



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31st DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

REVIEW PETITION NO.399 OF 2025

BETWEEN:

1. SHRI. JAI PRAKASH REDDY
S/O. LATE N.A. RAMAKRISHNA REDDY,
AGED ABOUT 64 YEARS,
R/AT. NO.90, DODDANEKUNDI VILLAGE
AND POST, BENGALURU - 560 037.
2. SHRI. RAJAREDDY,
S/O. SHRI. PAPAIAH,
AGED ABOUT 61 YEARS,
R/AT. NO.71/1, 3RD MAIN,
SRI. CHOWDESHWARI LAYOUT,
MARATHAHALLI, BENGALURU-560 037.
3. SHRI. B. A. BASAVARAJA,
S/O LATE ANJINAPPA,
AGED ABOUT 61 YEARS,
R/AT. NO.6, SRI RAMA NILAYA,
BYRATHI, SRK NAGAR POST,
BANGALORE - 560 077.

...PETITIONERS

(BY SRI. PRAKASH TIMMANNA HEBBAR, ADVOCATE)

AND:

1. SMT. PRABHAVATHI
D/O. LATE P. BALAPPA REDDY,
W/O. ANJINAPPA,
AGED ABOUT 72 YEARS,





R/AT. NO.19/2,
BEHIND MAHILA SANGHA,
KYALASANAHALLI VILLAGE,
KOTHANUR POST, BENGALURU - 77.

2. SHRI. KRISHNA REDDY,
AGED ABOUT 68 YEARS,
S/O. LATE P. BALAPPA REDDY,
RESIDING AT NO.154/1,
BALAPPA COMPOUND,
7TH MAIN, 80 FEET ROAD,
SUBBAIAHNA PALYA EXTENSION,
BENGALURU - 560 033.
3. SHRI. JAYASHANKAR,
S/O. LATE P. BALAPPA REDDY,
AGED ABOUT 60 YEARS,
RESIDING AT NO.154/1,
BALAPPA COMPOUND,
7TH MAIN, 80 FEET ROAD,
SUBBAIAHNA PALYA EXTENSION,
BENGALURU - 560 033.
4. SHRI. RAMANJIJAPPA,
S/O. LATE P. BALAPPA REDDY,
AGED ABOUT 60 YEARS,
RESIDING AT NO.154/1,
BALAPPA COMPOUND,
7TH MAIN, 80 FEET ROAD,
SUBBAIAHNA PALYA EXTENSION,
BENGALURU - 560 033.
5. SMT. NANDAKUMARI,
D/O. LATE P. BALAPPA REDDY,
W/O. RAJAGOPAL REDDY,
AGED ABOUT 55 YEARS,
R/AT. NO.2004/2003,
VIVEKANDANAGARA,
NEAR J.P. PUBLIC SCHOOL,
BANGARPET TALUK, KOLAR - 563 114.



6. SMT. PUSHPAVATHI,
D/O. LATE P. BALAPPA REDDY,
W/O. NARAYANASWAMY,
AGED ABOUT 53 YEARS,
R/AT. NO.158,
OMBATTHUGULI VILLAGE,
KARAMANGALA POST,
BANGARPET TALUK,
KOLAR-563 114.
7. SMT. CHANDRAKALA,
D/O. LATE P. BALAPPA REDDY,
AGED ABOUT 51 YEARS,
RESIDING AT NO.154/1,
BALAPPA COMPOUND,
7TH MAIN, 80 FEET ROAD,
SUBBAIAHNA PALYA EXTENSION,
BENGALURU - 560 033.
8. SHRI. GURURAJ,
D/O. LATE P. BALAPPA REDDY,
AGED ABOUT 51 YEARS,
RESIDING AT NO.154/1,
BALAPPA COMPOUND,
7TH MAIN, 80 FEET ROAD,
SUBBAIAHNA PALYA EXTENSION,
BENGALURU - 560 033.
9. SHRI. GURURAJ,
D/O. LATE P. BALAPPA REDDY,
AGED ABOUT 51 YEARS,
RESIDING AT NO.154/1,
BALAPPA COMPOUND,
7TH MAIN, 80 FEET ROAD,
SUBBAIAHNA PALYA EXTENSION,
BENGALURU - 560 033.
10. SHRI. MANJUNATH,
S/O. LATE P. BALAPPA REDDY,
AGED ABOUT 51 YEARS,



RESIDING AT NO.154/1,
BALAPPA COMPOUND,
7TH MAIN, 80 FEET ROAD,
SUBBAIAHNA PALYA EXTENSION,
BENGALURU - 560 033.

11. SMT. THIPPPAMMA
SINCE DEAD BY HER LRS
SMT. AMITHA REDDY,
D/O. LATE THIPPAMMA
AND CHIKKAYELLAPPA,
AGED ABOUT 70 YEARS,
R/AT. NO.88,
RAMASWAMPALYA,
BANASWADI MAIN ROAD,
BENGALURU-560 033.
12. SMT. PARVATHI,
D/O. LATE NARAYANAPPA,
AGED ABOUT 74 YEARS,
ARE R/AT. CHIKKABANASWADI,
BANASWADI POST,
BENGALURU-560 033.
13. SHRI. PRAKASH,
S/O. LATE NARAYANAPPA,
AGED ABOUT 72 YEARS,
ARE R/AT. CHIKKABANASWADI,
BANASWADI POST,
BENGALURU-560 033.
14. SHRI. KANNA
S/O. LATE NARAYANAPPA,
AGED ABOUT 70 YEARS,
ARE R/AT. CHIKKABANASWADI,
BANASWADI POST,
BENGALURU-560 033.
15. SHRI. CHANDRU,
S/O. LATE NARAYANAPPA,
AGED ABOUT 68 YEARS,



ARE R/AT. CHIKKABANASWADI,
BANASWADI POST,
BENGALURU-560 033.

16. SHRI. VASU,
S/O. LATE NARAYANAPPA,
AGED ABOUT 66 YEARS,
ARE R/AT. CHIKKABANASWADI,
BANASWADI POST,
BENGALURU-560 033.
17. SMT. SARASWATHI,
S/O. LATE NARAYANAPPA,
AGED ABOUT 64 YEARS,
ARE R/AT CHIKKABANASWADI,
BANASWADI POST,
BENGALURU-560 033.
18. SMT. HEMALATHA,
W/O. LATE S. RAGHU,
AGED ABOUT 52 YEARS,
R/AT NO.1/81,
SIDDARAMAPPA GARDEN,
LINGARAJAPURAM,
BENGALURU – 560 084
19. SMT. R. SHALINI,
D/O. LATE S. RAGHU,
AGED ABOUT 52 YEARS,
R/AT NO.1/81,
SIDDARAMAPPA GARDEN,
LINGARAJAPURAM,
BENGALURU – 560 084
20. SHRI. R. SOMASHEKAR,
S/O. LATE S. RAGHU,
AGED ABOUT 49 YEARS,
R/AT NO.1/81,
SIDDARAMAPPA GARDEN,
LINGARAJAPURAM,
BENGALURU – 560 084



21. SMT. R. RAJALAKSHMI,
D/O. LATE S. RAGHU,
AGED ABOUT 48 YEARS,
R/AT NO.1/81 SIDDARAMAPPA GARDEN,
LINGARAJAPURAM,
BENGALURU – 560 084
22. SHRI. VENKATESH B.,
S/O. LATE BUDDA REDDY,
AGED ABOUT 61 YEARS,
R/AT NO.1/81 SIDDARAMAPPA GARDEN,
LINGARAJAPURAM,
BENGALURU – 560 084

...RESPONDENTS

(BY SRI. NANDA KISHORE, ADVOCATE)

THIS RP FILED UNDER ORDER 47 RULE 1 R/W SEC. 114 OF CPC, PRAYING TO ALLOW THIS REVIEW PETITION AND REVIEW THE JUDGMENT DATED 11.08.2025 PASSED BY THIS HONBLE COURT IN MISCELLANEOUS FIRST APPEAL NO.1336/2025. THE ABOVE APPEAL CAME UP FOR PRONOUNCEMENT ON 11.08.2025 BEFORE THE HONBLE MR. JUSTICE RAMACHANDRA D. HUDDAR THE APPEAL WAS ALLOWED IN TIME CF SUFFICIENT.

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



CAV ORDER

The review petitioners are defendant Nos.9 and 10 in O.S.No.1168/2004, appellants in R.A.No.98/2020 and impleading applicant as respondent No.15 in MFA No.1336/2025 have filed this review petition under Order XLVII Rule 1 r/w Section 114 of CPC praying to review the order passed in MFA No.1336/2025 dated 11.08.2025 passed by this Court.

2. One Peddanna is the original propositus and he had five children namely, Lakshmi Bai, Gurramma, Thippamma, Narayanappa and Balappa Reddy and among them, it is stated that Lakshmi Bai died unmarried. Thippamma had filed the suit for partition in O.S.No.1168/2004, which is dismissed. Thereafter, R.A.No.98/2020 came to be filed, which is pending before the First Appellate Court. In R.A.No.98/2020, the appellant - Balappa Reddy has filed an application for temporary injunction by invoking the provision under Order XXXIX Rules 1 and 2 of CPC, but the same is



dismissed by the order dated 19.12.2024. Being aggrieved by dismissal of the said application, his legal heirs have filed MFA No.1336/2025 praying for an interim order of injunction. This Court on 11.08.2025 has allowed the said MFA No.1336/2025 and granted an order of temporary injunction restraining the defendant Nos.9 and 10 in O.S.No.1168/2004 and appellants R.A.No.98/2020 from interfering with the possession of suit schedule properties and damaging any structure including the tomb of Smt. Guramma till the final disposal of R.A.No.98/2020. Being aggrieved by allowing MFA No.1336/2024 and granting an order of temporary injunction, the present review petition is filed on the ground that certain observations made by this Court in the said MFA are error apparent on the face of the record. Therefore, prays to review the order and modify the order passed in MFA No.1336/2024.

3. The daughter of Peddanna namely, Thippamma has filed the suit for partition and separate possession



against the husband of defendant i.e., late Narayanappa. It is stated that Pedanna during his lifetime has acquired ancestral properties, which is land bearing Sy.No.12 to the extent of 8 acre 16 guntas for sale consideration through registered sale deed dated 02.10.1952. After acquiring the same he was cultivating the suit schedule properties and after his death, the husband of defendant No.1 namely, Narayanappa and defendant No.2 namely, Balappa Reddy are cultivating the said land jointly. Therefore, filed the suit for partition and separate possession in the suit schedule properties and the said suit O.S.No.1168/2004 is dismissed.

4. The plaintiff - Thippamma has not preferred any appeal against the dismissal of suit, but the daughter of Balappa Reddy has preferred an appeal in R.A.No.98/2020 before the first appellate court, which is pending for consideration. In the said R.A.No.98/2020 the appellant, who is daughter of Balappa Reddy has filed an interlocutory application under Order XXXIX Rules 1 and 2



of CPC, which also came to be dismissed. Against which, MFA No.1336/2025 was filed and is allowed by granting an order of temporary injunction.

SUBMISSION OF COUNSEL FOR REVIEW PETITIONERS:

5. Learned counsel for the review petitioner - Sri.Prakash T. Hebbar submitted that Peddanna had purchased 8 acre 18 guntas of land in Sy.No.12 (new No.85) of Kyasanahalli Village under registered sale deed dated 02.10.1952. Thereafter there was partition between Peddanna, Narayanappa and Balappa Reddy and according to the said partition Narayanappa continued in exclusive possession of 4 acre 9 guntas (northern portion) and Balappa Reddy has obtained 4 acre 9 guntas (southern portion). On 28.06.1973 Balappa Reddy executed a registered release deed relinquishing all his rights in the said property by accepting the other properties and severed from Hindu Undivided Family. Peddanna died in the year 1978. It was the contention of Balappa Reddy that his father Peddanna had executed a Will bequeathing



southern portion of the property of 4 acre 9 guntas in his favour and therefore, filed the suit O.S.No.1167/1982 for declaration and injunction based on the Will, but said suit came to be dismissed for default. Miscellaneous No.490/1985 was filed for restoration of O.S.No.1167/1982, but the same was also dismissed. Again the said Balappa Reddy has filed O.S.No.590/1988 for declaration and injunction based on the Will dated 11.07.1974, but said suit was dismissed on 04.04.2000 as the Will is not proved.

6. The Assistant Commissioner on 21.10.1982 allowed Narayanappa's appeal initiated under Section 136(2) of the Karnataka Land Revenue Act, 1964 and set aside the mutation, which was in the name of Balappa Reddy and restored the entries in Narayanappa's name. Thereafter, Thippamma, the daughter of Peddanna has filed O.S.No.1168/2004 seeking partition and separate possession over the land measuring 8 acre 18 guntas, but said suit is dismissed. Against dismissal of



O.S.No.590/1988, (above stated) Balappa Reddy has filed RFA No.509/2000, which is also dismissed.

7. Legal heirs of Narayanappa executed two registered sale deeds in favour of review petitioners (4 acre 9 guntas) and the review petitioners took possession and mutations were made in their names. Against dismissal of RFA No.509/2000, Balappa Reddy has filed Review Petition No.39/2005 and this Court held the finding that Will is not proved, is sound and proper and has upheld the said decision but gave liberty to seek share in O.S.No.1168/2004, which is filed by his sister Thippamma. Also Balappa Reddy filed O.S.No.1452/2009 for declaration based on unregistered Panchayat Parikhat, which is also dismissed. Against which, RFA No.1795/2015 is pending.

8. O.S.No.1168/2004 came to be dismissed on merits on 25.10.2019, against which R.A.No.98/2020 is filed by Balappa Reddy and during the pendency of the appeal he died. Therefore, his legal heirs have continued



the said appeal and also filed an application under Order XXXIX Rules 1 and 2 CPC seeking for temporary injunction, but same is dismissed. Against which, MFA No.1336/2025 is filed and this Court by order dated 11.08.2025 has allowed the said MFA and granted an order of temporary injunction by raising various grounds that the order suffers error apparent on the face of the record.

9. Learned counsel for the review petitioner submitted that on 02.10.1952 Peddanna had purchased land to the extent of 8 acre 18 guntas through registered sale deed and thereafter it was divided between Narayanappa and Balappa Reddy and Narayanappa obtained 4 acre 9 guntas and Balappa Reddy had got 4 acre 9 guntas. Thereafter on 26.06.1992 Balappa Reddy executed registered relinquishment deed relinquishing all his rights in favour of Peddanna (father) and Narayanappa. Therefore, Balappa Reddy has relinquished all his shares by accepting other properties, which was a



family arrangement. Further submitted that Balappa Reddy has filed a suit for declaration and injunction in O.S.No.1167/1982 based on the Will by contending that Peddanna had executed a Will and bequeathed the property, but said suit is dismissed for default. Against which, Miscellaneous No.490/1985 filed for restoration of said suit, is also dismissed. Therefore, submitted that claim of Balappa Reddy based on the Will is rejected. Further once again Balappa Reddy had filed O.S.No.590/1988 for declaration and injunction based on the very same Will, but his contest was dismissed on 04.04.2000 as the Will is not proved.

10. Further argued that Balappa Reddy had filed RFA No.509/2000 against the dismissal of suit O.S.No.590/1988, which is also dismissed. Therefore, finding on the Will is proved to be not executed. Therefore, Balappa Reddy did not have any claim over suit schedule land by virtue of Will. Against which, Balappa Reddy has filed a R.P.No.39/2005 in which it is held that



the execution of Will is not proved and dismissed the claim of the Balappa Reddy claiming his right through Will, is not established, but this Court gave liberty to seek share in the properties. In the meantime, Thippamma filed the suit for partition in O.S.No.1168/2004, which is dismissed. Thippamma has not preferred an appeal and she has accepted the decree of dismissal of suit. In O.S.No.1168/2004 Balappa Reddy being one of the defendants, had asserted his claim once again on the basis of the Will claiming exclusive ownership, but same is dismissed. Therefore, R.A.No.98/2020 filed by Balappa Reddy and continued by legal heirs, does not survive for consideration. Therefore, Balappa Reddy does not have any share in the suit schedule properties as he is estopped from claiming share in the suit properties. Therefore, though this Court in R.P.No.39/2005 gave liberty to seek share in the property, but his assertion of right to claim share in the property does not arise. Therefore, Balappa Reddy is estopped by virtue of judicial pronouncement as



above stated. When this being the fact that basically regular appeal above stated is not maintainable, Balappa Reddy and his legal heirs are not entitled for any share. Therefore, submitted that by filing R.A.No.98/2020 the appellants in regular appeal cannot seek partition.

11. Further submitted that this Court in MFA No.1336/2025 dated 11.08.2025 at para 7 of the order has given erroneous finding that the observation that Peddanna executed a registered Will whereby he bequeathed southern properties including the entire northern portion of the suit schedule property to Balappa Reddy alone is established, is not the correct observation as the said observation goes contrary to the findings in the suit, appeal and in review petition that the Will is not duly proved. Therefore, observing that relying on the said Will still Balappa Reddy and his legal heirs are having right to share is contrary to the admitted materials on record and error apparent on the face of the record. Therefore, submitted that main reason of granting an order of



temporary injunction based on the Will is not correct as by judicial pronouncement as above stated the execution of Will is not proved. Therefore, the order of grant of temporary injunction is not correct.

12. Further submitted that this Court in the said appeal MFA No.1336/2025 by the order dated 11.08.2025 has given finding on the Will as if it is proved and as such this is judicial over reach. Therefore, when Balappa Reddy has failed to prove the execution of Will, but on the very same Will granting temporary injunction is not correct.

13. Further submitted that observations made at para 8 in the order that after death of Peddanna in the year 1978 Balappa Reddy took possession and began cultivating the land, is not correct. Balappa Reddy has already executed registered release deed relinquishing his share over the suit schedule land by accepting the other properties. Therefore, Balappa Reddy and his legal heirs were never in possession, but this is not correctly



appreciated by this Court and wrongly held that Balappa Reddy was in possession, which is contrary to the evidence and thus, error apparent on the face of the record. When the appellants in R.A.No.98/2020 do not have prima facie case and balance of convenience to get share in R.A.No.98/2020, granted an order of temporary injunction, which is not correct. Therefore, justified the order of the trial court in rejecting the application filed for temporary injunction in O.S.No.1168/2004.

14. Further submitted that the review petitioners have purchased the suit schedule property from legal heirs of Narayanappa on 24.11.2024. The O.S.No.1168/2004 is dismissed on 25.10.2019, RFA No.509/2000 is dismissed on 03.09.2004 and also R.P.No.39/2005 in RFA No.509/2000 is dismissed on 13.10.2006. After dismissal of RFA No.509/2000 and O.S.No.1168/2004, the review petitioners have purchased the property on 24.09.2004, hence the doctrine of *lis pendens* as per Section 52 of the Transfer of Property Act, 1882, is not applicable.



Therefore, review petitioners are bonafide purchasers for valuable consideration. The finding on the Will that its execution is not proved is confirmed and as such the appellants in R.A.No.98/2020 cannot claim any right over the suit schedule property. Balappa Reddy had attempted three times by filing O.S.No.1186/1982, O.S.No.590/1988 and O.S.No.1452/2009 and in all these attempts he failed to establish his rights through the Will. When this being the fact and also in R.A.No.98/2020 the appeal filed by Balappa Reddy is only against the Will is concerned, which is already held not proved in RFA No.509/2000, hence submitted that the appellants in R.A.No.98/2020 do not have any right over the suit properties, but this Court in the above said MFA No.1336/2025 has wrongly given finding, which is error apparent on face of the record.

15. Further submitted that this Court in the said MFA as if it has given finding on the execution of the Will and based on which granted order of temporary injunction, is not correct. Therefore, submitted that it is error



apparent on the face of the record and thus, reviewable by all the documents produced. Therefore, submitted that the above facts are also not disputed by the respondents. Therefore, the observations and granting order of temporary injunction is error apparent on the face of the record. Therefore, prays for review of the order.

16. Further learned counsel for the review petitioners by placing reliance on the judgments of Hon'ble Supreme Court in ***ELUMALAI ALIAS VENKATESAN AND ANR. v. M.KAMALA AND ORS. AND ETC.***¹ submitted that this case is squarely applicable to the case on hand since Balappa Reddy has executed the release deed relinquishing his right in favour of Narayanappa and Peddanna by receiving other properties, as he has estopped to make claim again. Therefore, once again he cannot claim right over it and submitted that the factual matrix in the above said case are same as involved in the present review petition. Therefore, prays to review the

¹ AIR 2023 SC 659



order on the principle of law laid down by the Hon'ble Supreme Court in the above said decision.

SUBMISSION OF COUNSEL FOR RESPONDENTS:

17. On the other hand, learned counsel for the respondents, who are appellants in R.A.No.98/2020 submitted that though the contention of Balappa Reddy regarding claiming exclusive right over the suit property is dismissed, but by virtue of liberty granted in R.P.No.39/2005 the respondents (appellants in R.A.No.98/2020) are pursuing their shares. Therefore, the respondents cannot be deprived off their rights. Further submitted that upon considering genealogy produced in O.S.No.1168/2004 the respondents who are legal heirs of Balappa Reddy are also having right to claim share and also submitted that even if accepting the registered release deed executed by Balappa Reddy, still the legal heirs of Balappa Reddy are having right of share as per principle of notional share in the partition upon death of Peddanna. Therefore, under these circumstances, if the



nature of property is altered then the legal heirs of Balappa Reddy would be put into much loss and injury. Hence, justified the order of temporary injunction.

18. Further submitted that Balappa Reddy had executed deed of exchange but not registered release deed though the nomenclature is release deed, but on merits the documents speak it is deed of exchange. Also submitted that suit filed by Narayanappa for injunction in O.S.No.3358/1996 is dismissed. Therefore, plea of Narayanappa that he is in possession is rejected in the said suit O.S.No.3358/1996. Therefore, submitted that the legal heirs of Balappa Reddy are in possession of the property.

19. Further submitted that after the death of Gurramma she was buried in the said land and her tomb is in existence. Therefore, if the nature of land is altered that would destroy the tomb hurting the sentiments of legal heirs of Balappa Reddy. Therefore, considering this



the Court has rightly granted the order of temporary injunction. Therefore, prays to dismiss the review petition by upholding the order of temporary injunction granted in MFA No.1336/2025.

20. Learned counsel for the respondents places reliance on the following judgments of Hon'ble Supreme Court:

- (i) **ILR (1935) 62 CAL 701:** *HARACHANDRA DAS v. BHOLANATH DAS*
- (ii) **(1974) 2 SCC 393:** *GANGA BAI v. VIJAY KUMAR AND OTHERS*
- (iii) **AIR 1996 KAR 296:** *HANUMANTHA RAO v. CORPORATION OF THE CITY OF BANGALORE*
- (iv) **AIR 1953 MAD 485:** *SRIMATHI K. PONNALAGU AMMANI v. THE STATE OF MADRAS*
- (v) **(2020) 9 SCC 501:** *V.N. KRISHNA MURTHY AND ANOTHER v. RAVIKUMAR AND OTHERS*
- (vi) **AIR 1957 HYD 23:** *PHOOLA BHANNA v. REKHA DEVA*
- (vii) **1983 SCC ONLINE SC 373:** *DR. P. NALLA THAMPY THERA v. B.L.SHANKER AND OTHERS*



- (viii) **(1983) 2 SCC 132:** *BHAGWAN SWAROOP AND OTHERS v. MOOL CHAND AND OTHERS*
- (ix) **(2010) 2 SCC 107:** *DWARIKA PRASAD v. NIRMALA AND OTHERS*
- (x) **W.P.NO.23410/2025 (GM-CPC):** *K.G.SHANKAR BABU v. M. CHANDRA SHEKAR AND OTHERS*
- (xi) **(2022) 10 SCC 461:** *GREGORY PATRAO AND OTHERS v. MANGALORE REFINERY AND PETROCHEMICALS LIMITED AND OTHERS*
- (xii) **ILR 2001 KAR 638:** *D.V.LAKSHMANA RAO v. STATE OF KARNATAKA AND OTHERS*
- (xiii) **(2020) 270 DLT 36:** *TRIPTA KAUSHIK v. SUB REGISTRAR VI-A AND ANOTHER*
- (xiv) **AIR 1968 MAD 159 (FB):** *THE CHIEF CONTROLLING REVENUE AUTHORITY v. RUSTORN NUSSERWANJI PATEL*
- (xv) **2015 SCC ONLINE ALL 5678:** *RAGHVENDRA JEET SINGH v. BOARD OF REVENUE AND OTHERS*
- (xvi) **AIR 1986 AP 42:** *KOTHURI VENKATA SUBBA RAO v. STATE OF A.P.*
- (xvii) **2019 SCC ONLINE DEL 11153:** *HARI KAPOOR v. SOUTH DELHI MUNICIPAL CORPORATION*



- (xviii) **(1977) 1 SCC 17:** *PUZHAKKAL KUTTAPPU v. C. BHARGAVI AND OTHERS*
- (xix) **(2015) 16 SCC 787:** *YELLAPU UMA MAHESWARI AND ANOTHER v. BUDDHA JAGADEESWARARAO AND OTHERS*
- (xx) **1986 OLR 2 145:** *NARAYAN BISOI AND ANOTHER v. RAGHUNATH BISOI*
- (xxi) **FMAT 227 OF 2022 WITH CAN 1 OF 2022:** *PRASANTA MAJI & ORS. v. SUKHBINDAR SINGH & ORS.*
- (xxii) **(2001) 5 SCC 568:** *ANAND PRASAD AGARWALA v. TARKESHWAR PRASAD AND OTHERS*
- (xxiii) **(1992) 1 SCC 719:** *DALPAT KUMAR AND ANOTHER v. PRAHLAD SINGH AND OTHERS*
- (xxiv) **(1995) 1 SCC 170:** *MEERA BHANJA (SMT) v. NIRMALA KUMARI CHOUDHURY*
- (xxv) **(1995) 5 SCC 545:** *GUJARAT BOTTLING CO. LTD. AND OTHERS v. COCA COLA CO. AND OTHERS*
- (xxvi) **2017 SCC ONLINE DEL 8122:** *COLUMBIA SPORTSWEAR COMPANY v. HARISH FOOTWEAR & ANR.*



21. Having heard the arguments made by both the learned counsels, the following points would arise for consideration:

- (i) Whether, the order passed in MFA No.1336/2025 dated 11.08.2025 suffers from error apparent on the face of the record and thus, same is reviewable as per Order XLVII Rule 1 of CPC?
- (ii) Whether, the respondent Nos.2 to 9 in this review petition, who are appellants in MFA No.1336/2025 have made out prima facie case so as to grant order of temporary injunction?
- (iii) Whether, under the facts and circumstances involved in the case, the appellants in MFA No.1336/2025 have made out balance of convenience so as to grant order of temporary injunction?
- (iv) Whether, under the facts and circumstances involved in the case, if the order of temporary injunction is not granted then the appellants in MFA No.1336/2025 would suffer any injury or loss?



22. The Hon'ble Supreme Court in the case of ***BOARD OF CONTROL FOR CRICKET IN INDIA AND ANOTHER v. NETAJI CRICKET CLUB AND OTHERS***² has laid down the principle of law regarding scope of review under Order 47 Rule 1 of CPC, which reads as under:

"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.

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

² (2005) 4 SCC 741



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*, 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 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)

23. On the basis of principle of law laid down, as above stated, the instant review petition is taken up for consideration on the materials produced by both sides, which were already produced in MFA No.1336/2025.

24. The learned counsel for the review petitioners submitted that defendant Nos.12, 13 and 15 in O.S.No.1168/2004 and appellants in MFA No.1336/2025



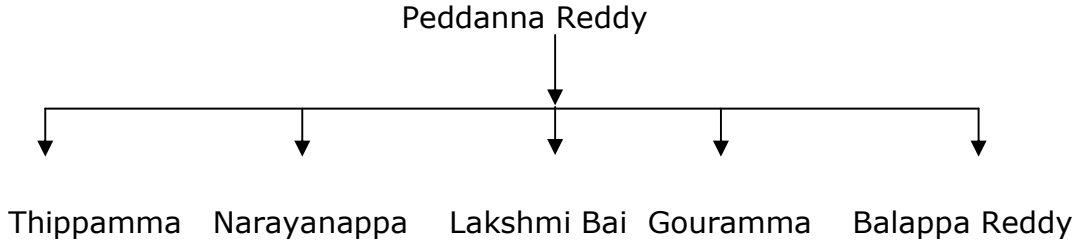
have filed this review petition praying to review the order dated 11.08.2025 on the ground that Balappa Reddy had consecutively failed in his attempt to get declaration of his exclusive ownership over the suit property, but this Court by the impugned order has granted an order of temporary injunction by making observation that the appellants, who are respondent Nos.1 to 9 have proved prima facie case that they are the owners and balance of convenience lies with them and thus granted an order of temporary injunction, is nothing but an error apparent on the face of the record.

25. Learned counsel for the review petitioners has taken the Court to various documents to show that Balappa Reddy had filed the suit in O.S.No.1167/1982 for declaration against Narayanappa based on the Will, which is dismissed for default. Against which, Miscellaneous No.490/1985 for restoration was filed, which is also dismissed. Again Balappa Reddy filed O.S.No.590/1988 for declaration to declare that he is the owner of suit



property based on the Will. After contest, the said suit was dismissed on 04.04.2000. Against which, RFA No.509/2000 is filed, which is also dismissed on 03.09.2004. Against which, R.P.No.39/2005 is filed and in this review petition it is categorically held that in suit O.S.No.590/1988 dated 04.04.2000 and in RFA No.509/2000 dated 03.09.2004 the Will is not proved, is sound and proper. Therefore, when Balappa Reddy had repeatedly failed in his claim to establish that he is the exclusive owner but this Court in the above said MFA had formed an opinion that the appellant Nos.1 to 9 have made out prima facie case, is nothing but error apparent on the face of the record.

26. The suit is filed for partition and for separate possession. It is relevant to mention here the genealogy as shown by the plaintiffs in O.S.No.1168/2004 and in R.A.No.98/2020.



27. Thippamma has filed the suit for partition and separate possession against the legal heirs of Narayanappa and the legal heirs of Balappa Reddy for claiming 1/3rd share, but said suit is dismissed. Against which, R.A.No.98/2020 is filed by the legal heirs of Balappa Reddy, which is pending for consideration. It is worthwhile to refer the pleadings taken by Balappa Reddy in his written statement in the said suit that the legal heirs of Balappa Reddy had taken contention that Peddanna had executed a Will in favour of Balappa Reddy. But the record shows that Balappa Reddy filed a suit in O.S.No.590/1988 claiming ownership over the property based on the Will and after contesting the suit, the said suit O.S.No.590/1988 is dismissed on 04.04.2000. Against which, RFA No.509/2000 is filed which is also



dismissed. Against which, the review petition is filed in R.P.No.39/2005. The findings on the Balappa Reddy that he has failed to prove the execution of Will in his favour is sound and proper, but in review petition this Court has given liberty to claim his share through Peddanna in a suit filed for partition, which is pending in R.A.No.98/2020. Thippamma has accepted the decree of dismissal of the suit, but Balappa Reddy against his own claim of seeking exclusive ownership of the property is claiming share now through Peddanna Reddy, which is not dealt with by this Court in MFA No.1336/2025.

28. The records produced by both sides show that Peddanna purchased land in Sy.No.12 (old) new No.85 to the extent of 8 acres 18 guntas in the year 1952. It was partition between Narayanappa and Balappa Reddy. Narayanappa is claiming exclusive ownership right towards north and Balappa Reddy has taken southern half portion to the extent of 4 acre 9 guntas towards southern side. Balappa Reddy had executed registered released deed



dated 28.06.1973 in favour of Peddanna and Narayanappa by receiving other properties. Peddanna died in the year 1978. Narayanappa continued to hold possession and enjoy exclusively the suit property exercising his right of ownership. Balappa Reddy had approached Revenue Authorities stating that by Will dated 11.07.1974 having executed by Peddanna claiming ownership over northern portion of 4 acre 9 guntas and the Revenue Authorities have mutated Balappa Reddy's name in the revenue records to the extent of 4 acre 9 guntas. Thereafter, Narayanappa filed the appeal under Section 136(2) of the Karnataka Land Revenue Act, 1964, before the Assistant Commissioner and the Assistant Commissioner has set aside the said mutation and entries and remanded the matter to the Tahsildar for fresh consideration vide order dated 21.10.1982. Thereafter, the Tahsildar mutated the entries in the RTC in the name of Narayanappa. Narayanappa died leaving behind his wife and children, who are defendant Nos.1(a) to 1(f) and these legal heirs



of Narayanappa have become exclusive owners of the property and later on sold the land measuring 4 acre 9 guntas in Sy.No.85 in favour of review petitioners, who are defendant Nos.4 and 5 in the suit O.S.No.1168/2004 through registered sale deeds dated 24.11.2004 and put them in possession. Thus, the review petitioners have become owners of the land to the extent of 4 acre 09 guntas.

29. The suit O.S.No.1168/2004 is instituted on 03.12.2004. Upon considering the above documents the property sold out by the legal heirs of Narayanappa in favor of review petitioners is much before filing the suit O.S.No.1168/2004. Therefore *lis pendens* of Section 52 of the Transfer of Property Act, 1882, is not applicable.

30. The Hon'ble Supreme Court in the case of ***ELUMALAI ALIAS VENKATESAN AND ANR. v.***



M.KAMALA AND ORS. AND ETC.³ has observed as under:

"11. What however remains to be seen is whether conduct of Shri Chandran in executing the release deed and what is even more important receiving consideration for executing the Release Deed would result in the creation of estoppel. Having regard to the equity of the matter, in short, whether it is a case where the doctrine of equitable estoppel would have prevented Shri Chandran from staking a claim if he had survived his father. What is the effect of the existence of estoppel as against Shri Chandran if such estoppel is made out, as far as the claim of the appellants is concerned? The further question would be what is the effect of Section 8 of Hindu Minority and Guardianship Act."

"21. In the facts of this case, the case of the appellants may be noted. It is their case, that Shri Chandran, their father, himself did not have any right in the plaint schedule property. This is for the reason that being the separate property of Shri Sengalani Chettair, Shri Chandran did not have any right by birth. He himself had only, what is described a spec successionis within the meaning of Section 6(a) of the Transfer of Property Act. It is not even the case of the appellants that they had any independent right in the plaint schedule property either at the time of their birth or at the time when their father died or even when their father Shri Sengalani Chettair died in 1988. The right, which they claim, at the earliest point, can arise only by treating the property as the separate property of Shri Sengalani Chettair on his death within the meaning of Section 8 of the Hindu Succession Act. Therefore, we are unable to discard the deed of release executed by their father Shri Chandran in the year 1975 as a covenant within the meaning of Section 8 of the '1956 Act.'"

³ AIR 2023 SC 659



"23. It will be noticed that the father of the appellants, by his conduct, being estopped, as found by us, is the fountainhead or the source of the title declared in Section 8(a) of the Hindu Succession Act. It is, in other words, only based on the relationship between Shri Chandran and the appellants, that the right under Section 8(a) of the Hindu Succession Act, purports to vest the right in the appellants. We would think, therefore, that appellants would also not be in a position to claim immunity from the operation of the Principle of Estoppel on the basis of Section 8(a) of the Hindu Succession Act. If the principle in Gulam Abbas (AIR 1973 SC 554) (supra) applies, then, despite the fact that what was purported to be released by Shri Chandran, was a mere spec successonis or expectation his conduct in transferring/releasing his rights for valuable consideration, would give rise to an estoppel. The effect of the estoppel cannot be warded off by persons claiming through the person whose conduct has generated the estoppel. We also find no merit at all in the attempt at drawing a distinction based on religion. The principle of estoppel applies without such distinction."

31. The facts in the above stated case are that one Sengalani Chettiar married to Rukmini and also solemnized second marriage with Kuppammal. Chandran is the son of Sengalani Chettiar and Rukmini. The properties were self acquired of Sengalani Chettiar. Chandran had executed release deed dated 12.11.1975 relinquishing his rights of share in favour of Sengalani Chettiar by receiving other valuable properties. The



children of Chandran claimed share, which is negated on the reason that Chandran had already relinquished his right of share over the suit schedule properties by receiving other valuable properties. As such, it would create estoppel against Chandran and it is held that children of Chandran are not entitled to any share. Thus, the appeal filed was dismissed.

32. In the instant case also, Balappa Reddy had executed relinquishment deed by receiving other properties. Thereafter, Balappa Reddy has started claiming share once again over the suit schedule properties. Therefore, the above said ruling is applicable in the present case making Balappa Reddy and his legal heirs not entitled to claim right over the suit properties as they are estopped.

33. Before that Balappa Reddy as discussed above failed in his attempt to get exclusive ownership and some facts are necessary to be considered based on the records.



Balappa Reddy filed the suit in O.S.No.1167/1982 for declaration against Narayanappa based on the Will dated 11.07.1974, which is dismissed for default. Against which, the Miscellaneous No.490/1985 is filed for restoration of the suit, the same was also dismissed. Then once again the said Balappa Reddy filed O.S.No.590/1988 for declaration to declare that he is owner of the suit property based on the Will. After contest, O.S.No.509/2000 is also dismissed on 03.09.2004. Against which RFA No.509/2000 filed by Balappa Reddy is also dismissed. Balappa Reddy had filed R.P.No.39/2005 praying to review the order passed in RFA No.509/2000 and this Court in R.P.No.39/2005 has held that the finding that the Will is not proved is sound and proper. But this Court in R.P.No.39/2005 has given liberty to claim his share through Peddanna's share in O.S.No.1168/2004, which is pending in R.A.No.98/2020. It is pertinent to mention here that Thippamma, Lakshmi Bai and Gurramma have accepted the decree in O.S.No.1168/2004. Also Balappa



Reddy has failed in his attempt to claim exclusive ownership over the suit property based on the Will. Therefore, it is argument of the counsel for the review petitioners that the conduct of the Balappa Reddy is approbate and reprobate, at one hand he was claiming exclusive ownership through the Will and his legal heirs are claiming share in the suit property. Therefore, upon considering all these aspects based on the records produced by both sides the appellants in MFA No.1336/2025 have not made out prima facie case so as to claim the entire extent of land at the most they can claim shares of Peddanna.

34. Also the learned counsel for the review petitioners produced registered relinquishment deed which prima facie proves that Balappa Reddy had executed relinquishment deed in favour of Peddanna and Narayanappa by receiving other properties. Therefore, after the death of Peddanna, Peddanna's share would be devolved into Balappa Reddy. To this extent only Balappa



Reddy can work out his share as per liberty granted by this Court in R.P.No.39/2005. Therefore, grant of temporary injunction as observed in page Nos.7 and 8 of MFA No.1136/2025 is found to be error apparent on the face of the record.

35. This Court in the above said MFA No.1336/2025 has held that the possession stands threatened by third party purchasers without clear title, who claim under individuals who had themselves divested their rights decades ago. But the records show that the legal heirs of Narayanappa had sold 4 acre 09 guntas of land through registered sale deed in favour of defendant Nos.4 and 5. Narayanappa during his lifetime has sold his share i.e., southern portion of 4 acre 09 guntas to one Raghu through registered sale deed to defendant No.3. As observed above, even doctrine of *lis pendens* as per Section 52 of the Transfer of Property Act, 1882, is also not attracted.



36. When above chronological events on the admitted materials by both sides are revealed, this Court in the order dated 11.08.2025 has observed at paragraph 7 that Balappa Reddy had become owner of the property through registered Will dated 11.07.1974 to the extent of 4 acres 09 guntas, is error apparent on the face of the record. As discussed above, in all these successive legal proceedings Balappa Reddy has not succeeded in proving his exclusive ownership over the suit property to the extent of 8 acre 18 guntas through the Will is not proved. Admittedly there are partition between Narayanappa and Balappa Reddy and Narayanappa has become owner of the land to the extent of 4 acre 09 guntas, which is sold out to defendant Nos.3 and 4 by the legal heirs of Narayanappa. For remaining half portion towards southern side what Balappa Reddy had obtained the said share had been bequeathed through relinquishment deed dated 28.06.1973 in favour of Narayanappa and Peddanna. Thippamma has filed suit O.S.No.1168/2004 even after



selling the land by legal heirs of Narayanappa to defendant No.3. Therefore, whatever alienation made by legal heirs of Narayanappa does not attract Section 52 of the Transfer of Property Act, 1882. Since their partition between Peddanna and Narayanappa is prior to the appointed date 20.12.2004, therefore, whether the applicability of Section 6 of the Hindu Succession Act, 1956, regarding entitlement of equal share to daughters is a question to be considered in the appeal. So far as Thippamma, Lakshmi Bai and Gurramma are concerned, the judgment and decree in O.S.No.1168/2004 has attained finality as they have not challenged the said judgment and decree. Only the legal heirs of Balappa Reddy have preferred R.A.No.98.2020, which is pending for consideration. The regular appeal in R.A.No.98/2020 filed by the legal heirs of Balappa Reddy is only pertaining to the questioning the findings on Issue No.2, that is regarding the Will, but not raised ground regarding claiming share on the suit land.



37. It is the written statement filed by the defendant No.2 in O.S.No.1168/2004 that defendant No.2 is in possession and enjoyment of 4 acre 9 guntas only by virtue of registered Will stated to have been executed by Peddanna. But in the legal proceedings as above discussed execution of Will is not proved, is held correct, sound and proper by this Court in RFA No.509/2000 and subsequently, also in R.P.No.39/2005. Therefore, R.A.No.98/2020 is only pertaining to the challenging Issue No.2 i.e., on question of considering the Will since in the said suit the Issue No.2 is held negative against the defendant No.2 that he has failed to prove that he is in possession over the land on the basis of the Will dated 11.07.1974. Therefore, from the records it is shown that defendant No.2 during his lifetime and his legal heirs are not in possession of the property.

38. The prayer made by the legal heirs of defendant No.2 in R.A.No.98/2020 is only in respect of Issue No.2 is concerned, which is regarding proof of Will. Therefore, the



defendant No.2 has not claimed share in the property. However, this Court in R.P.No.39/2005 has given liberty to claim his share through his father Peddanna. Therefore, according to the defendant No.2 when his relinquished share of 4 acre 09 guntas in favour of his father Peddanna and after death of Peddanna all the legal heirs of Peddanna at the most can maintain their claim of partition. Peddanna died in the year 1978. Therefore, the daughters namely, Thippamma, Lakshmi Bai and Gurramma are not to be considered as coparceners. Therefore, notionally the partition effected between Peddanna, Narayanappa and Balappa Reddy amounts to $1/3^{\text{rd}}$ share in 4 acre 9 guntas. Further Peddanna's $1/3^{\text{rd}}$ share is once again to be divided between three daughters and two sons that becomes $1/15^{\text{th}}$ share each to the children of Peddanna. Therefore, at the most, probably Peddanna's share may be given above extent.

39. When this being the fact, prima facie it is shown that the appellants in R.A.No.98/2020 are not in



possession over the suit property. Therefore, there is no prima facie case and balance of convenience is made out by the legal heirs of Balappa Reddy so as to make claim the entire extent of suit property. Therefore, the appellants in MFA No.1336/2025 are not entitled to the discretionary relief of order of temporary injunction. Hence, the order dated 11.08.2025 passed by this Court in MFA No.1336/2025 requires to be reviewed and recalled. When prima facie case is not made out and the balance of convenience does not lie so as to grant an order of temporary injunction to the entire extent of land, the trial court is correct in dismissing the application filed for temporary injunction.

40. However, it is submitted that the defendant Nos.3 to 5 have purchased the property to the half extent in the year 1981 and if any construction to be made on the suit schedule land that is subject to result in R.A.No.98/2020. It is submitted that there is a tomb of Gurramma on the suit schedule land. If any construction



to be made on the suit land is subject to result in the appeal R.A.No.98/2020, then considering the feelings of the parties in the suit regarding tomb of Gurramma the same shall be preserved exclusively for performing pooja till decision is taken in R.A.No.98/2020. Though legal heirs of Thippamma, Lakshmi Bai and Gurramma have not challenged the judgment and decree in O.S.No.1168/2004, but is challenged by the legal heirs of Balappa Reddy though on the other ground of challenging the pending Issue No.2 regarding the Will, but the whole judgment and the decree in O.S.No.1168/2004 is under scrutiny of the appellate court in R.A.No.98/2020. Therefore, suitable decision is yet to be taken by the appellate court as per law.

41. This Court has perused the rulings relied on by the counsel for the respondents. The above said rulings are on the governing principles pertaining to the powers of appellate court and scope of review and granting discretionary relief of order of temporary injunction. This



Court has considered the above said rulings and applied the same while considering this review petition.

42. The Hon'ble Supreme Court in the case of **MANDALI RANGANNA & ORS. ETC VS T. RAMACHANDRA & ORS⁴** has observed 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.

22. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively.

23. This Court in *M. Gurudas v. Rasaranjan* noticed (SCC P. 374, para 19)

"19. A finding on "prima facie case" would be a finding of fact. However, while arriving at such a finding of fact, the court not only must arrive at a conclusion that a case for trial has been made out but also other

⁴ (2008) 11 SCC 1



HC-KAR

NC: 2026:KHC:5548
RP No. 399 of 2025

factors requisite for grant of injunction exist. There may be a debate as has been sought to be raised by Dr. Rajeev Dhavan that the decision of the House of Lords in *American Cyanamid Co. v. Ethicon Ltd.* would have no application in a case of this nature as was opined by this Court in *Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. and S.M. Dyechem Ltd. v. Cadbury (India) Ltd.* but we are not persuaded to delve thereinto."

Therein, however, the question in regard to valid adoption of a daughter was in issue. This Court held that Nirmala was not a validly adopted daughter. This Court wondered: (*M. Gurudas case*, SCC p. 379 para 34)

"34. The properties may be valuable but would it be proper to issue an order of injunction restraining the appellants herein from dealing with the properties in any manner whatsoever is the core question. They have not been able to enjoy the fruits of the development agreements. The properties have not been sold for a long time. The commercial property has not been put to any use. The condition of the properties remaining wholly unused could deteriorate. These issues are relevant. The courts below did not pose these questions unto themselves and, thus, misdirected themselves in law."

24. Emphasis was also laid on the conduct of the parties while granting an order of injunction.

25. In *Seema Arshad Zaheer v. Municipal Corpn. Of Greater Mumbai* this Court held: (SCC p. 294, para 30)

"30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of



the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands."

[See also *Transmission Corpn. of A.P. Ltd. v. Lanco Kondapalli Power (P) Ltd.*

26. Rightly or wrongly constructions have come up. They cannot be directed to be demolished, at least at this stage. Respondent No.7 is said to have spent three crores of rupees. If that be so, in our opinion, it would not be proper to stop further constructions.

27. We, therefore, are of the opinion that the interest of justice would be subserved if while allowing the respondents to carry out constructions of the buildings, the same is made subject to the ultimate decision of the suit. The Trial Court is requested to hear out and dispose of the suit as early as possible. If any third party interest is created upon completion of the constructions, the deeds in question shall clearly stipulate that the matter is sub judice and all sales shall be subject to the ultimate decision of the suit. All parties must cooperate in the early hearing and disposal of the suit. Respondents must also furnish sufficient security before the learned Trial Judge within four weeks from the date which, for the time being, is assessed at Rupees One Crore."



43. When suit for partition is filed the rights of co-sharers also to be protected in case a project is being under construction, in such an event the rights of co-sharers is to be protected without stopping construction as huge amount is invested considering peculiar facts and circumstances involved in the case. As above discussed, as per liberty reserved by this Court in R.P.No.39/2005 to Balappa Reddy and likewise, the other co-sharers namely Thippamma, Lakshmi Bai and Gurramma's share also to be protected. Following the spirit of the principle of law laid down by the Hon'ble Supreme Court in **MANDALI RANGANNA'S** case (supra) it is just necessary to direct the review petitioners to reserve 1/15th share in the suit schedule property without making alienation in case review petitioners are making construction on the suit schedule land and reserving 1/15th share shall be subject to result in R.A.No.98/2020. Accordingly, I answer Point No.(i) in the affirmative and Point Nos.(ii) to (iv) in the



negative. Thus, the order passed by this Court in the appeal is liable to be reviewed and recalled.

44. Hence, I proceed to pass the following:

ORDER

- (i) The review petition is ***allowed***.
- (ii) The impugned order dated 11.08.2025 passed by this Court in MFA No.1336/2025 is reviewed and recalled.
- (iii) The order passed by the trial court on interlocutory application filed under Order XXXIX Rules 1 and 2 of CPC in R.A.No.98/2020, is affirmed.
- (iv) The review petitioners are directed to reserve 1/15th share in the suit schedule property without making alienation of 1/15th share till disposal of the appeal and this reservation of 1/15th share shall be subject to result in R.A.No.98/2020.
- (v) Whatever construction to be made by the review petitioners is subject to result in R.A.No.98/2020.
- (vi) Whatever observations made above are only based on the documents made



available to this Court in the appeal and the trial court shall not construe the above observations as discussion on the merits of the case. Only on the basis of the prima facie documents made available the above observations are made.

- (vii) The first appellate court shall decide the appeal independently without being influenced by the above said order in accordance with law.
- (viii) No costs.

**Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE**

DR
List No.: 19 Sl No.: 1