



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CIVIL REVISION PETITION No.13 OF 2010 (IO)

BETWEEN:

YOGESH C P
@ YOGESHWAR C P
S O PUTAMADEGOWDA
AGED ABOUT 50 YEARS
CHAKKERE VILLAGE
MALUR HOBLI, CHANNAPATNA TALUK
ALSO AT NO.1, CHANDRALOK 5TH CROSS,
GOUTHAMNAGAR, BANGALORE -09

REP. BY HIS PA HOLDER
MAHADEVIAIAH
S/O PUTTEGOWDA
AGED ABOUT 56 YEARS
CHAKKERE VILLAGE, MALUR HOBLI
CHANNAPATNA TALUK-563 138

...PETITIONER

(BY SRI K.G.DAYANANDA FOR SRI HARISHA.A.S, ADVOCATES)

AND:

1. GANGAPPA
S/O LATE HOMBAIAH
AGED ABOUT 58 YEARS,
SHETTIGOWDANADODDI,
BIDADI HOBLI,
RAMANAGARM TALUK-561 318

VENKATAIAH
DEAD BY LRS





2(a) NINGAMMA
W/O LATE VENKATAIAH
AGED ABOUT 66 YEARS,

2(b) HOMBAIAH
SINCE DEAD BY LRS

2(b)(a) JAYAMMA
AGED ABOUT 43 YEARS
W/O LATE HOMBAIH

2(b)(b) NAGARAJU
AGED ABOUT 28 YEARS,
S/O LATE HOMBAIH

2(c) THIMMAIAH
S/O LATE VENKATAIAH
AGED ABOUT 38 YEARS

2(d) SEENA
AGED ABOUT 33 YEARS,
S/O LATE VENKATAIAH

2(e) NAGARATHNA
W/O NANJUNDA
D/O LATE VENKATAIAH
AGED ABOUT 36 YEARS,

ALL ARE RESIDING AT
SETTIGOWDANADODDI VILLAGE,
M.KARENAHALLI POST,
BIDADI HOBLI,
RAMANAGARAM TALUK-561 318

2(f) KALAMMA
W/O PUTTASIDDA
AGED ABOUT 30 YEARS,
R/A THADIKAVAGILU
KOOTAGAL HOBLI,
JALAMANGALA HOBLI



RAMANAGARAM TALUK-561 318

3. DODDA YELLAIAH
S/O LATE HOMBAIAH
SINCE DEAD REPRESENTED BY LEGAL
REPRESENTATIVES
- 3(a) NAGALAKSHMI
W/O LATE DODDA YELLAIAH @ NAGABHUSHAN
AGED ABOUT 65 YEARS
- 3(b) ASHWINI
D/O LATE DODDA YELLAIAH @ NAGABHUSHAN
AGED ABOUT 30 YEARS
- 3(c) ANIL KUMAR
S/O LATE DODDA YELLAIAH @ NAGABHUSHAN
AGED ABOUT 25 YEARS

ALL ARE RESIDING AT NO.48/2,
RAGHAVENDRA COLONY
6TH MAIN, CHAMARAJPET,
BANGALORE – 18.

...RESPONDENTS

(BY SRI J.D.KASHINATH, ADVOCATE FOR R1 AND R3(c);
R2(a), R2(b)(a), R2(b)(b), R2(c), R2(d), R2(e), R3(b) ARE
SERVED AND UNREPRESENTED;
VIDE ORDER DATED 07.07.2014, R3(b) AND (c) ARE LRs OF
DECEASED R3(a);
VIDE ORDER DATED 15.09.2011 PETITION AGAINST R2(f) IS
DISMISSED FOR NON PROSECUTION)

THIS CRP IS FILED UNDER SECTION 115 OF CIVIL
PROCEDURE CODE FILED AGAINST THE ORDER DATED
12.10.2009 PASSED FDP.21/2002 ON THE FILE OF THE PRL.
CIVIL JUDGE(SR. DN.) RAMANAGARA, DISMISSING THE I.A.
U/O 20 R-18 R/W S-151 OF CPC AND U/S 38, 41 AND 53 OF
T.P. ACT.



THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

Heard Sri K.G.Dayananda, advocate for Sri Harisha A.S,
learned counsel for the appellants and Sri J.D.Kashinath,
learned counsel for respondent Nos.1 and R-3(c).

2. Parties are referred to as per their ranking before the
Trial Court for the sake of convenience.

3. Present Revision petition is filed by respondent No.3 in
Final Decree Proceeding No.21/2002 on the file of the Civil
Judge (Sr.Dn.) and JMFC, Ramanagaram, seeking the relief of
revising the Order dated 12.10.2009 on the application filed
under Order XX Rule 18 r/w Section 151 of the Code of Civil
Procedure and under Sections 38, 41 and 53 of the Transfer of
Property Act, 1882.

4. Facts in brief which are utmost necessary for disposal of
the present petition are as under:



A suit came to be filed by the plaintiffs in O.S No.82/1997 for the relief of partition and separate possession in respect of the following properties hereinafter referred to as 'suit properties'.

"ITEM-I: Survey number 35, measuring 08 acres 12 guntas, assessed at Rs.9.20 paise, situated at Muddapura Karenahalli, Bidadi Hobli, Ramanagaram Taluk, and bounded on the:

*East by : Narasegowdana Doddi road,
West by : Land of Phailwan Ramanna and Chaluvaiah,
North by :Land of Hanumanthappa, Narasimhaiah,
South by: Property of Ramaiah, Puttaiah and
Chaluvaiah.*

ITEM-II: House property with Thatched Roof, situated at Shettigowdana Doddi, Bidadi Hobli, Ramanagaram Taluk, and bounded on:

*East by : Road,
West by : House of Krishna,
North by : Road,
South by : Vacant site of Ramanna."*

5. The suit on contest came to be decreed. Operative portion of the said judgment dated 17.03.1999 reads as under:

"In the result, suit of the plaintiff is decreed against defendants No.1 and 2. It is hereby declared that the plaintiff has got 1/3rd share in both suit item No.1 and 2



properties. That the suit item No.1 property is an agricultural land and it shall be divided by metes and bounds by the Deputy Commissioner, Bangalore Rural District, as admissible under Section 54 of CPC since it is a revenue assessed land. That suit item No.2 property is a house and it shall be divided by appointment of the Court Commissioner.

However, suit against defendant No.3 is dismissed. Draw preliminary decree accordingly. Both parties are directed to bear their own costs."

6. Since the aforesaid judgment and decree was not challenged, it became final.

7. In order to have the properties divided by metes and bounds, Final Decree Proceeding came to be filed by the plaintiff which was numbered as F.D.P.21/2002. As a formal party, third defendant was made as respondent No.3 in the said Final Decree Proceeding.

8. When the final decree proceeding was pending before the Trial Court, an application as aforesaid came to be filed by the third respondent/third defendant seeking for allotting the entire land in item No.1 of the suit schedule property in his favour, i.e., 2/3rd share of respondent Nos.1 and 2.



9. It is his case that respondent Nos.1 and 2 had sold item No.1 of the suit properties by registered sale deed dated 19.02.1998 and 1/3rd share of the plaintiff by virtue of the agreement of sale dated 07.04.1996 and 19.07.1996 and registered sale deed dated 19.02.1998 for which, if any unpaid sale consideration is pending, petitioner will be ready to deposit the same before the Court.

10. In the affidavit filed accompanying the said application by the Power of Attorney holder of third defendant, it has been stated that he has purchased the suit property to an extent of 7 acres 4 guntas from respondent No.1 on 19.02.1998 under a registered sale deed.

11. Respondent No.2 is a consenting witness to said sale deed. The sale having taken place during pendency of the suit, the sale was subject to *lis pendens*.

12. After the decree came to be passed, as a plea of equitable partition, said application came to be filed.



13. Application was opposed by the plaintiff by filing detailed written objections contending that application is not maintainable as the sale is *lis pendens* and suit being dismissed as against defendant No.3, he has no *locus standi* to oppose the Final Decree Proceeding.

14. Learned Trial Judge after hearing the arguments of the parties, referring to the judgments of the Hon'ble Apex Court and this Court, dismissed the application *inter alia* holding in paragraph Nos.9 to 12 as under:

"9. *Point-1: Admittedly respondents-1 and 2 have not executed sale deed in favour of respondent-3. Respondent-3 contends that respondent-2 signed as consenting witness to sale deed and that respondents-1 and 2 again had executed release deed in favour of respondent-3 agreeing to receive Rs.3,00,000/- each and they have received Rs.50,000/- each towards advance. But all these have not been proved. In fact admittedly all these transactions have taken place during the pendency of O.S.82/1997 which was filed for partition and separate possession by the petitioner of this case against respondent-3 and others, same came to be decreed against respondent -3 and others, so the transaction amounts to lis pendency. The alleged transaction between respondents is hit by section 52 of Transfer of Property Act, they are not valid and hence it*



cannot be taken into consideration, further respondent-3 has not challenged the judgment and decree passed in O.S.No.82/1997, so in this case the respondent-3 cannot seek any relief sought by him.

10. The learned counsel for the petitioner has relied upon a case law reported in AIR 1998 SC 743, wherein it is held as follows:

"Execution Powers of executing Court Government servant Court granting relief of declaration claimed as to he being in continuance of service-Consequential reliefs as to arrears of salary and interest on arrears not claimed-Same however, granted by executing Court-Not proper-Executing Court was bound by terms of decree-Court not add or alter decree."

and argues that at this stage the court cannot alter the decree. As against the arguments of learned counsel for the petitioner, the learned counsel for respondent has argued that the case law referred above i.e.. AIR 1998 SC 743 is in respect of execution cases but the present case is F.D. Proceedings, so under these circumstances the case laws referred is not applicable. But I have perused the citation referred by the learned counsel for the petitioner, though the nature of the case is different, the ratio laid down is that the original decree cannot be altered in subsequent proceedings is applicable to the case on hand. As per the ratio laid down since the present case is final decree proceedings subsequent to original suit, in this proceedings no orders can be passed that amounts to alteration to the



judgment and decree passed in the original suit i.e., O.S.82/1997.

11. The learned counsel for respondent-3 has relied upon a case law reported in ILR 2004 KAR 5277 which reads as follows:

"Direction to draw final decree proceedings-The Procedure envisaged under-HELD-The Court has to decide the matter as to respective shares of the parties, in respect of the properties involved in the proceedings strictly as per the mandatory provisions of Order XX Rule 18(1) of CPC, after affording sufficient opportunity to the parties."

The learned counsel for respondent-3 has relied upon a case law reported in ILR 2008 KAR 13 which reads as follows:

"Decree in suit for partition of property and separate possession of a share therein-Final decree proceedings-Section 54-Partition of estate or separation of share-Petition/Application to draw the final decree. Procedure-HELD, A petition/application to draw final decree is not a plaint and need not contain the material facts as specified under Order 7 Rule 1 CPC-Order 20 Rule 18 CPC do not specify as to what are the particulars to be mentioned in a petition/application to draw the final decree-Therefore, petition /application accompanied by preliminary decree passed in the suit is sufficient to draw a final decree."

12. I have perused these case laws. The facts and circumstances of the above referred case and the facts and circumstances of the present case are different, even the ratio laid down in the above cases are not applicable to the case on hand. For the reasons stated



above, hold that the respondent-3 is not entitle for the relief sought i.e., allotment of entire land in item No.1 of suit schedule of O.S. No.82/1997. Hence, I answer point No. 1 in Negative.

15. Being aggrieved by the same, third respondent in the Final Decree Proceeding/defendant No.3 has preferred the present Civil Revision Petition on following grounds:

- *"That the findings recorded by the court below that the respondent has not proved the execution of the agreement by the 1st and 3rd respondent is erroneous.*
- *That the findings recorded by the court below that the transactions of the agreements have taken place during the pendency of the suit in O.S.No.82/1997 is erroneous and contrary to material evidence on record.*
- *That the findings recorded by the court below, that the transactions of agreements is hit by principles of lis-pendency is illegal, arbitrary and opposed to law.*
- *That the findings recorded by the court below, that the transactions between the respondents and the petitioner is hit by section 52 of Transfer of Property Act and therefore, they are not valid to be taken into consideration is error apparent on the face of the record.*



- *That the court below has committed an error in as much as relying upon case law reported in AIR 1998 SC Page 743, though the said decision is not applicable to the facts of the case on hand.*
- *That the findings recorded by the court below that the original decree cannot be altered in subsequent proceedings is error apparent on the face of the record.*
- *That the court below ought to have held that the court has to decide the matter in final proceedings, as to respective shares of the properties in respect of the properties involved in the proceedings, which means to say the right of the petitioner was required to be taken into consideration under the agreement of sale. Non-consideration of this aspect of the matter is error apparent on the face of the record.*
- *That the findings recorded by the court below that the petitioner is not entitled for the relief sought i.e., allotment of entire land in item No.1 of suit schedule is error apparent on the face of the record.”*



16. The order sheet of this case discloses that the present Civil Revision Petition came to be dismissed twice and later on restored.

17. Sri K.G.Dayananda, learned counsel for the revision petitioner reiterating the grounds urged in the revision petition, contended that learned Judge in the Final Decree Proceeding did not notice that though the sale was hit by *lis pendens*, respondent No.3 always could have pleaded for equitable partition by seeking the allotment of the share of respondents Nos.1 and 2 in his favour.

18. He also contended that huge sum of money has been received by respondent Nos.1 and 2, as well as the plaintiff in respect of the item No.1 of the suit property. Therefore rejection of the application filed by the respondent No.3 has resulted in miscarriage of justice and sought for allowing the revision petition.

19. Per contra, Sri J.D.Kashinath, learned counsel representing the respondent No.1 and respondent No.3(c) who



is one of the legal representative of defendant No.2, supports the impugned Order.

20. He also argued that, already third respondent is in possession of the portion of the property which has been sold by the father of the respondent No.2(c) i.e., Venkataiah and respondent No.3- Dodda Yellaiah, who are no more and their legal representatives are on record.

21. Therefore, there cannot be any further Order that could have been passed especially when suit having been dismissed as against the third defendant.

22. Having heard the arguments of both sides, this Court perused the material on record meticulously.

23. On such perusal of the material on record, it is crystal clear that the third defendant who is the revision petitioner has purchased the item No.1 of the suit property during pendency of the suit in O.S No.82/1997.

24. If first respondent has alienated the suit property by virtue of a registered sale deed and second respondent is only a



consenting witness, at the most, the said sale will be valid insofar as the share of defendant Nos.1 and 2 are concerned.

25. According to Sri Kashinath, third defendant is already in possession of that particular portion of the property and agreement to sell, if any, by the plaintiff would not bind the plaintiff inasmuch as, under the agreement to sell, no right would accrue to the third defendant. Further, plaintiff has denied the agreement to sell said to have been executed in favour of third defendant.

26. Thus, even if any such agreement is in existence, it would not create any title in third defendant to seek for equitable partition of item No.1.

27. Further, mere filing an application under Order XX Rule 18 of the Code of Civil Procedure seeking for equitable partition would not have given any right for the third defendant inasmuch as suit against third defendant came to be dismissed and it has become final.

28. Therefore taking note of these aspects of the matter, the order impugned in the revision petition does not require



interference that too having regard to the scope of Section 115 of the Code of Civil Procedure.

29. Hence the following:

ORDER

(i) Revision Petition is meritless and hereby ***dismissed.***

(ii) No order as to costs.

**Sd/-
(V SRISHANANDA)
JUDGE**

kcm
List No.: 2 Sl No.: 55