoning, I proceed to pass the following :

ORDER

I.A.No.30 filed by the 3rd defendant under Order XLVII and Section 114 of C.P.C., is hereby rejected.

(Dictated to the Stenographer, transcribed by her, transcript corrected and then pronounced in Open Court on this the 27th day of November, 2025.)

(SHARMILA C.S.)
Senior Civil Judge & ACJM, Karkala