



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR JUSTICE R DEVDAS

CIVIL REVISION PETITION NO.645 OF 2024

BETWEEN:

- 1 . MR A V NAGARAJ
S/O LATE VENUGOPAL NAIDU,
AGED ABOUT 40 YEARS,

R/OF NO.130/17, 30TH MAIN,
BSK 3RD STAGE,
BANGALORE-560008.

SRI R K VENKATA KRISHNA
SINCE DEAD BY HIS LRS.,
- 2 . ANANDALAKSHMI,
W/O LATE R K VENKATA KRISHNA,
AGED ABOUT 50 YEARS,
- 3 . SMT. ROOPA
D/O LATE R K VENKATA KRISHNA,
AGED ABOUT 30 YEARS,
- 4 . DEEPA
D/O LATE R K VENKATA KRISHNA,
AGED ABOUT 28 YEARS,

PETITIONER NO.2 TO 4 ARE
R/AT NO.40, MADHANAGARA,
BANGALORE-560001.

...PETITIONERS

(BY SRI. PHANIRAJ KASHYAP., ADVOCATE)

AND

SMT KANTAMMA
SINCE DEAD BY HER LRS

G N NANJAPPA,
SINCE DEAD BY HIS LRS,
ALREADY ON RECORD R2 TO R5

- 1 . G N JANARDHANA
S/O MAREGOWDARA NANJAPPA,
AGED ABOUT 45 YEARS,
- 2 . SOMASHEKAR G N
S/O MAREGOWDARA NANJAPPA,
AGED ABOUT 42 YEARS,
- 3 . G N RAVINDAR KUMAR
S/O MAREGOWDARA NANJAPPA,
AGED ABOUT 39 YEARS,
- 4 . SMT. MALAKUMARI
D/O MAREGOWDARA NANJAPPA,
W/O B.S.CHANDRASHEKAR,
AGED ABOUT 37 YEARS,

RESPONDENTS 1 TO 4 ARE
R/AT NO.245/3, NANJAPPA FARM HOUSE,
GUNJUR BANGALORE EAST TALUK,
BANGALORE-560027.

SMT NAGARATHNA
SINCE DEAD BY HER LRS

5. NAGARAJA
S/O NOT KNOWN TO PLAINTIFF,
AGED ABOUT 50 YEARS,
R/AT NO.20,
RAMANAGARA COURT COMPLEX,
COURT STREET, RAMANAGAR,
RAMANAGAR-562159.

6 . SMT JYOTHI
D/O LATE LAKSHMAIAH,
AGED ABOUT 35 YEARS,

7 . SRI SRINIVAS
S/O LATE LAKSHMAIAH,
AGED ABOUT 33 YEARS,

8 . SMT. ROOPA
D/O LATE LAKSHMAIAH,
AGED ABOUT 31 YEARS,

9 . SMT. SARASWATHAMMA
W/O THIMMAPPA,
AGED ABOUT 53 YEARS,

10 . SRI KRISHNA
S/O LATE KARIYAPPA,
AGED ABOUT 57 YEARS,

RESPONDENTS NO.6 TO 10 ARE
R/AT NO. LAKKANNA BUILDINGS,
KARIYANNA VATARA,
NAGASANDRA, BASAVANAGUDI,
BANGALORE-560028.

SRI KUPENDRA
SINCE DEAD BY HER LRS

11 . K RAMESH
S/O LATE KUPENDRA,
AGED ABOUT 32 YEARS,
NO.2, 1ST MAIN, LAKKANNA BUILDING,
KARIYANNA VATARA, NAGASANDRA,
BASAVANAGUDI,
BANGALORE-560028.

12 . SMT SHIVAMMA
W/O LATE K KUPENDRA,
AGED ABOUT 50 YEARS,

13 . K MURTHY
S/O LATE K KUPENDRA,
AGED ABOUT 30 YEARS,

14 . KUMARI NETHRA
D/O LATE K KUPENDRA,
AGED ABOUT 25 YEARS,

RESPONDENT NO.12 TO 14 ARE
R/AT CHEMBENAHALLI VILLAGE,
DOMSANDRA POST, ANEKAL TALUK,
BANGALORE-560087.

15 . SMT. JAYAMMA
W/O LATE KUPENDRA,
AGED ABOUT 50 YEARS,

16 . K KIRAN
S/O LATE KUPENDRA,
AGED ABOUT 28 YEARS,

RESPONDENT NO.15 & 16 ARE
R/AT NO.2, LAKKANNA BUILDING,
KARIANNA VATARA,
NAGASANDRA BASAVANAGUDI,
BANGALORE-560028.

17 . M K CHANDRA SHEKAR
S/O LATE CHANNAVEERAIAH,
AGED ABOUT 75 YEARS,
R/AT NO. 1540, 20TH CROSS,
BSK II STAGE,
BANGALORE-560070

18 . SMT. NALINI RAM
W/O LATE RAMASWAMY NAIDU,
AGED ABOUT 55 YEARS,
R/AT 43, KATRIGUPPE,
UTTARAHALLI HOBLI,
BANGALORE-560085.

- 19 . KRISHNAPPA NAIDU
S/O DORESWAMY NAIDU,
AGED ABOUT 58 YEARS,
R/AT NO.1, KATRIGUPPE,
UTTARAHALLI HOBLI,
BANGALORE-560085.
- 20 . BHASKAR
S/O D MUNIRATHNAM NAIDU,
AGED ABOUT 52 YEARS,
R/AT NO.5, KATRIGUPPE,
UTTARAHALLI HOBLI,
BANGALORE-560085.
- 21 . M VINOD
S/O D MUNIRATHNAM NAIDU,
AGED ABOUT 50 YEARS,
R/AT NO.6, KATRIGUPPE,
UTTARAHALLI HOBLI,
BANGALORE-560085.
- 22 . SMT. VIJAYA
W/O CHITTI BABU,
AGED ABOUT 48 YEARS,
R/AT POGULUR VILLAGE,
CHAMBADA POST,
UDIYATHAM TALUK,
N A DISTRICT, TAMIL NADU.
- 23 . G KUMARASWMAY
S/O G MARKANDA NAIDU
AGED ABOUT 44 YEARS
R/AT NO 15 & 16 NO. 184,
12TH CROSS, II STAGE WOC
MAHALAKSHMIPURAM
BANGALORE- 560086.

A VENUGOPAL NAIDU
SINCE DEAD BY HER LRS
- 24 . PADMALATHA
D/O LATE A VENUGOPAL NAIDU

AGED ABOUT 45 YEARS

- 25 . ASHALATHA
D/O LATE A VENUGOPAL NAIDU
AGED ABOUT 43 YEARS
 - 26 . SRILAKSHMI
D/O LATE A VENUGOPAL NAIDU
AGED ABOUT 41 YEARS
 - 27 . BINDUSHREE
D/O LATE A VENUGOPAL NAIDU
AGED ABOUT 38 YEARS
 - 28 . SMT RADHA VENUGOPAL
W/O A. VENUGOPAL NAIDU
AGED ABOUT 64 YEARS
 - 29 . SMT ASHA LATHA
W/O DR A DARANARASIAH NAIDU
AGED ABOUT 32 YEARS
- RESPONDENT NO.24 TO 29 ARE
R/AT NO. 136/17, 30TH MAIN ROAD
BANASHANKARI III STAGE
BANGALORE-560085.
- 30 . A NARASIMHALU NAIDU
S/O LATE CHANGAMMA NAIDU
AGED ABOUT 64 YEARS
R/AT NO. 17/14, 6TH CROSS
NEAR 80 FEET ROAD
BANASHANKARI III STAGE
BANGALORE-560085.
 - 31 . S RAJAREDDY
S/O LATE SHIVA REDDY
AGED ABOUT 48 YEARS
R/AT 9, 5TH CROSS, 6TH MAIN
BEHIND TEACHERS COLONY
BSK III STAGE BANGALORE-560085.

32 . K MUNIRATHAM NAIDU
S/O LATE DORESWAMY NAIDU
AGED ABOUT 65 YEARS
R/AT NO. 1176, 12TH B MAIN
HAL II STAGE INDIRANAGAR
BANGALORE-560038.

....RESPONDENTS

(BY SRI.G. B. MANJUNATHA., ADVOCATE FOR R2 TO R5
V/O DTD. 19.11.2025 NOTICE TO R6 TO R32 IS D/W)

THIS CRP FILED UNDER SEC.115 OF CPC., PRAYING THIS COURT TO SET ASIDE THE ORDER DATED 14.08.2024 PASSED IN OS NO. 4866/2010 ON PRELIMINARY ISSUE NO.5 ON THE FILE OF IX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU AND CONSEQUENTLY DISMISS THE SUIT FILED BY THE PLAINTIFF AS IT IS BARRED BY PRINCIPLES OF RES-JUDICATA.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 21.01.2026 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THIS COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE R DEVDAS

CAV ORDER

(PER: HON'BLE MR JUSTICE R DEVDAS)

This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1908, at the hands of defendants No.19 and 9 (a) to (c) in O.S.No.4866/2010, aggrieved of the impugned order dated 14.08.2024 whereby the preliminary issue 'whether the suit of the

plaintiff is hit by principles of *res judicata* was considered and dismissed.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

3. Facts in brief are that the plaintiff Smt.Kantamma filed O.S.No.4866/2010 seeking a judgment and decree in favour of the plaintiff for partition and separate possession of 1/5th share in the suit schedule properties. Written statement was filed by the defendants-petitioners herein contending *inter alia* that the very same plaintiff had filed O.S.No.929/1991 before the City Civil Court, Bengaluru, seeking the very same relief of partition and separate possession arraying all the other family members as defendants. The suit was instituted on 11.02.1991 and a judgment was pronounced on 17.07.2003 dismissing the suit holding that the plaintiff who pleaded that the plaintiff schedule properties are acquired by her grandfather Lakkanna and her father Sri Kariyappa (defendant No.1 in the suit), but the plaintiff also admitted the fact that in a family partition effected on 20.09.1959, the suit schedule

properties were partitioned and shares were allotted to the grandchildren of Sri Lakkanna who are none other than defendants No.2 to 5 in the suit. Therefore, it was held that during the lifetime of the plaintiff's father viz., defendant No.1, the plaintiff has no right to seek partition.

4. After issues were framed and one of the issues being, 'whether the suit of the plaintiff is hit by principles of res judicata as contended by 9th defendant?', at the instance of defendants No.9 and 19, the said issue was taken up as preliminary issue. Further, since the learned Judge of the City Civil Court held the preliminary issue in favour of the plaintiff, defendants No.9 and 19 are before this Court, assailing the said order dated 14.08.2024.

5. Learned Counsel for defendants No.9 and 19 submits that the learned Judge of the City Civil Court has fallen in grave error while rendering a finding that the judgment and decree passed in the earlier suit was not adjudicated, since no evidence was recorded and no documents were marked and therefore, the plaintiff was denied the right of *audi alteram partem* in

O.S.No.929/1991. Learned Counsel submits that such a finding could not have been rendered by the learned Judge, since the judgment and decree passed in the earlier suit is a decree in law and if the plaintiff was aggrieved of such a decision, the plaintiff should have raised a challenge to the said decision. Learned Counsel submits that even if the plaintiff had so contended before the learned Judge of the City Civil Court, the learned Judge could not have accepted the said contention and the learned Judge is precluded from rendering such a finding which is clearly opposed to the settled position of law.

6. In this regard, learned Counsel for defendants has placed reliance on two decisions of the Apex Court viz., ***K.Arumuga Velaiah Vs. P.R.Ramasamy and Another***¹ and ***Jamia Masjid Vs. Sri K.V.Rudrappa (Since Dead) By Legal Representatives And Others***². Learned Counsel submitted that in ***K.Arumuga Velaiah*** the Apex Court has held that while determining the application of the rule of res judicata the Court is not concerned with the

¹ (2022) 3 SCC 757

² (2022) 9 SCC 225

correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. It was also noticed that in another case in ***State of W.B. Vs. Hemant Kumar Bhattacharjee***³ the Apex Court had held that even a wrong decision can be superseded only through appeals to higher tribunals or courts or through review, if provided by law. Further, since the learned Counsel for the plaintiff had raised an issue as to whether the application of the rule of res judicata, even if raised as an issue, could be taken up as a preliminary issue, learned Counsel for the defendants placed reliance on ***Jamia Masjid*** (supra) where it was held, 'we are unable to accept the submission of the appellants that res judicata can never be decided as a preliminary issue.....'.

7. Per contra, learned Counsel for the plaintiff contended that although it is true that issues were framed

³ AIR 1966 SC 1061

by the Trial Court based on the pleadings of the parties, nevertheless without there being any application filed by the defendants, the Trial Court has *suo motu* taken up the issue regarding res judicata as preliminary issue. It was further contended that no opportunity was given to the plaintiff to adduce evidence regarding the preliminary issue. While pointing out to the order sheet maintained by the Trial Court, it was contended that the plaintiff was not called upon to adduce evidence and on the other hand, the Trial Court recorded the evidence of defendant No.19 Sri Nagaraj as PW.1 and the learned Counsel for the plaintiff was asked to cross-examine the said witness. Learned Counsel would also place reliance on ***Ramesh B.Desai and Others Vs. Bipin Vadilal Mehta and Others***⁴, where it was held that though there has been a slight amendment in the language of Order XIV Rule 2 CPC by the Amending Act, 1976, but the principle enunciated in several decisions of the Apex Court still holds good and there can be no departure from the principle that the Court confers no jurisdiction upon the Court to try a suit

⁴ AIR 2006 SC 3672

on mixed issue of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue. The learned Counsel would therefore submit that in the first place, the Trial Court fell in error in taking up the issue of res judicata as a preliminary issue. It is submitted that the issue is one of mixed question of law and facts and therefore, such an issue has to be considered only after a full-fledged trial. The learned Counsel would therefore submit that even if this Court would come to a conclusion that the impugned order is not sustainable, nevertheless the said issue should be kept open to be decided along with all the other issues.

8. Heard the learned Counsels on both the sides and perused the petition papers.

9. Since the learned Counsel for the plaintiff has contended that the issue regarding res judicata being mixed question of law and facts, could not be considered as a preliminary issue, this Court deems it appropriate to consider the said contention. It would be relevant to

notice the decision of the larger Bench of the Apex Court in the case of ***Jamia Masjid*** (supra) where, while analyzing such question, the Apex Court analyzed many other earlier decisions and concluded as follows:

"66. In view of the discussion above, we summarise our findings below:

***66.1.** Issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of res judicata if there arises a new fact which has to be proved. However, the plea of res judicata may in an appropriate case be determined as a preliminary issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it."*

10. Having regard to the law settled by the Hon'ble Supreme Court, it is clear that since the earlier suit filed by the plaintiff in O.S.No.929/1991 was also a suit for partition and separate possession and the present suit is also a suit for partition and separate possession, it can be safely concluded that there are no new set of facts or alteration in the position of law which requires consideration in the second suit. Therefore, the contention

of the learned Counsel for the plaintiff that the issue of res judicata could not have been taken as a preliminary issue, is considered and rejected.

11. However, lots are required to be said about the finding rendered by the learned Judge of the City Civil Court. The learned Judge has stated after perusing the judgment and decree passed in O.S.No.929/1991 dated 17.07.2003, that the plaintiff has not adduced any oral or documentary evidence although written statement was filed by defendant No.1-Kariyappa, the father of the plaintiff and written statements were also filed by the other defendants, the plaintiff was not examined as a witness. Therefore, the Trial Judge has opined that there was no adjudication of the case as there was no evidence taken, no documents were marked and no hearing took place, there was no *audi altram partem* in O.S.No.929/1991. The learned Judge, while placing reliance on a decision of the Apex Court in the case of ***State of Uttar Pradesh And Another Vs. Jagdish***

Sharan Agrawal And Others⁵, arrived at a conclusion that the suit in O.S.No.929/1991 was not decided on merit. It is opined that the learned Presiding Officer pronounced the judgment upon the pleadings of both the parties. It was therefore held that when the former case was not adjudicated, no evidence was recorded, no documents were marked, nor parties were heard, therefore, the decision cannot be taken as rendered on merits of the case and therefore, it was concluded that the present suit is not hit by the principles of *res judicata*.

12. In the considered opinion of this Court, this finding and decision of the Trial Court is shocking. Sub-section (2) of Section 2 of the CPC defines "decree" as a formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. Therefore, the finding rendered by the learned Judge is clearly opposed to the settled position of law. If on the other hand, on analyzing

⁵ (2009) 1 SCC 689

the averments made in the plaint and having regard to the earlier judgment, if it was found that the cause of action was not same and the relief sought for by the plaintiff in the earlier suit is not the same in the present suit, on that ground it was permissible for the learned Judge to say that the present suit was not hit by the principles of *res judicata*. No such finding is forthcoming from the impugned order. It is relevant to notice the decision of the Apex Court in the case of ***Jaswant Singh Vs. Custodian of Evacuee Property***⁶, which reads as follows:

"14. ... In order that a defence of res judicata may succeed it is necessary to show that not only the cause of action was the same but also that the plaintiff had an opportunity of getting the relief which he is now seeking in the former proceedings. The test is whether the claim in the subsequent suit or proceedings is in fact founded upon the same cause of action which was the foundation of the former suit or proceedings."

13. Such a finding of the learned Judge that the earlier judgment is not a judgment rendered on merits,

⁶ (1985) 3 SCC 648

exceeds the jurisdiction and powers of the learned Judge of the City Civil Court. A judgment rendered by a competent court is binding on the parties in the said proceedings. If one of the parties to the said proceedings is aggrieved of the fact that no opportunity was given to adduce evidence or to put forth the arguments or that the decision was rendered *ex-parte*, such a party should take steps to get the decision set aside in a manner known to law. Unless the said decision is set aside in a manner known to law, the aggrieved party cannot contend in another suit or proceedings that the earlier decision is not binding on the party. Even if such a contention is put forth, such a finding cannot be rendered by another court of similar jurisdiction. The court considering a subsequent suit cannot sit in judgment over a decision rendered by another court of co-ordinate jurisdiction.

14. On facts, it is clear that the original plaintiff had earlier filed a suit for partition and separate possession against the other family members. The said suit was dismissed. No steps were taken either to prefer an appeal

or file a miscellaneous petition to recall the judgment or set aside the same. Consequently, it should be held that the earlier judgment in O.S.No.929/1991 which was filed by the plaintiff is binding on the plaintiff and the defendants thereto. It is therefore impermissible for the plaintiff to have filed another suit seeking the same relief of partition and separate possession, even if one more party is added as a defendant, who has subsequently purchased the property from the other defendants, who succeeded in the earlier suit. With such admitted facts, the only conclusion that could be drawn by the Trial Court was to affirm the preliminary issue and dismiss the suit on the ground of *res judicata*.

15. It is necessary to notice the decision of the Apex Court in the case of ***Sulochana Amma Vs. Narayanan Nair***⁷, where the confusion which prevailed earlier, having regard to the words employed in Section 11 of the CPC, viz., "competent to try such subsequent suit" and the amendment brought to Section 11 of the CPC vide an

⁷ (1994) 2 SCC 14

Amending Act, 1976, was dealt with and it was held that the result that would flow is an order or issue which had arisen directly or substantially between the parties or privies and decided finally by a competent court or tribunal though of limited or special jurisdiction which includes pecuniary jurisdiction will operate as *res judicata* in a subsequent suit or proceeding, notwithstanding the fact that such court had limited or special jurisdiction was not a competent court to try the subsequent suit. This issue however does not arise in the present case.

16. The Apex Court in the case of **K.Arumuga Velaiah** (supra) has noticed the earlier decision of the Apex Court in the case of **State of W.B. Vs. Hemant Kumar Bhattacharjee** and held that even a wrong decision can be superseded only through appeals to higher tribunals or courts or through review, if provided by law. Therefore, the remedy available for the plaintiff who suffered dismissal of a suit for partition and separate possession in O.S.No.4866/2010 was to question the same either by way of an appeal or by filing a Miscellaneous

Petition to recall the order and have the matter reconsidered. That not being done, the judgment rendered in the earlier suit has attained finality. It was not open for the learned Judge to have said in the impugned order that the earlier suit was not adjudicated, since no evidence was recorded and no documents were marked. Such a finding is clearly opposed to the principles of law, well settled.

17. This Court is therefore of the considered opinion that since the plaintiff had filed a suit earlier in O.S.No.929/1991 seeking the very same relief i.e., for partition and separate possession suffered dismissal of the suit, the issue raised in the present suit is a matter directly and substantially the issue already considered by a competent Court, between the same parties, the present suit is clearly hit by Section 11 of the Code of Civil Procedure and therefore, the preliminary issue, 'whether the suit of the plaintiff is hit by principles of res judicata?' should have been answered positively, while dismissing the suit.

18. For the reasons stated hereinabove, this Court proceeds to pass the following:

ORDER

- i) The Civil Revision Petition is ***allowed***.
- ii) The impugned order dated 14.08.2024 passed by the learned IX Addl. City Civil and Sessions Judge, Bengaluru in O.S.No.4866/2010 is hereby quashed and set aside.
- iii) Consequently the preliminary issue is answered against the plaintiff. The suit in O.S. No.4866/2010 is accordingly dismissed.
- iv) A copy of this order shall be placed before Hon'ble the Chief Justice and the learned Registrar (Vigilance) for further action.

**Sd/-
(R DEVDAS)
JUDGE**

JT/-
CT: JL