

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY 2018

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

REVIEW PETITION No.220 OF 2018

IN

R.F.A.No.1132 OF 2010

BETWEEN

1. G. Maheshwara,
Aged Major,
2. G.Shadakshara
Aged Major,

Both are sons of Gangappa
Residing at Haradanahalli,
Chandrakavadi Hobli,
Chamarajanagar Taluk

...Petitioners

(By Sri. S.Shaker Shetty, Advocate)

AND

1. Sri. Mahanthaswamiji of
Devanur Mutt,
Aged about 70 years,
Devanur Mutt, Devanur,
Nanjangud Taluk-571312.
Mysuru District.

2. Vasudevamurthy R.
S/o. Late Rattehalli Ramappa,
Aged about 85 years,
Proprietor,
Prabha Talkies,
Mysuru-570001.
3. Basavarajappa,
Aged about 68 years,
Agriculturist,
Hanumanahalli,
Nanjangud Taluk-571312.
Mysuru District.
4. G.H.Nayak,
Aged about 70 years,
Retired Kannada Professor,
No.487, Preethi,
Behind Kamakshi Hospital,
Kuvempunagar,
Mysuru-570001.
5. R.Guru
Aged about 58 years,
Prop: Partner,
Vasu Agarbathi,
Vanivilasa Road,
Mysuru-570001.
6. Devanooru Shivamallu
Aged about 58 years,
No.3, Adhichunchanagiri Road,
Kuvempu Nagar,
Mysuru-570001.

...Respondents

This Review Petition is filed under Order 47 Rule 1 of CPC read with Rule 1 of Chapter iii of High Court Rules, praying this Hon'ble court to review the order passed in RFA No.1132/2010 on the file of this Hon'ble Court passed on 29.05.2018 and allow the petition with costs throughout in the interest of justice and equity.

This Review Petition coming on for admission this day, the court made the following:

ORDER

Heard the petitioners' counsel on admission of this review petition. It is his first point of argument that review petition need not be heard on admission; and notice should be ordered to respondents as it is the right of a party to apply for review.

2. Actually, when the review petition is posted for admission, it is not necessary to give detailed reasons for dismissing review petition. But, the learned counsel now appearing for review petitioners was not the counsel who argued when the appeals were heard. According to him, many points have not been considered in the appeal and

therefore he placed reliance on many authorities. For this reason I feel it necessary that a detailed order is to be passed.

3. The submission of the learned counsel that review petition need not be heard on admission is difficult to be accepted; though a party has a right to apply for review, it does not mean that without apparent grounds for review being made out, notice should be ordered to the respondent. The judgment of the Hon'ble Supreme Court in ***Arundhati @ Harshana Vs. Iranna @ Veerendra [2008(3) KCCR 1287]***, is cited by the learned counsel. This decision is not applicable to the case on hand. It pertains to appeals filed under Section 96 and Order 41 CPC. Order 41 Rule 11 CPC states that the appellant must make out a worthy case for admission, but the Hon'ble Supreme Court has given a word of caution while dealing with appeals filed under Order 41 CPC, having regard to the fact that first appellate court is the last fact finding body and therefore the courts have to be slow and

cautious at the time of admission. But this rule is not applicable in other cases.

4. I have perused the review petition. All the grounds taken in the petition are elaborately discussed in the judgment. With regard to trust being not made a party to the suit, it has to be stated that reasons are given as to why trust was not a necessary party in the suit O.S.71/1986. However, trust is a party in the connected suit O.S.2/2002. Since the trust is a party in the said suit, it could recover the possession of the property which review petitioners have purchased. Their interest is not affected. Reasons are also given as to why schedule of the property was not necessary to be given in O.S.71/1986 and as to how the circumstances required moulding of the reliefs in accordance with Order 41 Rule 33 CPC.

5. Another ground urged by the learned counsel for the petitioners is that the plaintiff in O.S.71/1986 had not taken permission according to Section 92 of CPC. This is a wrong submission made by the learned counsel. The order

sheet of the District Court shows very clearly the application under Section 92 CPC being allowed. This was not the point urged by the learned counsel who appeared for the appellants in RFA 1132/2010. Moreover, review petitioners are strangers to the trust and therefore they cannot take up this contention to seek review of the judgment on this point.

6. In regard to another point that review petitioners should have been made parties in RFA.No.1132/2010, it is to be stated that appeal was filed by their vendor i.e., first defendant in O.S.No.71/1986. In fact the review petitioners were parties in the suit. The first defendant who preferred the first appeal before this court should have made them proforma parties in the appeal. The learned counsel who appeared for review petitioners in RFA 1139/2010 never argued that in RFA.No.1132/2010 also they should have been made parties. Even they also did not try to come on record on their own by making an application under Order 1 Rule 10(2) CPC. Even

otherwise, in a Scheme Suit, the review petitioners, who are purchasers from first defendant in O.S.No.71/1986 become proper parties if at all their presence is necessary and not necessary parties. They do not derive a better title than their vendor, who could not have sold the property in violation of resolution passed by Board of Trustees.

7. Very importantly in the cause title of the memorandum of appeal in RFA 1132/2010 itself it is stated on behalf of the appellant/first defendant that defendants 5 and 6, i.e., the review petitioners are not made parties in the appeal since no relief is claimed against them. Therefore, if the appellant decided not to make them parties, it is not necessary for the Court to direct him to make the review petitioners as parties to the appeal. In both the suits, relief of possession was claimed. The review petitioners are not affected parties.

8. The learned counsel cites some authorities in support of his argument that the common judgment in

both the appeals needs to be reviewed. In the case of ***Rasiklal Manikchand Dhariwal and Another vs M.S.S.Food Products [(2012) 2 SCC 196]*** it is held as below :-

"In case the contentions raised by the appellants were not considered by the High Court, the proper course available to the appellants was to bring to the notice of the High Court this aspect by filing a review application. Such course was never adopted. In view of this, the appellants cannot be permitted to challenge the orders passed by the trial court on the interlocutory applications now and argue that the trial court erred in not adhering to the pre-trial procedures".

It appears that many interlocutory applications were filed during the proceedings in the suit. With regard to orders passed on those applications, there was no challenge when the appeal was filed before the High Court and that they were raised before the Hon'ble Supreme Court and in that context, the Supreme Court has held above. Therefore,

with great respect it is to be mentioned here that this ratio is not applicable.

8.1. In ***Board of Control for Cricket, India and Another vs Netaji Cricket Club and Others [AIR 2005 SC 592]*** it is held that review is maintainable not only upon discovery and important piece of evidence or when there exists error apparent on the face of the record but also if the same is necessitated on account of some mistake or any other sufficient reason. There cannot be a second word with this proposition of law, but I have given reasons as to why this review petition is not worth admission. The Division Bench judgment of this court in ***The Selection Committee for Admission to the Medical and Dental College, Bangalore vs M.P.Nagara [AIR 1972 MYSORE 44]*** is also not applicable for the same reason.

8.2. The High Court of Andhra Pradesh in ***Y.Venkannachowdary vs The Special Deputy Collector, Land Acquisition (General), Hyderabad***

District and Others [AIR 1981 AP 232] has held that review is maintainable if important provision of law was not brought to the notice of the court during hearing of appeal by mistake of counsel and this amounts to error apparent on the face of the record. Every point was argued at length when I heard arguments on the appeals. In fact the provisions of law which the learned counsel has referred to were canvassed and therefore I am of the opinion this judgment is not applicable.

8.3. Another judgment of the Hon'ble Supreme Court in ***Sudhir G Angur and others vs M.Sanjeev and others [AIR 2006 SC 351]*** was cited during arguments in the appeals and this authority has been referred to in my judgment.

9. Therefore, in view of the above discussion, I hold that there are no grounds to review the judgment in RFA 1132/2010 c/w RFA 1139/2010 on any of the reasons found in Order 47 Rule 1 CPC. This petition is dismissed.

I.A.1/2018 is consequently dismissed. I.A.2/2018 for stay is also dismissed.

**Sd/-
JUDGE**

ckl