

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 20TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

REVIEW PETITION NO.100061 OF 2021



BETWEEN:

1. SHRI. MALLIKARJUN GURURAJ KOUJAGERI
AGE. 61 YEARS, OCC. BUSINESS,
R/O. ROSTON APARTMENT,
BEHIND SUYOGA COMPLEX,
VIDYANAGAR, HUBBALLI.
2. SHRI. SURESH GURURAJ KOUJAGERI
AGE. 59 YEARS, OCC. SELF EMPLOYED,
R/O. HOSUR, HUBBALLI.
3. SMT. SUDHA W/O. SHIVAPRASAD
AGE. 60 YEARS, OCC. HOUSE HOLD,
R/O. NO.10, K.G. ROAD,
2ND CROSS, BENGALURU-560009.

...PETITIONERS

(BY SRI. ASHOK R. KALYANSHETTY, ADVOCATE)

AND:

GURURAJ GADEGEPPA KOUJAGERI
(SINCE DECEASED ON 27-04-2018)
REPRESENTED BY BASAVANNEVVA
D/O. GURUPPA YALABURGI,
AGE. 49 YEARS, OCC. PVT. SERVICE,
R/O. G.G. KOUJAGERI BUILDING,
2ND CROSS, HOSUR, HUBBALLI, DIST. DHARWAD.

...RESPONDENT

(BY SRI. VINAY S. KOUJALAGI, ADVOCATE AND
SEI. V.M. SHEELAVANT, ADVOCATE)

THIS REVIEW PETITION IS FILED UNDER ORDER 47 RULE 1
READ WITH SECTION 114 OF CPC, PRAYING TO, RE CONSIDER THE
JUDGMENT PASSED IN R.F.A.NO.1867/2007 BY THIS HON'BLE COURT
DATED 17.12.2020 SINCE THE R.F.A. WAS NOT MAINTAINABLE IN
VIEW OF THE PECUNIARY JURISDICTION OF THE SUIT AND THE
HONBLE COURT MAY KINDLY BE RE CONSIDER THE JUDGMENT
PASSED IN R.F.A.NO.1867/2007 BY THIS HON'BLE COURT DATED

17.12.2020 IN LINE WITH THE OBSERVATION OF THE HON'BLE SUPREME COURT AND THE R.F.A. BE DISMISSED BY CONFIRMING THE JUDGMENT AND DECREE PASSED IN O.S.NO.3/2001 DATED 30.05.2007 BY THE HON'BLE SECOND ADDITIONAL CIVIL JUDGE (SR.DN) COURT HUBBALLI.

THIS REVIEW PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.02.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV ORDER

This Review Petition is filed under Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure seeking review of the judgment dated 17.12.2020 passed in R.F.A. No.1867/2007 by this Court, whereby the appeal filed by defendant No.1 was allowed and the judgment and decree passed in O.S. No.3/2001 was modified.

2. The petitioners herein/plaintiffs had instituted O.S.No.3/2001 on the file of the II Additional Civil Judge (Senior Division), Hubballi, ('the Trial Court' for short) seeking partition and separate possession in respect of the suit schedule property. The suit schedule property is a house and open space bearing CTS No.123/43B situated at Hubballi City. It is not in dispute that the said property

belonged to late Smt.Sushila, wife of late Shri.Gururaj G. Koujageri, and that she had inherited the same from her father. Smt.Sushila died intestate on 16.02.1998 leaving behind her husband Shri.Gururaj Koujageri, two sons namely Shri.Mallikarjun and Shri.Suresh, and a married daughter Smt.Sudha. When mutation proceedings were initiated, defendant No.1–husband objected claiming exclusive ownership of the property on the basis of a Will dated 27.12.1993 alleged to have been executed by Smt.Sushila in his favour. In view of the said dispute, the plaintiffs instituted the suit contending that defendant No.1 was excluded from succession in terms of Section 15(2)(a) of the Hindu Succession Act, 1956 ('the Act' for short).

3. The Trial Court, on appreciation of the oral and documentary evidence on record, held that the Will propounded by defendant No.1 was not proved in accordance with law and decreed the suit. The Trial Court excluded the husband from inheritance and allotted shares only to the children of the deceased.

4. Aggrieved by the said judgment and decree dated 30.05.2007, defendant No.1 preferred R.F.A.No.1867/2007 before this Court. During the pendency of the appeal, defendant No.1 died. A third party claiming under an alleged Will said to have been executed by defendant No.1 was brought on record and prosecuted the appeal. This Court, by judgment dated 17.12.2020, dismissed the Will set up by defendant No.1 but allowed the appeal in part by holding that succession to the property is governed by Section 15(1) of the Act and consequently allotted 1/4th share each to the two sons, the daughter and the husband. The present review petition is filed assailing the said judgment.

5. The learned counsel for the review petitioners has filed detailed written submissions contending that the judgment under review suffers from an error apparent on the face of the record. It is contended that the suit schedule property having been inherited by Smt.Sushila from her father, succession is governed exclusively by Section 15(2)(a) of the Act and not by Section 15(1) of the Act. It is

further contended that Section 15(2)(a) of the Act begins with a non obstante clause and operates as an exception to Section 15(1) of the Act. According to the learned counsel, the absence of the word "husband" in Section 15(2)(a) of the Act clearly indicates legislative intent to exclude the husband from inheriting parental property of the deceased female Hindu.

6. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **Lachhman Singh v. Kirpa Singh and Others** reported in **AIR 1987 SC 1616**, in support of the above contention. It is also contended that after the death of defendant No.1, the alleged claim of a third party under his Will is wholly untenable, she being a stranger to the family and to the parental property of late Smt.Sushila.

7. Per contra, learned counsel for the respondent submits that the review petition is not maintainable. It is contended that the issues raised in the review were directly in issue in the Regular First Appeal and have been adjudicated upon by this Court. It is further submitted that

the interpretation adopted by this Court in the judgment under review is a plausible interpretation of the statutory provisions and that a review petition cannot be used as an appeal in disguise.

8. Heard the learned counsel for the review petitioners and the learned counsel for the respondent and perused the material available on record.

9. The scope of review under Order XLVII Rule 1 CPC is extremely limited. A review is permissible only when there is an error apparent on the face of the record, discovery of new and important evidence which was not within the knowledge of the party despite due diligence, or for any other sufficient reason analogous thereto. Re-appreciation of evidence or re-argument on merits is impermissible in review jurisdiction.

10. The principal contention urged by the petitioners pertains to the applicability of Section 15(2)(a) of the Act. Section 15(1)(a) of the Act provides that the property of a female Hindu dying intestate shall devolve firstly upon her sons, daughters and husband. Section 15(2)(a) of the Act

carves out an exception and provides that property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased, upon the heirs of the father. A plain reading of Section 15(2)(a) of the Act makes it clear that its application is expressly conditioned upon the absence of any son or daughter of the deceased. In the present case, it is an admitted fact that Smt.Sushila died leaving behind two sons and a daughter. Therefore, the condition precedent for invoking Section 15(2)(a) of the Act is not satisfied.

11. The reliance placed on ***Lachhman Singh's case*** (*supra*) does not assist the petitioners in the facts of the present case. The said decision does not lay down that the husband is excluded even when sons and daughters of the deceased female Hindu are alive. This Court, in the judgment under review, has taken a considered view that succession is governed by Section 15(1)(a) of the Act. The said interpretation is a legally sustainable and plausible view. Merely because another interpretation is sought to be

advanced by the petitioners, the same cannot constitute an error apparent on the face of the record.

12. The contentions relating to the death of defendant No.1 and the claim of a third party under his alleged Will pertain to the merits of the appeal and do not furnish any ground for review. No clerical, arithmetical or patent error is pointed out in the judgment under review. The review petition is essentially an attempt to reopen the matter on merits, which is impermissible in law.

13. In view of the above, this Court is of the considered opinion that no ground is made out for review under Order XLVII Rule 1 of the CPC.

14. Accordingly, this court proceeds to pass the following:

ORDER

i) The Review Petition stands dismissed.

No order as to costs

Sd/-
(DR. K.MANMADHA RAO)
JUDGE

MBS, CT:VP