HC-KAR
CNR: KAHC020061122025

NC: 2026:KHC-D:18575
RP No. 100031 of 2025
C/W RP No. 100032 of 2025

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 13TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE C.M. POONACHA

REVIEW PETITION NO. 100031 OF 2025

C/W

REVIEW PETITION NO. 100032 OF 2025

IN RP No. 100031/2025

BETWEEN:

BALAPPA
S/O BASAPPA PUJAR
SINCE DECEASED BY LRS

1. SMT KOKILA
   W/O RAMESHREDDY GODHIHAL
   AGE ABOUT 46 YEARS
   OCC HOUSEHOLD
   R/O KUSAGUR
   TQ RANEBENNUR
   DIST HAVERI 581208

2. SMT KAVITA
   W/O NINGAREEDDY GODIHAL
   AGE ABOUT 43 YEARS
   OCC HOUSEWIFE
   R/O KUSAGUR
   TQ RANEBENNUR
   DIST HAVERI 581208

3. SMT. ROHINI
   W/O SHIVAREDDY JANGAREDDY

AGE ABOUT 42 YEARS
OCC HOUSEWIFE
R/O MOTEBENNUR
TQ BYADAGI
DIST HAVERI 581 160

4. SMT SUNITA
W/O BALAPPA PUJAR
AGE ABOUT 67 YEARS
OCC HOUSEWIFE
R/O MOTEBENNUR
TQ BYADAGI
DIST HAVERI 581 160

5. SRI RAJENDRA
S/O BALAPPA PUJAR
AGE ABOUT 37 YEARS
OCC LECTURER
CURRENT R/O 10TH CROSS
VISHWABANDHU NAGAR
RANEBENNUR
DIST HAVERI 586110

...PETITIONERS

(BY SRI. S A SANDUR, ADVOCATE FOR
SRI. K L PATIL.,ADVOCATE)

AND:

BASAPPA
S/O CHANNAPPA KALAVEERAPPANAVAR
SINCE DECEASED BY LRS

SMT YALLAWWA
W/O BASAPPA KALAVEERAPPANAVAR
SINCE DECEASED BY LRS

1. SRI CHANDRAPPA S/O BASAPPA
KALAVEERAPPANVAR
AGE 36 YEARS

OCC COOLIE
R/O YANNIHOSALLI
TQ RANEBENNUR
DIST HAVERI 581 115

SRI SURESH
S/O BASAPPA KALAVEERAPPANAVAR
SINCE DECEASED BY LRS

2. SMT SUDHA
W/O SURESH KALAVEERAPPANAVAR
AGE 45 YEARS
OCC HOUSEHOLD
R/O TIRUMALADEVARAKOPPA
TQ RANEBENNUR
DIST HAVERI 581 115

3. VARSHINI
D/O SURESH KALAVEERAPPANVAR
AGE 22 YEARS
OCC HOUSEHOLD
R/O TIRUMALADEVARAKOPPA
TQ RANEBENNUR
DIST HAVERI 581 115

4. VIKAS
S/O SURESH KALAVEERAPPANAVAR
AGE 20 YEARS
OCC HOUSEHOLD
R/O TIRUMALADEVARAKOPPA
TQ RANEBENNUR
DIST HAVERI 581 115

5. SRI ASHOK
S/O BASAPPA KALAVEERAPPANVAR
AGE 29 YEARS
OCC COOLIE
R/O YANNIHOSALLI
TQ RANEBENNUR
DIST HAVERI 581 115

6. SUBHASH
S/O CHANNAPPA KALAVEERAPPANAVAR
AGE 58 YEARS
OCC AGRICULTURE
R/O YANNIHOSALLI
TQ RANEBENNUR
DIST HAVERI 581 115

…RESPONDENTS

(BY SMT. PALLAVI PACHHAPURE .,ADVOCATE FOR
SRI. F.V. PATIL, ADVOCATE FOR R1 TO R6)

THIS REVIEW PETITION IS FILED UNDER ORDER 47 RULE 1 OF CPC, PRAYING TO ALLOW THIS PETITION AND REVIEW JUDGMENT DATED 17.01.2025 PASSED BY THIS HONBLE COURT IN RSA NO. 2462/2006 PASSED BY THIS HONBLE COURT, IN THE INTEREST OF JUSTICE AND EQUITY.

IN RP NO. 100032/2025

BETWEEN:

BALAPPA
S/O BASAPPA PUJAR
SINCE DECEASED BY LRS

1. SMT KOKILA
W/O RAMESHREDDY GODIHAL
AGE ABOUT 46 YEARS
OCC HOUSEHOLD
R/O KUSAGUR
TQ RANEBENNUR
DIST HAVERI 581 208

2. SMT KAVITA
W/O NINGAREDDY GODIHAL
AGE ABOUT 43 YEARS

OCC HOUSEWIFE
R/O KUSAGUR
TQ RANEBENNUR
DIST HAVERI 581 208

3. SMT ROHINI
W/O SHIVAREDDY JANGAREDDY
AGE ABOUT 42 YEARS
OCC HOUSE WIFE
R/O MOTEBENNUR
TQ BYADAGI
DIST HAVERI 581 160

4. SMT SUNITA
W/O BALAPPA PUJAR
AGE ABOUT 67 YEARS
OCC HOUSEWIFE
R/O MOTEBENNUR
TQ BYADAGI
DIST HAVERI 581160

5. SRI RAJENDRA
S/O BALAPPA PUJAR
AGE 37 YEARS
OCC LECTURER
CURRENT R/O 10TH CROSS
VISHWABANDHU NAGAR
RANEBENNUR
DIST HAVERI 586110

...PETITIONERS

(BY SRI. S A SANDUR, ADVOCATE FOR
SRI. K L PATIL.,ADVOCATE)

AND:

BASAPPA
S/O CHANNAPPA KALAVEERAPPNAVAR
SINCE DECEASED BY LRS

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SINCE DECEASED BY LRS

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S/O BASAPPA KALAVEERAPPANAVAR
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...RESPONDENTS

(BY SMT. PALLAVI PACHHAPURE .,ADVOCATE FOR
SRI. F.V. PATIL, ADVOCATE FOR R1 TO R6)

THIS REVIEW PETITION IS FILED UNDER ORDER 47 RULE 1 OF CPC, PRAYING TO ALLOW THIS PETITION AND REVIEW JUDGMENT DATED 17.01.2025 PASSED BY THIS HONBLE COURT IN RSA NO.2460/2006 PASSED BY THIS HONBLE COURT, IN THE INTEREST OF JUSTICE AND EQUITY.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, ORDER WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. JUSTICE C.M. POONACHA

CAV ORDER

The present review petitions are filed seeking to review the judgment dated 17.01.2025 passed in RSA Nos.2462/2006 c/w 2460/2006.

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2. The relevant facts in a nutshell leading to the present review petitions are that, one Sri Channappa [1] was the owner of an extent of 4 acres 31 and ½ guntas of land in R.S No.34/2 at Ennehosahalli village, Ranebennur Taluk[2]. One Sri Balappa Basappa Pujar[3] entered into an Agreement of Sale on 21.07.1973[4] with the erstwhile owner, whereunder the owner agreed to sell the subject property for a total sale consideration of Rs.8,000/-. That an earnest money of Rs.2,500/- was paid on the date of the Agreement of Sale and the balance amount was agreed to be paid when the Sale Deed was to be registered. That the agreement holder was put in possession of the subject property on the date of the agreement itself. That the erstwhile owner received a further sum of Rs.2,000/- on 25.02.1974. That the erstwhile owner died on 11.06.1974 leaving behind two

[1] Hereinafter referred to as 'erstwhile owner'
[2] Hereinafter referred to as the 'subject property'
[3] Hereinafter referred to as the 'agreement holder'
[4] Hereinafter referred to as the 'said agreement'

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sons namely, Basappa and Subash[5]. That the present owners received a further sum of Rs.500/- on 20.07.1975. That since the present owners refused to execute the Sale Deed in terms of the said agreement, a legal notice dated 13.12.1996 was issued by the agreement holder. The present owners got issued a reply dated 19.12.1996. Thereafter, the agreement holder filed a suit for specific performance (OS No.60/1997[6]). In the meanwhile, the present owners filed a suit for declaration (OS No.162/1997[7]) contending that they are the absolute owners of the subject property and for cancellation of the revenue entries. It is the case of the present owners in the said suit that since the erstwhile owner was in financial difficulty, he entered into an Agreement of Sale dated 06.03.1972 with the agreement holder agreeing to sell the subject property for a total sale consideration of Rs.8,000/- and an advance of Rs.2,500/- was paid on the

[5] Hereinafter referred to as 'present owners'
[6] hereinafter referred to as 'suit for specific performance'
[7] hereinafter referred to as 'declaration suit'

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date of the said agreement. That the sale transaction was to be completed within two years from the date of the said agreement. That since the sale transaction was not completed, the present owners filed the suit for declaration. That the said agreement executed by the erstwhile owner was null and void as also that the present owners are the absolute owners of the suit property. Both the suits were clubbed together. The Trial Court vide the judgment dated 28.01.2003 decreed the suit for specific performance and dismissed the suit for declaration. It is pertinent to notice the operative portion of the judgment passed by the Trial Court, which reads as under:

> *"The suit of the plaintiff is in O.S No.60/97 decreed with cost. Hereby directed to defendant no.1 and 2 to execute the sale-deed in favour of plaintiff after receiving the balance sale consideration of Rs.3,000/- within 4 months of this order. Otherwise to refund the earnest money of Rs.5,000/- with interest at the rate of 24% per annum from the date of agreement in the alternative. The suit in O.S No.162/96 is hereby dismissed.*
>
> *Draw decree accordingly. Copy of the judgment kept in O.S.No.162/96".*

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3. Being aggrieved, the agreement holder preferred RA.No.27/2003 challenging the judgment and decree passed in the suit for specific performance (OS No.60/1997) insofar as the Trial Court directed refund of earnest money with interest. RA No.24/2003 was filed by the present owners challenging the judgment and decree passed in the suit for specific performance (OS No.60/1997). RA No.25/2003 was filed by the present owners challenging the dismissal of the suit for declaration (OS No.162/1996). The First Appellate Court disposed of the said first appeals by its judgment dated 22.06.2006, whereunder RA No.27/2003 filed by the agreement holder was allowed and the appeals (RA Nos.24 and 25/2003) filed by the present owners were dismissed. The First Appellate Court set aside the portion of the Trial Court judgment, which ordered for refund of the security deposit amount.

4. Being aggrieved by the dismissal of RA No.24/2003, the present owners preferred RSA

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No.2460/2006; and being aggrieved by the dismissal of RA No.25/2003, the present owners preferred RSA No.2462/2006. The said appeals were allowed vide judgment dated 17.01.2025 (under review), wherein it was ordered as under:

"ORDER

i. The above appeals are allowed;

ii. The judgment dated 22.06.2006 passed in RA.No.27/2003 (clubbed with RA.Nos.24/2003 and 25/2003) by the Civil Judge (Senior Division) and Principal JMFC, Ranebennur is set aside;

iii. The judgment and decree date 28.01.2003 passed in OS.Nos.60/1997 and 162/1996 by the Principal Civil Judge (Junior Division) and I Additional JMFC, Ranebennur, is set aside;

iv. The suit in OS.No.60/1997 on the file of the Principal Civil Judge (Junior Division) and I Additional JMFC, Ranebennur, is partly decreed with costs by directing the defendants therein to refund to the plaintiffs therein the advance amount of Rs.5,000/- together with interest at 12% p.a, from the date of suit till date of payment. A further direction is issued to the plaintiff in the said suit to handover possession of the suit property to the defendants in the said suit;

v. The suit in OS.No.162/1996 on the file of the Principal Civil Judge (Junior Division) and I Additional JMFC, Ranebennur, is decreed with costs as follows:

a. The plaintiffs in the said suit are declared to be absolute owners of the suit property.

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> *b. A direction is issued to the revenue authorities to enter the names of the plaintiffs in the said suit in the revenue records pertaining to the suit property."*

5. At this juncture, it is pertinent to note that the judgment and decree passed in RA No.27/2003 whereunder, the judgment of the Trial Court, which ordered for refund of the security deposit amount was set aside, has not been challenged by filing a regular second appeal.

6. Vide the judgment under review, this Court allowed the appeals filed by the present owners; set aside the judgment and decree passed by the Trial Court in the suit for specific performance as well as the judgment and decree passed by the First Appellate Court in that regard; partly decreed the suit filed by the agreement holders for specific performance (O.S.No.60/1997) by ordering for refund of the advance amount together with interest; and decreed the suit (O.S.No.162/1996) filed by the present

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owners and declared that the present owners were the absolute owners of the suit property.

7. The present review petitions are filed by the agreement holder primarily urging four grounds: First, that after filing of the second appeals they were dismissed for non-prosecution, consequent to which, the agreement holder initiated execution proceedings in E.P.No.27/2006 and in the said execution proceedings, a Sale Deed dated 29.07.2022 has been executed through the Court commissioner conveying the suit property absolutely in favour of the agreement holder. That the said execution proceedings having attained finality, the said aspect of the matter ought to have been considered by this Court while ordering for specific performance.

8. Secondly, that the First Appellate Court by its judgment and decree dated 22.06.2006 had disposed of three appeals (R.A.Nos.27/2003 filed by the agreement holder; as well as R.A.Nos.24 and 25 of 2003 filed by the present

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owners). However, the present owners preferred two second appeals (RSA Nos.2460/2006 and 2462/2006), and no appeal was filed impugning the judgment of the First Appellate Court passed in R.A.No.27/2003. That the First Appellate Court, having allowed R.A.No.27/2003 and having set aside the findings recorded by the Trial Court on Issue No.6 with regard to refund of the advance amount, the said finding operates as *res judicata* against the present owners in the second appeals preferred by them.

9. Thirdly, that the legal representatives of the present owners, i.e., appellant No.1(a) – Smt. Yallawwa W/o. Basappa Kalaveerappanava and appellant No.1(c) – Sri. Suresh S/o. Basappa Kalaveerappanavar passed away on 16.01.2011 and 27.09.2014 respectively. The legal representatives of the said deceased appellants No.1(a) and 1(c) were not brought on record. The same tantamounts to a material irregularity in the second appeals filed by the present owners.

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10. Fourthly, that the agreement holder was put in possession of the suit property and the present owners in the suit for declaration filed by them did not seek for possession of the suit property. Hence, this Court ought to have considered this aspect of the matter while exercising discretion and ordering for the specific performance. Hence, it is contended that this Court ought not to have ordered for specific performance of the agreement of sale as well as for possession of the suit property to be handed over, which is an error apparent on the face of the record.

11. The learned counsel for the review petitioners elaborating on the aforementioned contentions put forth on behalf of the review petitioners has also relied on various judgments in support of the said contentions.

12. Opposing the review petitioners, the learned counsel for the respondents contends that, although the decree, which was the subject matter of challenge in the second appeals, had been executed during the pendency of

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the second appeals, and the sale deed has been executed in the course of execution proceedings, the same is subject to the outcome of the said second appeals. That merely since the decree under challenge has been executed, the said fact will not render the second appeals infructuous. That any action done in the course of the execution proceedings is subject to the outcome of the second appeals.

13. With regard to the contention that the purchaser has already been put in possession of the suit property, and there was no relief of possession that was sought for in the suit, it is contended that the said aspect of the matter has been considered by this Court while adjudicating upon the second appeals filed by the respondents and the said aspect is not liable to be reviewed.

14. With regard to the contention that no second appeal has been filed assailing the allowing of R.A.No.27/2003, it is contented that the said R.A.No.27/2003 was filed challenging a portion of the

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judgment of the Trial Court regarding the finding on Issue No.6 and the entire judgment and decree in the suit was not under challenge in R.A.No.27/2003. That while allowing of R.A.No.27/2003, only the relief of refund of deposit money was set aside, which aspect was not challenged by the present owners in the second appeals, since the entire decree in O.S.No.60/1997 was challenged vide RA.Nos.24 of 2003. That the finding of the Trial Court on Issue No.6, consequent to which, the Trial Court had ordered for refund of the deposit amount along with the decree for specific performance has been assailed by the agreement holders. That the entire decree passed in O.S.No.60/1997 having been assailed in RA No. 24 of 2003 and thereafter in RSA No.2460 of 2006, the question of assailing a portion of the decree does not arise, since the decision of the First Appellate Court in all the first appeals merges with one another. It is specifically contented that since the entire decree in O.S.No.60/1997 having been challenged (in RA No. 24 of 2003 and thereafter in RSA No.2460/2006), the

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question of filing another second appeal assailing the allowing of RA No. 27 Of 2003 , which set aside of only a portion of the decree in O.S.No.60/1997 does not arise.

15. With regard to the contention of the review petitioners that appellant Nos.1(a) (Smt. Yallava) and 1(c) (Sri. Suresh) died on 16.01.2011 and 27.09.2014, it is contented that appellant No.1(a) (Smt. Yallava) is the mother of the remaining appellants and her children are already being on record as appellant Nos. 1(b) (Sri. Chandrappa) to 1(d) (Sri. Ashok), and she was adequately represented by the other appellants. With regard to appellant No.1(c) (Sri. Suresh), it was contented that the brothers of appellant No.1(c) were already on record as appellant Nos.1(b) (Sri. Chandrappa) and 1(d) (Sri. Ashok). Hence, the estate of appellant No.1(a) and 1(c) were adequately represented in the appeals. Further it is contented that appellant No.2 is the paternal uncle of appellant Nos.1(b) and 1(d) and that there was no partition amongst the said family members. Hence, it is

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contented that the question of abatement of the appeals does not arise.

16. Learned counsel for the respondents has also elaborated on the contentions put forth in opposition to the review petitions and also relies upon various judgments.

17. The submissions made by both the learned counsels have been considered and the material on record have been perused.

18. Although various judgments have been cited by both the learned counsels, reference will be made to the said judgments which are necessary for adjudication of the questions that arise for consideration of the present appeals.

19. With regard to the contention of the review petitioners that Appellant no. 1(a) (Smt. Yallavva) and 1(c) (Sri.Suresh) in the second appeal (RSA No.

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2462/2006) had passed away on 16.01.2011 and 27.09.2014 respectively and that their legal representatives were not brought on record, it is pertinent to note here that appellant number 1(a) (Smt. Yallavva) was the mother of appellant No.1(b) - (Sri. Chandrappa), 1(c) - (Sri. Suresh) & 1(d) - (Sri. Ashok). Hence her children were already on record**.** Further Appellant No. 1(b) (Sri. Chandrappa) and Appellant No. 1(d) (Sri. Ashok) were the brothers of the deceased appellant No. 1(c) (Sri. Suresh). The appellant No. 1(b) and 1(d) were already on record and they were represented by counsel. Further it is to be noted that appellant No.2 (Sri. Subhash) was the paternal uncle of appellant Nos. 1(c) and 1(d). Hence, it cannot be stated that the estate of the said deceased appellant No. 1(a) (Smt. Yallavva) and appellant No. 1(c) (Sri. Suresh) were not represented by their respective legal heirs/representatives.

20. With regard to the contention of the review petitioner that RA No.27 of 2003 was not challenged and

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hence the findings recorded while allowing RA No 27 of 2003 would operate as *res judicata*, as noticed while appreciating the factual matrix herein above, RA No. 27 of 2003 was filed by the Agreement Holder, assailing the portion of the judgment and decree passed by the trial Court, whereunder refund of earnest money of Rs.5,000/- with interest at 24% per annum from date of the agreement was ordered. In this context it is pertinent to notice that the Trial Court while decreeing the suit for specific performance [O.S. No. 60 of 1997] directed the defendants No.1 and 2 to execute the sale deed in favour of the plaintiff after receiving the balance sale consideration of Rs.3,000 within 4 months from the date of the judgment. It further ordered that in the event the balance sale consideration was not deposited, refund of the earnest money of Rs.5,000 with interest at 24% was ordered. The agreement holder filed RA No. 27 of 2003 before the first appellate court assailing the portion of the

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Trial Court judgment which ordered for refund of the earnest money.

21. It is pertinent to note that the owners had preferred RA No. 24/2003, assailing the decreeing of the suit for specific performance i.e. O.S No. 60 of 1997. Further the owners had also filed RA No. 25 of 2003, assailing the dismissal of the suit for declaration i.e., OS No. O.S No. 60 of 1997. The First Appellate court, vide its judgment dated 22.06.2006, allowed RA No. 27 of 2003 and dismissed RA No. 24 and 25 of 2003. Accordingly the first Appellate Court set aside the portion of the Trial court judgment which ordered for refund of the deposit amount. The owners filed RSA No. 2460 of 2006 challenging the dismissal of RA No. 24 of 2003. Hence the entire decree passed in the suit for specific performance, was assailed by the owners in RA No.24 of 2003 and thereafter in RSA No. 2460 of 2006.

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22. While considering the aspect whether the findings recorded by the first appellate court while allowing RA No. 27 of 2003 would operate as *res judicata* since the same was not challenged, learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of ***Gangai Vinayagar Temple V.s Meenakshi Ammal***[8], whereunder, the Hon'ble Supreme Court has held as under:

> *"27. Procedural norms, technicalities and processual law evolve after years of empirical experience, and to ignore them or give them short shrift inevitably defeats justice. Where a common judgment has been delivered in cases in which consolidation orders have specifically been passed, we think it irresistible that the filing of a single appeal leads to the entire dispute becoming sub judice once again. Consolidation orders are passed by virtue of the bestowal of inherent powers on the courts by Section 151 CPC, as clarified by this Court in Chitivalasa Jute Mills v. Jaypee Rewa Cement [(2004) 3 SCC 85] . In the instance of suits in which common issues have been framed and a common trial has been conducted, the losing party must file appeals in respect of all adverse decrees founded even on partially adverse or contrary speaking judgments. While so opining we do not intend to whittle down the principle that the appeals are not expected to be filed against every inconvenient or disagreeable or unpropitious or unfavourable finding or observation contained in a judgment, but that this can be done by way of cross-objections if the occasion arises. The decree not assailed thereupon metamorphoses into the character*

[8] AIR Online 2014 SC 174

of a "former suit". If this is not to be so viewed, it would be possible to set at naught a decree passed in Suit A by only challenging the decree in Suit B. Law considers it an anathema to allow a party to achieve a result indirectly when it has deliberately or negligently failed to directly initiate proceedings towards this purpose. Laws of procedure have picturesquely been referred to as handmaidens to justice, but this does not mean that they can be wantonly ignored because, if so done, a miscarriage of justice inevitably and inexorably ensues. The statutory law and the processual law are two sides of the judicial drachma, each being the obverse of the other. In the case in hand, had the tenant diligently filed an appeal against the decree at least in respect of OS No. 5 of 1978, the legal conundrum that has manifested itself and exhausted so much judicial time, would not have arisen at all."

23. However, it is to be noticed that RA.No.27/2003 was filed by the agreement holder before the First Appellate Court assailing the portion of the Trial Court in the suit for specific performance for refund of the earnest money.

24. In this context, it is pertinent to note that the Trial Court decreed the suit for specific performance filed by the agreement holder and directed defendant Nos.1 and 2 in the said suit to execute the sale deed in favour of the plaintiff (agreement holder) after receiving the balance

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consideration of Rs.3,000/- within four months. It is further ordered that in the event the balance sale consideration was not deposited refund of earnest money of Rs.5,000/- was to be made with interest at 24%. The owners preferred RA.No.24/2003 assailing the entire decree passed in OS.No.60/1997 (suit for specific performance). The owners had also preferred RA.No.25/2003 assailing the judgment and decree passed in OS.No.160/1997 (suit for declaration). RA.Nos.24/2003 and 25/2003 having been dismissed, the owners preferred RSA.No.2460/2006 and RSA.No.2462/2006 respectively. The First Appellate Court had also allowed RA.No.27/2003. However, no second appeal was filed assailing RA.No.27/2003.

25. Learned counsel for the respondents is justified in contending that RA.No.27/2003 was filed by the agreement holder assailing only the portion of the Trial Court judgment in the suit for specific performance which

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ordered for refund of the earnest money and that the entire judgment and decree passed in the suit for specific performance was assailed by the owners in RA.No.24/2003, the dismissal of which was assailed in RSA.No.2460/2006. Accordingly, the contention of the review petitioners that the owners not having assailed RA.No.27/2003, the reliefs sought for in the second appeals (RSA.Nos.2460 and 2462/2006) ought not to be granted, cannot be accepted. The present fact situation is not one, wherein a decree passed by the Trial Court has not been assailed by the owners. The owners having assailed the decree in the suit for specific performance in RA.No.24/2003 and the dismissal of the said RA.No.24/2003 having been assailed in RSA.No.2460/2006, the contention put forth on behalf of the review petitioners in this regard cannot be accepted.

26. With regard to the contention of the review petitioners that the Decree for specific performance passed by the Trial Court, which was, as modified by the First

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Appellate Court, has been executed during the pendency of the second appeals before this Court, it is pertinent to note, that the aspect that the decree has already been executed and the sale deed has been registered in favour of the agreement holder through the Court Commissioner was brought on record during the pendency of the second appeals. The said aspect alone would not render the second appeal infructuous and the outcome of the execution proceedings would be subject to the result of the second appeals.

27. In this context, it is pertinent to notice a Co-ordinate bench judgment of this Court in the case of ***Sanjeevama and others v. G. Krishna***[9] and others, relied upon by the petitioner wherein it reads as under:

> *"6. When the matter was taken up for hearing, a submission was made by the counsel for the respondents/plaintiffs stating that decree granted by the Trial Court in favour of the plaintiffs has been executed by the plaintiffs and he submitted that the appeal has become in fructuous. Therefore, he requested the Court to dismiss the appeal as having become infructuous. Based on the above said submission, Appellate Court*

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dismissed the appeal as well as the application filed by the appellant under Order-41 Rule-27 of CPC. Being aggrieved by the concurrent findings of both the Courts below, present appeal is filed by the defendants.

9. The facts of this case are not in dispute. It is not in dispute that after granting a decree by the Trial Court, respondents by filing an execution have removed the construction put up by the appellants/defendants on MNOP portion. It is no doubt true that the decree has been executed, but the question is whether the appellate Court on the said ground can dismiss the appeal of the appellants, without considering the case of the appellants on merits. Appellate Court without considering the provisions of Section 144 of CPC has disposed of the appeal. If the Appellate Court on merits had come to the conclusion that the judgment and decree granted by the Trial Court shall require to be set aside, in such an event, Appellate Court had every power to allow the appeal and dismiss the suit of the plaintiffs by reversing the judgment and decree of the Trial Court. In such an event, appellants were entitled to invoke the provisions of Section 144 of CPC and request the Court for restitution. But in the instant case, Appellate Court, without considering the provisions of Section 144 of CPC and the case of the appellants on merit, has dismissed the appeal as having become infructuous. Therefore, this Court is of the opinion that the procedure followed by the Appellate Court as bad in law and requires to be set aside."

28. It is also pertinent to notice Section 144 of the CPC, which reads as under:

"144. Application for restitution? (1) Where and in so far as a decree or an order is [102][varied or reversed in any appeal, revision or other proceedings or is set aside or modified in any suit instituted for the purpose the Court which passed the decree or order] shall, on the application of any party entitled to any benefit by way of

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restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or [103][such part thereof as has been varied, reversed, set aside or modified], and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly [104][consequential on such variation, reversal, setting aside or modification of the decree or order.]

Explanation.-For the purposes of sub-section (1) the expression "Court which passed the decree or order" shall be deemed to include,-

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute, it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)."

29. It is clear from the aforementioned legal position that even if the Decree which was the subject matter of an appeal had been executed, Section 144 of the CPC provides for restitution. Having regard to the settled

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legal position as noticed above, merely since the decree for specific performance has been executed and the sale deed has been registered in favour of the agreement holder, the said aspect alone, would not in any manner interdict this Court from adjudicating upon the second appeals. Accordingly the contention of the review petitioner in this regard is to be rejected.

30. With regard to the contention of the review petitioner that he was already in possession of the property and the said aspect of the matter ought to have been considered while adjudicating upon the aspect of specific performance, it is pertinent to note that the said aspect of the agreement holder being in possession of the suit property was considered by this Court while adjudicating the second appeals. In this context it is relevant to notice the substantial question of law which was framed. The same is extracted hereunder for ready reference:

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> *"Whether the Courts below was justified in decreeing the suit for specific performance when admittedly the agreement dated 21.07.1973 and the suit was filed 14 years after the said agreement?"*

31. Subsequently, this Court after answering the substantial questions of law dated 31.01.2007 in RSA No. 2460 of 2006 and 10.06.2008 in RSA NO. 2462 of 2006 respectively, framed a further substantial question of law. The relevant portion of the said aspect of the matter from the judgment under review reads as under:

> *"If the substantial question of law dated 31.01.2007 and 10.08.2008 are answered in the negative, whether any further order is required to be passed with regard to the relief claimed by the owners in OS No.162/1997 and with regard to possession of suit schedule property?"*

32. While considering, the further substantial question of law which was with regard to the relief claimed by the owners in OS.No.162/1997 and with regard to the possession of suit property, this Court ordered as under:

> *"42. While considering the aspect of refund it is relevant to note at this juncture that the agreement holder has enjoyed the usufructs of the suit property that has been in his possession from the year 1975 without paying the entire sale consideration or completing the sale*

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transaction under the agreements dated 06.03.1972/21.07.1973. The rights of the parties under the agreements dated 06.03.1972 /21.07.1973, having been adjudicated upon in the present appeals and the agreement holder admittedly having come into possession of the suit property by virtue of the original deceased owner executing the agreements of sale in his favour, all rights of the parties having adjudicated upon, it is just and proper that since this Court has recorded a finding that the agreement holder is not entitled to specific performance of the suit property, appropriate orders be passed ordering for redelivery of possession of the property to the present owners and declaration of title of the present owners.

43. Having regard to the factual matrix and legal position, as noticed above, the substantial question of law dated 31.1.2007 and 10.6.2008 framed for consideration are answered in the Negative and the substantial question of law framed at para 36 of this judgment is answered in the Affirmative. Further, the land owners are required to refund the amounts received by them together with interest @ 12% per annum and the agreement holder is required to return the possession of the said property to the present owners."

(emphasis supplied)

33. Having regard to the fact that the aspect of possession was already considered by this Court vide judgment dated 17.01.2025 (under review), the said contention cannot be re-agitated in the present review petition, since any adjudication of the aspect of possession in the present review petition would tantamount to re-agitating the question that was decided in the second appeals which has been decided by judgments dated 17.01.2025 (under review).

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34. Accordingly, the review petitions are ***dismissed*** as being devoid of merits.

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(C.M. POONACHA)
JUDGE

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