

IN THE SUPREME COURT OF INDIA

{S.C.R. ORDER XXI RULE 3 (1) (A)}

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2024

WITH A PRAYER FOR INTERIM RELIEFS

(Against the final judgment and order dated 08.12.2023 passed by the  
Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1165 of 2009  
(PAR) APPEALED FROM)

IN THE MATTER OF:

M/s. Rajesh Exports Limited

... Petitioner

Versus

Sri B. Devaraj and Others

... Respondents

WITH

I.A. NO. OF 2024

APPLICATION FOR EXEMPTION FROM FILING OFFICIAL  
TRANSLATION OF THE DOCUMENTS IN THE  
VERNACULAR

WITH

I.A. NO. OF 2024

APPLICATION FOR CONDONATION OF DELAY IN REFILING  
SPECIAL LEAVE PETITION  
PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONER: M/S AP&J CHAMBERS

DIARY NO 6203 OF 2024

**DECLARATION**

All defects have been duly cured. Whatever has been added/deleted/modified in the petition in the result of curing of defects and nothing else. Except curing the defects, nothing has been done. Paper books are complete in all respects.

*Awantika Manohar*

M/s AP & J Chambers  
Advocate-on-Record

Code- 1552

Date 15.03.2024

Contact No. 9999 570591

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[illegible]

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CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2024

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(Against the final judgment and order dated 08.12.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1165 of 2009 (PAR) APPEALED FROM)

IN THE MATTER OF:

M/s. Rajesh Exports Limited

... Petitioner

Versus

Sri B. Devaraj and Others

... Respondents

OFFICE REPORT ON LIMITATION

1. The Petition is /are within time.
2. The Petition is barred by time and there is delay of Nil days in filing the same against final judgement and order dated 08.12.2023 and petition for condonation of nil days delay has been filed.
3. There is delay of 26 days in refilling the Petition and petition For condonation of 26 delay in refilling has been filed.

New Delhi

Dated: 08.02.2024

BRANCH OFFICER

A/

## PROFORMA FOR FIRST LISTING

SECTION -

The case pertains to (Please tick/check the correct box):

<input type="checkbox"/>	Central Act: (Title) _____
<input type="checkbox"/>	Section: _____
<input type="checkbox"/>	Central Rule: (Title) _____
<input type="checkbox"/>	Rule No(s): <u>N/A</u>
<input type="checkbox"/>	State Act: (Title) _____ <u>N/A</u>
<input type="checkbox"/>	Section: _____ <u>N/A</u>
<input type="checkbox"/>	State Rule: (Title) <u>/</u> _____ <u>N/A</u>
<input type="checkbox"/>	Rule No(s): <u>N/A</u>
<input type="checkbox"/>	Impugned Interim Order: (Date) <u>N/A</u>
<input type="checkbox"/>	Impugned Final Order/Decree: (Date) <u>8.12.2023</u>
<input type="checkbox"/>	High Court: (Name) <u>High Court of Karnataka at Bengaluru</u>
<input type="checkbox"/>	Names of Judges: Hon'ble Mr. Justice P S Dinesh Kumar & Hon'ble Mr. Justice T G Shivashankare Gowda
<input type="checkbox"/>	Tribunal/Authority: (Name) <u>N/A</u>

- Nature of matter: ☒ Civil ☐ Criminal
- (a) Petitioner/Appellant No.1: M/s Rajesh Exports Limited  
 (b) e-mail ID: \_\_\_\_\_ N/A  
 (c) Mobile Phone Number: \_\_\_\_\_ N/A
- (a) Respondent No.1: SRI B DEVARAJ AND OTHERS  
 (b) e-mail ID: N/A

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- (c) Mobile Phone Number: N/A
4. (a) Main category classification: 18  
(b) Sub classification: 1807
5. Not to be listed before: N/A
6. (a) Similar disposed of matter with citation,  
if any, & case details: No similar disposed off matter  
(b) Similar pending matter with case details: **NO SIMILAR MATTER  
PENDING**
7. **Criminal Matter:** N/A  
(a) Whether accused/convict has surrendered: ☐ Yes ☐ No  
(b) FIR No. N/A Date: N/A  
(c) Police Station: N/A  
(d) Sentence Awarded: N/A  
(e) period of sentence undergone including period of Detention/Custody  
undergone N/A
8. **Land Acquisition Matter:**  
(a) Date of Section 4 notification: N/A  
(b) Date of Section 6 notification: N/A  
(c) Date of Section 17 notification: N/A
9. **Tax Matter:** State the tax effect: N/A
10. **Special Category (first Petitioner/Appellant Only):** N/A  
☐ Senior Citizen > 65 ☐ SC/S ☐ Woman/C ☐ Disabl ☐ Legal  
years T hild ed  
Aid ☐ In custody  
case
11. **Vehicle Number (in case of Motor Accident Claim Matters):** N/A

FILED BY:

DATE: 08.02.2024

M/S AP&J CHAMBERS  
AOR FOR PETITIONERS



B

### SYNOPSIS

That the present Special Leave Petition impugns the final judgment and order dated 08.12.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1165 of 2009 (PAR) whereby the Hon'ble High Court while allowing the Petitioner's appeal, has erroneously allowed the Respondent No. 1 to 3's applications seeking amendment of their plaint and production of additional documents, and consequently remanded the matter for fresh consideration by the Trial Court.

The Petitioner is the bona fide purchaser of property bearing Khata No. 43, 44, and 45, measuring 80 feet by 42 feet situated at Subedar Chatram Road, now known as Natarathnagar Gubbi Veeranna Road, Gandhinagar, Bangalore (*'the Schedule Property'*). It had purchased the same from the owner thereof, one Sh. Balasubramanya vide Registered Sale Deed dated 22.12.2004. Sh. Balasubramanya came into absolute ownership of the Schedule Property as it previously belonged to his mother, Smt. Lalithamma, who had no other children, and had died intestate.

However, before the Petitioner could secure possession of the Schedule Property, its vendor's wife and children (Respondents No. 1 to 3 herein, with a view to defeat the Petitioner's interest, preferred a suit (O. S. No. 914/2005 before the XXXVIII Addl. City Civil and Sessions Judge, Bangalore (*'Trial Court'*) for partition of the Schedule Property, claiming it to be joint family property. This suit was later amended, on 27.09.2009, seeking a declaration that Sale Deed dated 22.12.2004 was not binding on the undivided 1/4<sup>th</sup> share of the each of the Plaintiffs, as well as certain

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injunctive reliefs. The Plaintiffs claimed that the Schedule Property had been acquired by Sh. Balasubramanya's father, Sh. Subbaiah and as he was not wordly-wise, the joint family property transactions were made in the name of his wife, Smt. Lalithamma. They further claimed that whenever Sh. Subbaiah was in need of funds, the Schedule Property would be offered as security through conveyance deeds, and upon discharge of those liabilities, the Schedule Property would be reconveyed back to Smt. Lalithamma. It was also claimed that though the Schedule Property was purchased in the name of Smt. Lalithamma, she had no independent source of income.

The Plaintiffs also claimed that Sh. Balasubramanya was the only issue of his parents, Sh. Subbaiah and Smt. Lalithamma. In fact, throughout the proceedings before the Trial Court, the Plaintiffs maintained this position. When one of the Defendants before the Trial Court (Defendant No. 5/ one of the Tenants in the Schedule Property) deposed to the existence of a sibling of Sh. Balasubramanya by the name of one Smt. Pramila, the Plaintiff suggested to Defendant No. 5 during his cross-examination that this assertion was false. As such, through their pleadings and their conduct, the Plaintiffs have always contended that Sh. Balasubramanya was the only issue of Sh. Subbaiah and Smt. Lalithamma, who had no other children.

The Ld. Trial Court eventually decreed the Plaintiffs' suit, directing a partition to be carried out by metes and bounds, with each of the Plaintiffs to be given 1/4<sup>th</sup> of the of the Schedule Property. The Petitioner filed

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appeal against the judgment and decree of the Ld. Trial Court before the Hon'ble High Court of Karnataka at Bangalore vide RFA No. 1165/2009, primarily on the ground that the Ld. Trial Court had failed to take into account the operation of Section 14 of the Hindu Succession Act, 1956, which provides that any property held by a female Hindu, whether acquired before or after commencement of the Act, would be held by her as its absolute owner. As such, even if the Plaintiff's case were to be accepted, the moment the Schedule Property was conveyed in the name of Smt. Lalithamma, she became its absolute owner, and the property lost its character as joint family property.

On the basis of the above, the Hon'ble High Court was pleased to stay operation of the Trial Court's final judgement and decree. However, during the pendency of the Petitioner's appeal before the Hon'ble High Court, the original Plaintiffs (in the year 2013, almost ten (10) years after preferring their suit) filed three applications: (i) to amend their suit, (ii) to produce additional evidence, and (iii) to produce additional documents. By way of these applications the original Plaintiffs sought to bring on record additional and new facts and documents that were in complete conflict with their original case. Essentially, original Plaintiffs in the 2013 sought to amend their suit by contending that Sh. Subbaiah and Smt. Lalithamma had one more child, a daughter by the name of Smt. Pramila, whose whereabouts they did not know at the time of filing their suit, and whose son, one Sh. Mallikarjun had recently executed a partition deed dated 05.07.2012 in their favour, giving up his share in the Schedule Property in exchange for Rs. 5,00,000/-.

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It is the Petitioner's case that this amendment and the additional documents are entirely bogus, and brought on record only with a view to ensure that the Petitioner's appeal before the Hon'ble High Court would not succeed. Having realized that the judgment of the decree issued by the Ld. Trial Court was erroneous in view of its ignorance of Section 14 of the Hindu Succession Act, 1956, the original Plaintiffs conceived of another mechanism through which the Petitioner's interest in the Schedule Property could be defeated: by propping up a purported long-lost sister, after more than a decade of actively claiming that no such sister existed.

The Petitioner resisted the aforementioned applications strenuously before the Hon'ble High Court, by filing substantive statements of objection thereto, and also placing on record decisions which categorically provide that amendments to pleadings may not be permitted if such amendments change the very nature of the original suit and cause of action. The Hon'ble High Court in blatant disregard of this settled law, and without even considering or providing any reasons to refute the objections raised by the Petitioner, allowed the aforementioned applications, permitting amendment of the suit as well as production of additional evidence and documents, and remanding the suit for fresh consideration in light of the amendments sought to be made, as well as additional evidence sought to be produced.

Though it was contended before and demonstrated to the Hon'ble High Court that the amendments sought to be made (and documents sought to be produced) (i) were extraordinarily belated and without cause (ii) were

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in complete conflict with the originally pleaded case before the Trial Court, (iii) were completely prejudicial to the Petitioner, and (iv) sought to completely alter the nature of the Plaintiffs' claim and sought to bring in a new cause of action, the Hon'ble High Court did not even consider any of these objections and has allowed the aforementioned applications vide the impugned order without issuing any reasons in support thereof.

Hence, the impugned judgment passed by the Hon'ble High Court requires to be interfered with as it is in disregard of the above-mentioned grounds and liable to be interfered with and set aside.

Hence, the present Special Leave Petition.

LIST OF DATES AND EVENTS

DATES	EVENTS
14.03.1963	<p>Smt. Lalithamma acquired a larger composite property including the Schedule Property vide a Sale Deed of this date registered in her favour by its previous owner, one Sh. G. M. Channappa. A true translated copy of the Sale Deed dated 14.03.1963 executed between G.M. Channappa in favour of Smt. Lalithamma is annexed herewith and marked as ANNEXURE-P/1 (Pgs. <u>43</u> to <u>48</u>).</p>
05.08.1963	<p>Smt. Lalithamma, having acquired the larger composite property, sold a portion thereof to one Smt. Laksmidevamma vide a registered Sale Deed of this date. This sale has till date not been questioned or impugned by any party. And in this sale deed, Smt. Lalithamma describes the property as her absolute, exclusive property. It is submitted that the sale deed dated 05.08.1963 is not traceable and will be filed before this Hon'ble Court if required.</p>

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09.05.1965	A Lease Deed came to be executed by Smt. Lalithamma in favour of Janab Mohammed Ali (Hotel Adora) in respect of a portion of the Schedule Property. It is submitted that the sale deed dated 09.05.1965 is not traceable and will be filed before this Hon'ble Court if required.
01.01.1979	Smt. Lalithamma leased a portion of the larger composite property, including the Schedule Property to one Sh. V. K. Mohammed Ali, vide Registered Lease Deed dated 01.01.1979. A true copy of <del>Lease</del> deed dated 01.01.1979 executed between Smt. Lalithamma and K Mohammed Ali is annexed herewith and marked as ANNEXURE-P/2 (Pgs. <u>49</u> to <u>60</u> ).
01.02.1986	Sh. Subbaiah attained heavenly abode on this date. A true copy of death certificate of Subbaiah dated 01.02.1986 is annexed herewith and marked as ANNEXURE-P/3 (Pg. <u>61</u> to <u>   </u> ).
12.10.1987	Smt. Lalithamma passed away intestate, leaving behind her son, Sh. Balasubramanya as her only surviving class-I heir.

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	A true copy of death certificate of Smt. Lalithamma dated 12.10.1987 is annexed herewith and marked as ANNEXURE-P/4 (Pg. <u>62</u> to <u>   </u> ).
22.12.1999	A public notice came to be issued in the Times of India on behalf of the Respondents No. 1 to 4/Plaintiffs concerning non-acceptance of the Schedule Property as security for any loan that may be sought to be taken by any party. A true copy of the public notice dated 22.12.1999 published in Times of India Newspaper is annexed herewith and marked as ANNEXURE-P/5 (Pgs. <u>63</u> to <u>   </u> ).
31.07.2004	Subsequently, the Schedule Property came to be transferred in the name of Sh. Balasubramanya, as evinced by khata certificate dated 31.07.2004. A true translated copy of Khata Certificate dated 31.07.2004 issued by Bengaluru Mahanagara Palika is annexed herewith and marked as ANNEXURE-P/6 (Pgs. <u>64</u> to <u>66</u> ).
31.07.2004	Schedule Property came to be transferred in the name of Sh. Balasubramanya, as evinced by Khata Extract dated



	<p>31.07.2004. A true translated copy of Khata Extract dated 31.07.2004 issued by Bengaluru Mahanagara Palike is annexed herewith and marked as ANNEXURE-P/7 (Pgs. <u>67</u> to <u>69</u>).</p>
30.05.2006	<p>Sh. Balasubramanya was also paying property taxes on the Schedule Property, as evinced by property tax receipts. A true translated copy of property tax receipts dated 30.05.2006 issued by Bengaluru Mahanagara Palike annexed herewith and marked as ANNEXURE-P/8 (Pg. <u>76</u> to <u>   </u> ).</p>
31.07.2003	<p>A letter was issued by Vijaya Bank stating that it has not received any application for a loan in the name of Sh. Balasubramanya, which was produced along with the plaint before the Trial Court. A true copy of the letter dated 31.07.2003 issued by Vijaya Bank to Sri M Shivappa is annexed herewith and marked as ANNEXURE-P/9 (Pgs. <u>71</u> to <u>72</u>).</p>

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13.08.2003	A public notice came to be issued in the daily "Kannada Prabha" concerning the loss/misplacement of the original sale deed dated 14.03.1963. A true copy of the Public Notice dated 13.08.2003 published in Kannada Prabha Newspaper is annexed herewith and marked as ANNEXURE-P/10 (Pgs. <u>73</u> to <u>7</u> ).
20.08.2003	A police complaint came to be purportedly filed by the Sh. Balasubramanya to the Commissioner of Police Bangalore City concerning his impersonation by another individual. A true copy of the police complaint dated 20.08.2003 filed by Sh. Balasubramanya to the Commissioner of Police Bangalore City is annexed hereto as ANNEXURE-P/11 (Pg. <u>74</u> to <u>81</u> ) and a true copy of endorsement of complaint vide acknowledgment dated 29.08.2003 is annexed herewith and marked as ANNEXURE-P/12 (Pgs. <u>82</u> to <u>   </u> ).
22.12.2004	A Sale Deed was executed and registered in respect of the Schedule Property by its absolute owner, Sh.

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	<p>Balasubramanya in favour of the Petitioner herein. The sale deed was assigned pending No. 520/2004-05 for determination of valuation of proper stamp duty and registration charges. A true copy of Sale deed dated 22.12.2004 executed by Sri S Balasubramanya in favour of the Petitioner is annexed herewith and marked as ANNEXURE-P/13 (Pgs. <u>83</u> to <u>96</u>).</p>
27.12.2004	<p>Sh. Balasubramanya issued a letter to the Respondent No. 3 stating that he had sold the Schedule Property to the Petitioner, asking her to attorn her tenancy (in respect of the shop 'Subramanya Stores') in favour of the Petitioner as well as pay rents to the Petitioner. A true copy of letter dated 27.12.2004 issued by Sh. Balasubramanya to Smt. Sarojamma is annexed herewith and marked as ANNEXURE-P/14(Pg. <u>97</u> to <u>100</u>).</p>
NIL	<p>A police complaint came to be filed by the Respondent No. 3 concerning her husband (Sh. Balasubramanya)'s purported disappearance. A true copy of the police complaint dated nil filed by Smt. Saroja B to the</p>

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	Commissioner of Police Bangalore City is annexed herewith and marked as ANNEXURE-P/15 (Pg. <sup>101</sup> to <sup>106</sup> ).
12.01.2005	This a complaint came to be registered as an FIR being 0944/2005 dated 12.01.2008. A true copy of complaint being FIR No.0944/2005 dated 12.01.2005 is annexed herewith and marked as ANNEXURE-P/16 (Pg. <sup>107</sup> to <sup>109</sup> ) and A true copy of an endorsement issued by the jurisdictional police in respect of the aforementioned complaint dated 12.01.2005 is annexed herewith and marked as ANNEXURE-P/17 (Pg. <sup>110</sup> to <sup>111</sup> ).
24.01.2005	Respondent No. 3 responded to the letter dated 27.12.2004 stating that the Schedule Property did not absolutely belong to Sh. Balasubramanya, and that she was not a tenant and would not be paying any rents to the Petitioner. A true copy of letter dated 24.01.2005 issued by Smt. Saroja B to S Balasubramanya and the Petitioner is annexed herewith and marked as ANNEXURE-P/18 (Pg. <sup>111</sup> to <sup>113</sup> ).

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25.01.2005	A notice was issued on behalf of the Respondents No. 1 to 3 to the Revenue Officer, Bangalore Mahanagara Palike. A true copy of notice dated 25.01.2005 sent by Smt. Saroj B to Revenue Officer Bangalore Mahanagara Palike is annexed herewith and marked as ANNEXURE-P/19 (Pgs. <u>114</u> to <u>115</u> ).
02.02.2005	Respondents No. 1 to 3 (original Plaintiffs) preferred O. S. No. 914/2005 before the Trial Court.
21.02.2005	A letter was issued by Respondent No. 3 to the Sub-Registrar, Gandhinagar, Bangalore with a request not to register any document in respect of the Schedule Property. A true copy of the letter dated 21.02.2005 sent <del>to</del> the Sub Registrar Ghandinagar Bangalore <del>by</del> St. B Sarojamma is annexed herewith and marked as ANNEXURE-P/20 (Pgs. <u>116</u> to <u>120</u> ).
10.04.2007	After completion of pleadings, the Court of XXII Addl. City Civil Judge, Bangalore /Ld. Trial Court framed issues vide an order dated 10.04.2007. A true copy of the issue framed

	by the Court of XXII Addl. City Civil Judge, Bangalore vide order dated 10.04.2007 is annexed herewith and marked as ANNEXURE-P/21(Pg. <sup>121</sup> to <sup>122</sup> ).
29.05.2007	The Plaintiffs got examined the 3 <sup>rd</sup> Plaintiff (Smt. Sarojamma) as their first witness, and one Sh. Palanetra and one Sh. M. S. Nagaraj in addition thereto. At no point during their examination (either in chief or cross) did either of these witnesses make any utterance about the existence of any sibling of Sh. Balasubramanya. A true copy of Smt. Sarojamma's evidence by way of affidavit, as well as her depositions dated 29.05.2007 are annexed herewith and marked as ANNEXURE-P/22(Pg. <sup>122</sup> to <sup>146</sup> ).
23.02.2008	That the Sh. Palanetra's got examined before the Ld. Trial Court in addition to Plaintiff No.1. A true copy of Sh. Palanetra's evidence by way of affidavit along with depositions dated 23.02.2008 is annexed herewith and marked as ANNEXURE-P/23 (Pg. <sup>141</sup> to <sup>145</sup> ).

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01.03.2008	That the Sh. M. S. Nagaraj's got examined before the Court in addition to Plaintiff No.1. A true copy of Sh. M. S. Nagaraj's evidence by way of affidavit along with depositions is annexed herewith and marked as ANNEXURE-P/24 (Pg. <u>146</u> to <u>150</u> ).
17.04.2008	The Petitioner herein (Defendant No 2 before the Trial Court) produced one witness being its then general Manager (Sh. M. A. Prakash), whose evidence was placed on record by way of affidavit. Exhibits D1 to D13 were marked through him, and he was duly cross-examined by the Plaintiffs' counsel. A true copy of Sh. M. A. Prakash's evidence affidavit as well as depositions dated 17.04.2008 is annexed herewith and marked as ANNEXURE-P/25 (Pg. <u>151</u> to <u>170</u> ).
21.06.2008	The original Defendant No. 5 (Sh. Srinivasa Shetty), one of the tenants in the Schedule Property got himself examined before the Trial Court as DW2. In his chief examination he deposed to the existence of one Smt. Pramila as being the

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	<p>sister of Sh. Balasubramanya. In his cross examination on behalf of the Plaintiffs, a suggestion was put to him that he was lying about the existence of Smt. Pramila and that no such person existed. A true copy of the evidence affidavit of Sh. Srinivasa Shetty along with his depositions dated 21.06.2008 is annexed herewith and marked as ANNEXURE-P/26 (Pgs. <u>171</u> to <u>189</u>).</p>
29.07.2009	<p>The Trial Court permitted the original Plaintiffs to amend their plaint by adding the reliefs of declaring that Sale Deed dated 22.12.2004 was not binding on the share of the Plaintiff's in the Schedule Property. A true copy of the Amended Plaint in O. S. No. 914/2005 dated 29.07.2009 is annexed herewith and marked as ANNEXURE-P/27 (Pgs. <u>181</u> to <u>194</u>).</p>
15.09.2009	<p>The Trial Court passed its final judgment and order, decreeing the suit, holding that the Sale Deed dated 22.12.2004 was not binding on the Plaintiffs' share (3/4<sup>th</sup> in total) of the Schedule Property, and that the Plaintiffs were entitled to partition and separate possession of their</p>



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	<p>respective 1/4<sup>th</sup> shares of the Schedule Property. A true copy of the final judgment and order dated 15.09.2009 passed by the Court of the XXXVIII Addl. City Civil Judge Bangalore in O.S. 914/2005 is annexed herewith and marked as ANNEXURE-P/28 (Pgs. <sup>195</sup> <u>  </u> to <sup>240</sup> <u>  </u>). Pursuant to the above, a preliminary decree was also drawn up. A true copy of the preliminary decree passed by the Court of the City Civil Judge at Bangalore in OS No.914/2005 which is annexed herewith and marked as ANNEXURE-P/29 (Pgs. <sup>241</sup> <u>  </u> to <sup>243</sup> <u>  </u>).</p>
19.11.2009	<p>Following this, the Petitioner herein preferred an appeal against the final judgment and order of the Trial Court dated 15.09.2009, before the Hon'ble High Court of Karnataka vide RFA No. 1165/2009. A true copy of RFA No. 1165/2009 dated 16.11.2009 filed by the Petitioner against the Respondents before the Hon'ble High Court of Karnataka at Bengaluru is annexed herewith and marked as ANNEXURE-P/30 (Pg. <sup>244</sup> <u>  </u> to <sup>255</sup> <u>  </u>). The judgment of the Trial Court came was stayed by the Hon'ble High Court.</p>

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05.07.2012	During the pendency of the Petitioner's appeal, the original Plaintiffs got executed a so-called ' <i>Partition Deed</i> ' which purported to grant in their favour the share of the Schedule Property that allegedly belonged to one Sh. Mallikarjun who the Plaintiffs posit as being the son of the now deceased Smt. Pramila, the long-lost sister of Sh. Subramanya.
28.01.2013	Thereafter, the original Plaintiffs/Respondents No. 1 to 3, preferred two applications (I. A. No. 1 and 2 of 2013) seeking to produce additional evidence by way of documents and seeking to amend their plaint. The additional documents included a copy of the Partition Deed dated 05.07.2012, and the amendment to the plaint were to the effect that Sh. Balasubramanya had a sister (Smt. Pramila) who the Plaintiffs had not been able to trace at the time of filing their suit, and whose son (Sh. Mallikarjun) had now given them his share of the Schedule Property vide the aforementioned Partition Deed. True copies of I. A. No. 1/2013 and 2/2013 along with enclosed documents

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	filed before the Hon'ble High Court of Karnataka at Bengaluru are annexed herewith and marked as ANNEXURE-P/31 (Pg. <sup>256</sup> to <sup>288</sup> ).
02.11.2017	Following this, the original Plaintiffs/Respondents No. 1 to 3 also preferred an application (seeking to produce additional documents, which were tax-paid receipts in respect of the Schedule Property for the years 2010 to 2017. A true copy of the application dated 02.11.2017 along with enclosed documents filed by the Petitioner before the Hon'ble High Court of Karnataka at Bengaluru in RFA No.1165/2009 is annexed herewith and marked as ANNEXURE-P/32 (Pg. <sup>289</sup> to <sup>316</sup> ).
31.05.2023	The Petitioner filed its detailed reply to the aforementioned applications, contending that the documents sought to be produced and amendments sought to be carried out were grossly belated, entirely prejudicial to the Petitioner, and completely at variance with the applicants' originally pleaded case. It was also contended that the Partition Deed dated 05.07.2012 was squarely hit by Section 52 of the

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	<p>Transfer of Property Act, 1882 and therefore could not be judicially considered. A true copy of the statement of objections filed by the Petitioner dated 31.05.2023 before the before the Hon'ble High Court of Karnataka at Bengaluru in RFA No.1165/2009 is annexed herewith and marked as ANNEXURE-P/33 (Pg. <u>319</u> to <u>333</u>).</p>
26.03.2023	<p>The Hon'ble High Court finally heard Petitioner's appeal along with the interlocutory applications preferred by the original Plaintiffs/Respondents No. 1 to 3, and reserved the matter for final judgment. During this hearing, the Hon'ble High Court was taken through several decisions that delineate the principals relating to amendment of plaints and production of additional evidence. The Hon'ble High Court was also taken through decisions that outline the scope and import of Section 14 of the Hindu Succession Act, 1956. A true copy of the Memorandum of Citations relied upon by the Petitioner before the Hon'ble High Court is annexed herewith and marked as ANNEXURE-P/34 (Pg. <u>334</u> to <u>336</u>).</p>

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08.12.2023	After more than 8 months, the Hon'ble High Court passed the impugned order, which while allowing the Petitioner's appeal, erroneously also allowed the Respondents No. 1 to 3's applications for amendment of their plaint and production of additional evidence, remanding the matter for fresh consideration by the Trial Court in light of such amendments ( <b>IMPUGNED JUDGMENT</b> ). Shockingly, the Hon'ble High Court has not assigned any reasons whatsoever for allowing the aforementioned applications, and nor has its order anywhere dealt with the serious objections raised to such amendments and production of documents by the Petitioner. None of the judicial decisions relied upon by the Petitioner are even mentioned or considered by the Hon'ble High Court, disclosing an entirely mechanical approach and non-application of mind
08.02.2024	Hence, the Special Leave Petition.

22817/23

Rihan Kothari

RFA 1165/2009

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8<sup>TH</sup> DAY OF DECEMBER 2023

PRESENT

THE HON'BLE MR. JUSTICE P.S.DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE T.G.SHIVASHANKARE GOWDA

**RFA NO.1165 OF 2009 (PAR)**

BETWEEN:

M/S RAJESH EXPORTS LIMITED  
NO.4, BATAVIA CHAMBERS  
KUMARA KRUPA ROAD  
KUMARA PARK EAST, BANGALORE -1  
REP. BY ITS AUTHORISED OFFICER  
M.K.NARAG, S/O KIRPARAM NARANG

... APPELLANT

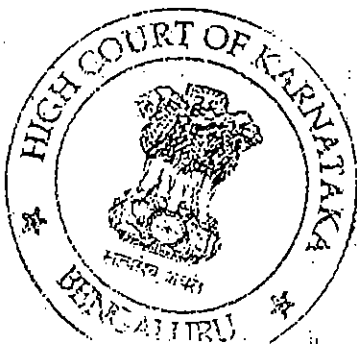
(BY SRI.ROHAN KOTHARI, ADV.)

AND:

1. SRI. B. DEVARAJ, S/O BALASUBRAMANYA  
AGED ABOUT 29 YEARS
2. B. YOGESH, S/O BALASUBRAMANYA  
AGED MAJOR 21
3. SMT. B. SAROJAMMA @ B. SAROJA  
W/O BALASUBRAMANYA, AGED 48 YEARS

RESPONDENTS 1 TO 3 ARE R/AT NO.43  
SUBEDAR CHATRAM ROAD, BANGALORE - 9

4. SRI. S. BALASUBRAMANYA .. DELETED
5. M/S VOLGA RESTAURANT  
NO.43 (UPSTAIRS), SC ROAD, BANGALORE - 09  
REP. BY ITS PROPRIETOR SHRI V.K.ABDULLA  
MAJOR ABOUT 50 YEARS



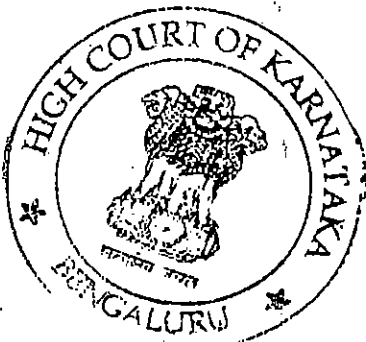
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6. M/S HOTEL ADORA  
NO.43 (OUTHOUSE), SC ROAD, BANGALORE -09  
REP. BY ITS SHRI JANAB AHMED, MAJOR - 55
7. SHRI SRINIVASA SHETTY, 60 YEARS  
PROP. OF M/S ARUNA STORES, NO.45  
SC ROAD, BANGALORE - 9  
AMENDMENT CARRIED OUT IN  
PURSUANCE OF ORDER  
DATED 27.09.2022  
SINCE DECEASED, REP. BY LRS.
- 7(a) SMT. NAGALAKSHMI  
AGED ABOUT 80 YEARS  
W/O LATE A.SHRI SRINIVASA SHETTY
- 7(b) SRI. S. ARUNA KUMAR  
AGED ABOUT 57 YEARS  
S/O SRINIVASA SHETTY  
BOTH R/AT NO.16/1, 'SUKHI'  
5<sup>TH</sup> CROSS, R.K.PURAM  
BENGALURU - 560 009
- 7(c) SRI. S. VENKATESH BABU  
AGED ABOUT 52 YEARS  
S/O LATE A. SRINIVASA SHETTY  
R/AT NO.9, 5<sup>TH</sup> CROSS  
R.K.PURAM, BENGALURU - 560 009 ... RESPONDENTS
- (BY SRI.C. SHANKAR REDDY, ADV. FOR R1 TO R3;  
R4 DELETED; SRI. P. USMAN, ADV. FOR  
SRI. HEGDE ASSTS. FOR R5 & R6;  
SRI. K. R. ASHOK KUMAR, ADV. FOR R7[a TO c])

THIS RFA IS FILED UNDER SECTION 96 OF CPC,  
AGAINST THE JUDGMENT AND DECREE DATED 15.09.2009,  
PASSED IN OS. NO.914/2005, ON THE FILE OF THE XXXVIII  
ADDL. CITY CIVIL JUDGE, BANGALORE DECREETING THE SUIT  
FOR PARTITION AND SEPARATE POSSESSION.

THIS RFA HAVING BEEN HEARD AND RESERVED FOR  
JUDGMENT ON 23.06.2023 AND COMING ON FOR  
PRONOUNCEMENT OF JUDGMENT THIS DAY,  
**T.G.SHIVASHANKARE GOWDA J.,** DELIVERED THE  
FOLLOWING:



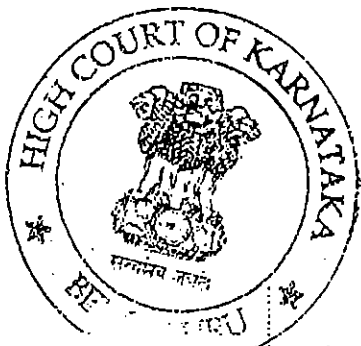
**J U D G M E N T**

This appeal by the second defendant is directed against the judgment and decree dated September 15, 2009 in O.S No. 914/2005 passed by the XXXVIII Addl.City Civil Judge, Bangalore, decreeing the suit for partition, separate possession, permanent injunction and declaration.

2. For the sake of convenience, parties shall be referred as per their status before the Trial Court.

3. Heard Shri. Rohan Kothari, learned Advocate for the appellant/defendant No.2 and Shri. Shankar Reddy, learned Advocate for the respondents/plaintiffs. The other respondents have been served but remained unrepresented.

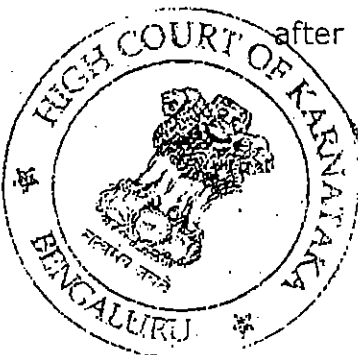
4. The plaint schedule property is the building bearing khata Nos.43, 44 and 45 measuring 80 feet x 42 feet situated at Subedar Chatram Road now Natarathnagar Gubbi Veeranna Road, Gandhinagar, Bangalore city.





5. Plaintiffs' case is, Plaintiff No.3/Sarojamma is the wife of Balasubramanya (defendant No.1). Devaraj and Yogesh (plaintiffs No.1 and 2) are their children. Suit property is their joint family property. Plaintiffs are running a business in a portion of the suit property under the name and style 'Subramanya Stores'. Remaining Portion of the suit property has been leased out to defendants No.3 to 5. The family is getting rentals and earning income from the business and it is financially in a comfortable position. There was no legal necessity for the family to sell the suit property. The suit property was acquired by Balasubramanya's father Subbaiah. He was an employee of Binny Mills. As he was not worldly-wise, the joint family transactions were being carried out in the name of Lalithamma, his wife. Subbaiah used to raise money on the suit property as and when required by executing a sale deed as a security document.

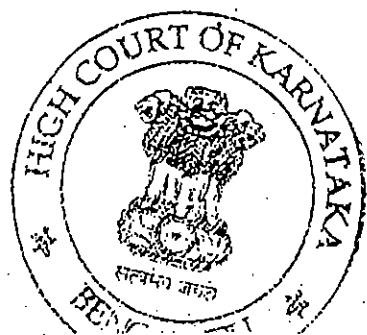
6. The suit property was offered as security and after discharge of the liabilities, re-conveyance deed is



obtained in the form of sale deeds in the name of his wife Lalithamma. The suit property was purchased in the name of his wife Smt. Lalithamma. She had no independent source of income.

7. Plaintiffs' further case is, Balasubramaya never took care of the family and the suit property, as he was interested in Cinema and music. His whereabouts were not known since 2007. Plaintiffs had lodged a police complaint in that behalf. During the pendency of suit, he has passed away.

8. Plaintiffs received letter dated 27.12.2004 stating that Balasubramaya had alienated the suit property in favour of Rajesh Exports (defendant No.2/appellant) demanding the rents payable by the tenants. Plaintiffs replied denying the contents of that letter and asserted that Balasubramaya was not the absolute owner of the property. Hence, plaintiffs have filed the instant suit seeking partition, separate possession and for permanent injunction restraining defendants No.1 and 2 from interfering with the

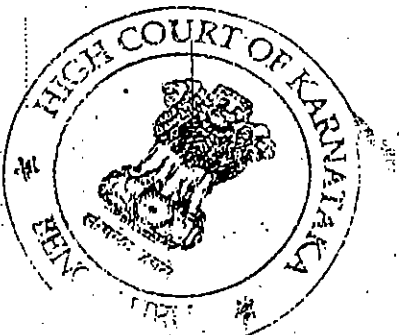


plaintiffs' possession and ousting them from joint possession of the suit schedule property.

9. Plaint was amended on 27.09.2009 and prayer (aa) was added seeking a declaration that the alleged sale deed dated 22.12.2004 executed by the first defendant in favour of second defendant in respect of suit schedule property is not binding on the undivided 1/4<sup>th</sup> share each of respective plaintiffs and seeking a mandatory injunction directing defendants No.3 to 5 to pay 3/4<sup>th</sup> share of the rents payable to the plaintiffs.

10. Rajesh Exports (defendant No.2) resisted the suit by filing written statement contending *inter alia* that:

- suit property is not an ancestral property. Lalithamma had acquired a large property from one Chinnappa, which included suit property. She sold a portion of that property to one Lakshmiddevamma under Sale Deed dated 05.08.1963. In that Sale Deed she is described as the absolute owner of the property;



- Lalithamma died on 12.10.1987 and Balasubramanya being the sole surviving class I heir, succeeded to the property;
- Balasubramanya was paying taxes in respect of suit property;
- Lalithamma had also leased a portion of the suit property. The said Lease Deed also bears the name of Lalithamma as the sole and absolute owner of the property.

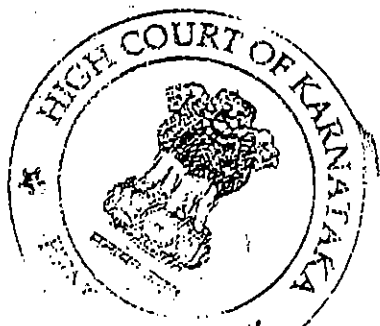
11. Defendant No.3 has filed written statement stating *inter alia* that he was a tenant in suit property and was paying rents to Balasubramanya.

12. Defendant No.4 has filed written statement contending *inter alia* that Balasubramanya had leased a portion of suit property to him for a period of 22 years commencing from 01.10.1999 with an option to extend the term of lease vide registered lease deed dated 22.03.1990, vacant land was leased and he has constructed a building on the said property. Suit property cannot be partitioned by metes and bounds till the expiry of lease period is over entitling him to enjoy



the property as one compact block till it hands over vacant possession of the property to its owner. The rent was fixed at Rs.600/- per month for 10 years and thereafter rent of Rs.850/- is paid to the first defendant.

13. Defendant No.5 filed the written statement ontending *inter alia* that first defendant's father Subbaiah was the absolute owner of the property. He has leased a portion of the suit property to him on a monthly rent of Rs.500/- in the year 1958. He was paying rents to Subbaiah, after his death paying rents to his wife Lalithamma and after her death, rents were being collected by first defendant on behalf of his family as Karta of Hindu Undivided Family from November 1995 till 12.12.2004. Subbaiah and Lalithamma have not only left the first defendant as legal heirs but also left one Prameela who died in the year 1999 leaving behind her only son by name Mallikarjuna @ Mani. Hence, the first defendant along with the plaintiffs and Prameela being the Class-I heirs are entitled to succeed to the suit schedule property.



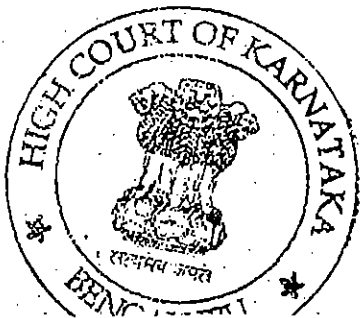
14. Based on the pleadings, the Trial Court has framed following issues:

- 1) Do the plaintiffs prove that suit schedule property is the joint family property belonging to plaintiffs and defendant No.1?
- 2) Does defendant No.2 prove that suit property is the self-acquired property of defendant No.2?
- 3) Does defendant No.2 prove that suit is not properly valued and Court fee paid is sufficient?
- 4) Is plaintiff entitled to 1/6<sup>th</sup> share in the suit schedule properties?
- 5) Do plaintiffs prove that they are entitled for a share in suit property, if so, to what share are they entitled to?
- 6) What order or decree?

In view of amendment to the plaint, seeking relief of declaration, the following additional issue is framed:

Addl.Issue No.1:

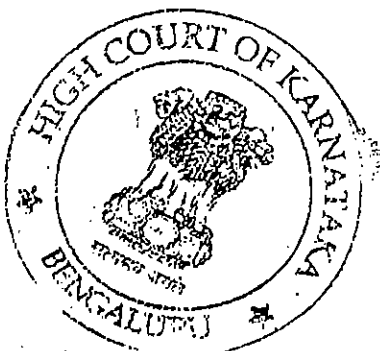
"Whether plaintiffs prove that the registered sale deed dated 22.12.2004 executed by defendant No.1 in favour of defendant No.2 in respect of suit properties



*is not binding on their share in the suit property?"*

15. On behalf of plaintiffs, three witnesses were examined as P.W.1 to P.W.3 and Exs. P1 to P59 were marked. On behalf of Defendants, one witness was examined as D.W.1 and Exs. D1 to D13 were marked. Answering issues No.1, 3, 5 and additional issue No.1 in the affirmative; and issue No.2 in the negative, the Trial Court has decreed the suit.

16. It is the contention of the learned counsel for defendant No.2 (Rajesh Exports) that suit property was purchased by Smt. Lalithama. Lalithamma died intestate leaving Balasubramanya as the sole surviving coparcener. Lalithamma had sold a portion of composite property to Lakshmiddevamma vide sale deed dated 05.08.1963 and the same has not been challenged. Balasubramanya died during the pendency of suit. With his death the cause of action did not survive.

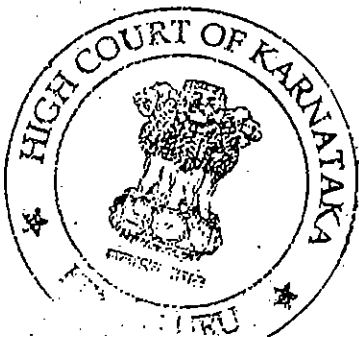


17. Learned counsel for the plaintiffs while arguing in support of the impugned judgment and decree contended *inter alia* that the suit property was purchased by Subbaiah. Therefore, it is a joint family property and plaintiffs are entitled for their share.

18. Plaintiffs have filed I.A.No.1/2013 with a prayer to produce additional evidence and I.A. No.2/2013 with a prayer to amend the plaint and I.A. No.2/2017 to produce additional documents.

19. In the affidavit filed in support of I.A. No.2/2013, it is stated that one of the tenants, Srinivasa Setty (defendant No.5) had taken up a contention in the written statement that Lalithamma had a daughter by name Prameela. Plaintiffs have entered into a partition deed dated 05.07.2012 wherein, Prameela's son Mallikarjuna has given up his rights in plaintiffs' favour for a consideration of Rs.5 Lakhs.

20. By I.A.No.2/2013, the plaint is sought to be amended by adding paragraph No.4(a), (b) and (c) in

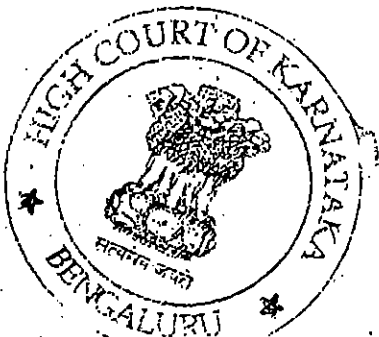




the plaint. In the proposed pleading, it is stated that whereabouts of Prameela was known only to Balasubramanya. Plaintiffs did not know the whereabouts of Prameela. Balasubramanya had also absconded. It is also stated that plaintiffs noticed presence of Prameela's son in a family function and obtained his relinquishment in respect of suit property.

21. In substance, plaintiffs' present case is that Lalithamma had two children namely Balasubramanya and Prameela. Prameela's whereabouts were not known at the time of filing the suit. They learnt about Prameela when one of the tenants urged this contention in the written statement. Accordingly, they have sought to amend the plaint.

22. With the filing of this application, the entire dimension of the case has changed. Suit has progressed on the premise that Subbaiah and Lalithamma had only one issue namely Balasubramanya.

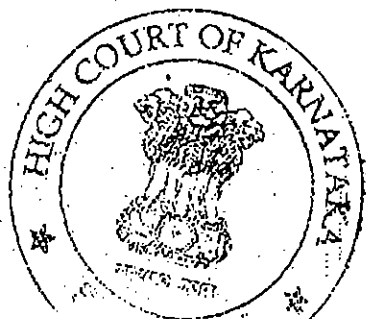


23. Srinivasa Setty has come into possession of the portion of suit property in 1958 whilst Subbaiah was alive. He has contended that Subbaiah had a daughter by name Prameela. It would have been appropriate for the plaintiffs to seek amendment once they received the copy of the written statement filed by Srinivasa Setty. For reasons best known, suit has proceeded without any amendment. This appeal has been filed in 2009. I.A. No.2/2013 has surfaced in 2013. It has been ordered by this Court on 21.08.2015 that the said application would be considered at the time of final hearing. Learned Advocate for the appellant has filed objections to the said I.A.2/2013 on 31.05.2023.

24. We have carefully considered rival contentions and perused the records.

25. The points that arise for our consideration in this appeal are:

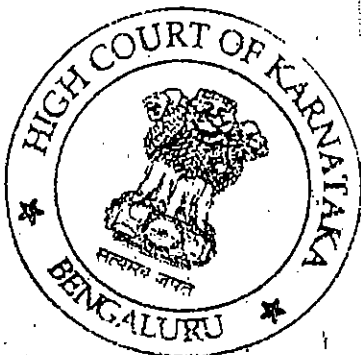
- i. *Whether the suit property is the joint family property or not?*
- ii. *Whether the impugned judgment and decree requires any interference?*



**Re. Point No.(i):**

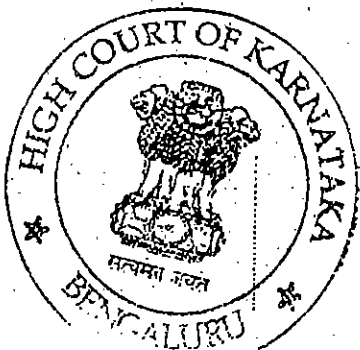
26. The undisputed facts of the case are, Subbaiah, father of defendant No.1 was the owner of the suit schedule property. He was raising loan by pledging the suit schedule property. After discharging the loan, he has obtained the re-conveyance deed in the name of his wife in the form of sale deeds. During his life time, Subbaiah has leased a portion of the property to the tenants and some of the tenants were inducted by the first defendant. Third plaintiff is the wife, plaintiffs No.1 and 2 are the children of Balasubramanya.

27. It is the contention of the learned counsel for the appellant/defendant No.2 that Lalithamma is the absolute owner of the suit schedule property. According to him, Lalithamma purchased the suit property under Ex.P12 and by virtue of Section 14 of the Hindu Succession Act, it inures to her benefit exclusively. Therefore, Balasubramanya having succeeded to his mother's property becomes its absolute owner.



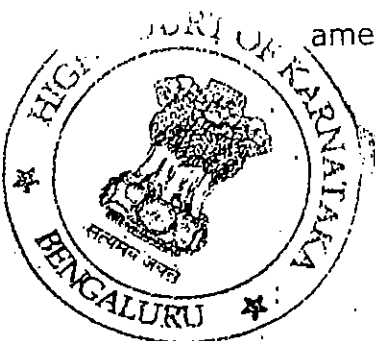
28. It is the contention of the learned counsel for the plaintiffs that the suit property was purchased by Subbaiah as per Ex.P57. He has mortgaged the said property to Siddalinga Swamigalu, Bellimutt as per Ex.P53. Later, he sold the suit property in favour of Gangappa as per Ex. P55. Subsequently, property was re-purchased in the name of his wife Lalithamma as per Ex.P12. Lalithamma is only a name lender, she had no independent source of income and therefore, the property is a joint family property. It is further contended that Subbaiah and Lalithamma had a daughter by name Prameela. She died leaving behind her son Mallikarjuna. Irrespective of the fact whether the suit property is the joint family property or self-acquired property of Lalithamma, Prameela is entitled for equal share with the first defendant. First defendant had no absolute right of alienation in favour of the second defendant.

29. In view of the rival contentions, we are required to consider whether Prameela is the daughter



of Subbaiah and Lalithamma. If the argument of the second defendant that the suit schedule property is the self-acquired property of Lalithamma is to be accepted, under Section 8 of the Hindu Succession Act, Prameela gets equal share on par with the first defendant.

30. As we notice from the written statement filed by defendant No.5, he has taken a specific contention that Prameela is the daughter of Subbaiah and Lalithamma. She died in the year 1999 leaving behind her son Mallikarjuna. When the legal heir of Lalithamma was alive, whether the first defendant had an absolute right to alienate the suit schedule property without joining Prameela's heir. In this regard, plaintiffs have filed I.A.No.1/2013 under Order XLI Rule 27(1) read with Section 151 of CPC and I.A.No.2/2017 under Order XLI Rule 27(aa) and (b) read with Section 151 of CPC seeking permission to produce additional documents and also filed I.A.No.2/2013 under Order VI Rule 17 read with Section 151 of CPC seeking amendment to the plaint. The proposed amendment



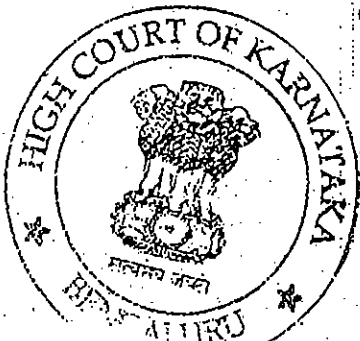
sought for by the plaintiffs in I.A.No.2/2013 reads as follows:

"1. To add paragraph no.4(a) after paragraph no.4 of the  
plaint.

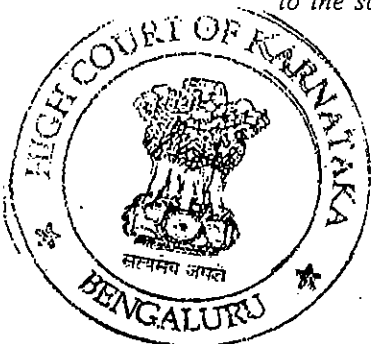
"4(a) The plaintiffs submit that as stated earlier Smt. Lalithamma is the grand mother of the plaintiffs 1 and 2 and mother in law of the 3<sup>rd</sup> plaintiff and the grand father plaintiffs 1 and 2 was one Sri.D.M.Subbaiah now both D.M.Subbaiah and Lalithamma are no more. Smt.Lalithamma and D.M.Subbaiah had a son namely S.Balasubramanya who is impleaded as the first defendant in the above suit and they had also a daughter by name Smt.Pramila who was married to Sri.T.N.Shivashankar. Both Smt.Pramila and Sri.T.N.Shivashankar during their lifetime were residing at no.19, Bhadraiahana playa, Magadi Taluk, Ramanagara District and prior to that they were residing in the suit schedule property along with the plaintiffs 1 to 3 and defendant no.1, late D.M.Subbaiah and late Smt.Lalithamma. The said Smt.Pramila and late Shivashankar are no more and they have left behind a son by name T.S.Mallikarjuna @ Malikarjunaiah. The said T.S.Mallikarjuna has since been married to Smt.Somalatha and out of the wed lock they have begot a daughter and a son by name Kumari M.Jamuna and Master M.Lokesh respectively."

2. To add paragraph no.4(b) after paragraph no.(a) in the original suit:

"4(b). The plaintiff submit that the whereabouts of Smt.Pramila, the sister of the first defendant was only to known the first



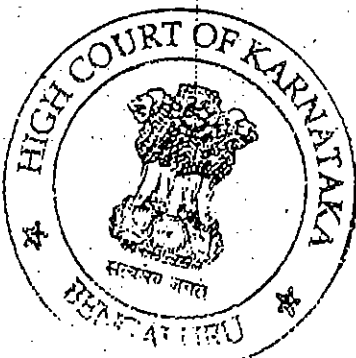
defendant. Subsequent to the family being shifted to magadi Taluk at the time of filing of the suit the first defendant was absconding and he was not co-operating with the plaintiffs and the plaintiffs were never aware regarding the actual whereabouts of the said Smt.Pramila. The plaintiffs submit that during the pendency of the suit efforts were made to trace the said Smt.Pramila but inspite of the best efforts the plaintiffs were not able to trace out the exact place of the residence of Smt.Pramila and her family members. The plaintiffs submit that all efforts made by them to trace the said Smt.Pramila proved futile. The 5<sup>th</sup> defendant in the above suit is one of the tenants in the suit schedule property had taken up a contention regarding the existence of the Smt. Pramila. However, during one of the family functions the plaintiffs had noticed the presence of the son of Smt.Pramila and on enquiry it was found that he has been residing at Bhadracharya Magadi Taluk along with his family members. Since Smt. Lalithamma left behind a son and a daughter to succeed her estate the said T.S.Mallikarjuna is also a proper and necessary party and he had also subsisting right, title, interest and his exclusive and independent share in the suit property and in order to safeguard the interest of the said T.S.Mallikarjuna since he was not in a position to travel all over to Bangalore and participate in the above proceedings he agreed to relinquish his share pertaining to the suit schedule property. In this behalf a mutual consultation and agreement the share of the said T.S.Mallikarjuna was fixed at Rs.5,00,000=00 [Rs.Five Lakhs Only]. Accordingly, a registered partition deed dated 05.07.2012 came to be executed by the said T.S.Mallikarjuna along with his wife and children and the entire amount payable to the said Mallikarjuna was paid under cheques. The certified



copy of the registered partition deed dated 05.07.2012 is produced herewith for kind reference of this hon'ble court alongwith a separate application. Thus, it is clear that even life of the 1<sup>st</sup> defendant he was not the absolute owner he could not have allegedly convey the schedule property all by himself to the exclusion of his sister share. On this instance also this hon'ble court be please to be declare that alleged share of the 1<sup>st</sup> defendant in favour of the second defendant is not binding on the share of Smt.Pramila and since son of Smt. Pramila, T.S.mallikarjuna had a share and on this ground also the said alleged sale deed dated 21.02.2004 is required to be declared as not binding on the plaintiffs' share and further/additional share is to be granted to the plaintiffs".

3. To add paragraph no.4(c) after paragraph no.4(b) in the original suit:

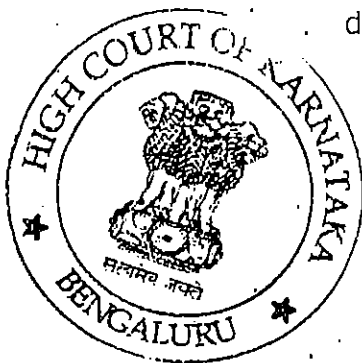
"4(c). The plaintiffs submit that in fact the grand father of the plaintiffs 1 and 2 Sri.D.M.Subbaiah and the fore fathers of the plaintiffs 1 and 2 were originally hailing from a village near Denkanikote, Hosur Taluk, State of Tamil Nadu and the said Sri.D.M.Subbaiah had two brothers and Sri.D.M.Subbaiah left all the family properties to his brothers and accepted money consideration by entering into a oral partition amongst themselves and out of the amount the said Sri.D.M.Subbaiah received towards his share he invested the said amount for purchasing the suit schedule property in the name of his wife, Smt.Lalithamma and Smt.Lalithamma had no self earned Source of income as she was a housewife and it is ancestral income that was invested in purchasing the suit property and hence the suit





*property is to be treated as ancestral/joint family property and hence the plaintiffs are also entitled for a share therein."*

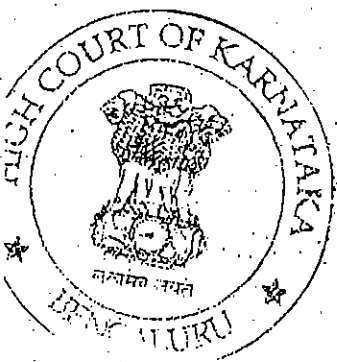
31. According to the plaintiffs, amendment is necessitated for the reason that they have traced Prameela's son, who has executed a Relinquishment Deed to the extent of Prameela's share in the suit schedule property by taking consideration. In view of the same, the plaintiffs want to plead and demonstrate that the suit schedule property is the joint family property. The contention of the second defendant is that the suit schedule property is the self-acquired property of the first defendant. Before commencement of the trial, defendant No.5 has specifically pointed out existence of Prameela and that she had died leaving behind her sole son and that he was a necessary party to the proceedings. But the trial has proceeded ignoring the said aspect and in the impugned judgment, there is no finding by the Trial Court with regard to Prameela. Hence, for the first time in this appeal, we cannot decide whether Prameela is one of the heirs of Subbaiah



and Lalithamma and what is her right in the suit schedule property. As seen from the material on record, plaintiffs do not deny alienation by defendant No.1 in favour of defendant No.2. They claim share in the property as it is a joint family consists of themselves and first defendant. The existence of Pameela is pleaded contending that she is the necessary party to the suit.

32. DW-2/A.Srinivasa Setty is the defendant No.5.

In the witness box, he has reiterated the existence of Pameela as one of the legal representatives of Subbaiah and Lalithamma. Hence, the proposed amendment narrating about Pameela, and Mallikarjuna executing a relinquishment deed in favour of the plaintiffs requires consideration on merits. The proposed amendment will not change the nature of the suit, irrespective whether the suit property is a joint family property or self-acquired property, the legal representatives of Pameela shall have a share in the suit property. Admittedly, the legal representative of

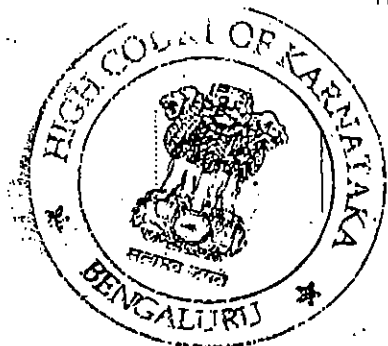


Prameela has not joined execution of the sale deed/Ex.D2 in favour of defendant No.2. Hence, the additional evidence as suggested by the plaintiffs under Order XLI Rule 27 of CPC necessarily merits consideration, which can only be done by the Trial Court and not for the first time before the appellate court. Hence, the plaintiffs have made out grounds for permitting amendment of the pleadings and to produce the additional evidence.

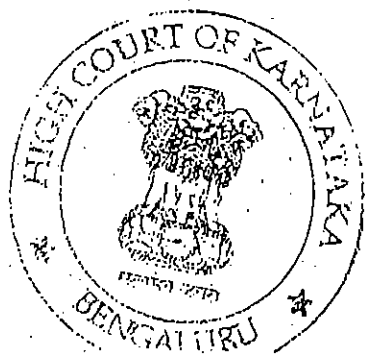
33. The contention of the second defendant that the suit schedule property is the self-acquired property of first defendant cannot be considered in the changed circumstances of existence of another heir of Subbaiah and Lalithamma. Hence, the matter requires re-consideration by the Trial Court. Accordingly, we answer point No.1.

**Reg. Point No.(ii):**

34. We have carefully perused the impugned judgment. As we have referred supra, defendant No.5 has taken a specific plea about the existence of



Prameela. But the Trial Court did not frame any issue in this regard, but in para-17 of its judgment, the Trial Court has noted that whereabouts of Prameela were not known. Taking into consideration that there was no pleading in the plaint or any evidence placed by the plaintiffs about existence of Prameela, who died leaving behind her son Mallikarjuna as her legal heir, the Trial Court has proceeded on an assumption that for more than 10 years, the whereabouts of Mallikarjuna and Prameela were not known. When one of the defendants has raised a point regarding existence of Prameela and she being a necessary party, the Trial Court has committed an error in not framing necessary issue in this regard. In a suit for partition, all the members of the joint family are necessary parties. The Trial Court ought to have deferred the judgment and direct impleadment of all necessary parties and then to proceed on merits. As we notice from the impugned judgment, the finding recorded by the Trial Court about non-existence of Prameela without there being any

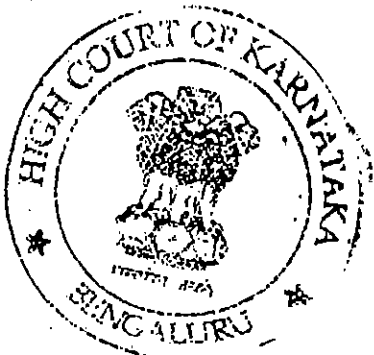


issue, is not sustainable. Hence, the finding recorded by the Trial Court is one-sided, without considering pleadings and evidence on record. Hence, we are persuaded to hold that the finding recorded by the Trial Court is erroneous and calls for interference.

35. In view of our finding on points No.(i) and (ii), we find that it is a fit case for remand rather than deciding the case on merits relying upon the proposed amendment without bringing the additional evidence before the Court. Hence, the appeal merits consideration. In the result, the following;

**ORDER**

- (i) Appeal is allowed;
- (ii) The impugned judgment and decree is set aside;
- (iii) I.A.No.1/2013 filed under Order XLI Rule 27(1) read with Section 151 of CPC and I.A.No.2/2017 filed under Order XLI Rule 27(aa) and (b) read with Section 151 of CPC by the plaintiffs are hereby allowed permitting the plaintiffs to adduce additional evidence;
- (iv) I.A.No.2/2013 filed by the plaintiffs under Order VI Rule 17 read with Section 151 of CPC is hereby



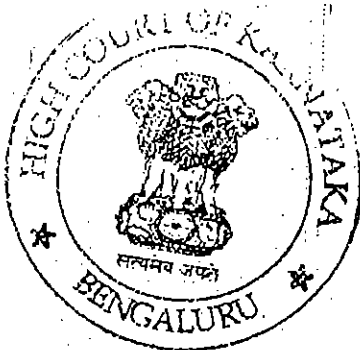
allowed. Plaintiffs are permitted to amend the plaint;

- (v) Suit in O.S.No.914/2005 is restored to the file of XXXVIII Addl.City Civil Judge, Bangalore, with a direction to complete the amendment and to frame necessary issues, permit both the parties to adduce additional evidence by impleading the legal representatives of Prameela and to decide the case on merits without being influenced by any of the observations made hereinabove;
- (vi) Without further notice, parties are directed to appear before the Trial Court on **22.12.2023**;
- (vii) Since the suit is of the year 2005, the Trial Court is requested to dispose of the suit at the earliest;
- (viii) The court fee shall be refunded to the appellant in accordance with law.

Parties to bear their own costs.

Sd/-  
JUDGE

Sd/-  
JUDGE



- The ~~NAME~~ on which the application was made 18/12/23
- b) The date on which charges and additional Charges if any are called for -
- c) The date on which charges and additional Charges if any are deposited/Paid -
- d) The date on which the copy is ready 15/12/23
- e) The date of notifying that the copy is ready For delivery 15/12/23
- f) The date on which the applicant is required to appear on or before 19/12/23
- g) The date on which the copy is delivered to the Applicant 21/12/23
- h) Examined by

TRUE COPY  
Section Officer  
High Court of Karnataka  
Bangalore - 560 001

26

IN THE SUPREME COURT OF INDIA

{S.C.R. ORDER XXI RULE 3 (1) (A)}

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

(Under Article 136 of the Constitution of India)

WITH A PRAYER FOR INTERIM RELIEF .

(Against the final judgment and order dated 08.12.2023 passed by the  
Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1165 of 2009  
(PAR) Appealed From)

POSITION OF THE PARTIES  
BEFORE HIGH COURT BEFORE THIS COURT  
RFA No. 1165/2009

IN THE MATTER OF:-

M/s. RAJESH EXPORTS LTD.  
NO. 4, BATAVIA CHAMBERS,  
KUMARA KRUPA ROAD,  
KUMARA PARK EAST,  
BANGALORE-560001.  
REPRESENTED BY ITS  
AUTHORISED REPRESENTATIVE,  
MR. RAJESH MEHTA

APPELLANT

PETITIONER

AND

1. SRI B. DEVARAJ  
S/O. LATE BALASUBRAMANYA  
AGED MAJOR  
NO. 43, SUBEDAR CHATRAM ROAD,  
BANGALORE-560009

27

KARNATAKA

RESPONDENT NO. 1    RESPONDENT NO. 1

2. SRI B. YOGESH  
S/O. LATE BALASUBRAMANYA  
AGED MAJOR  
NO. 43, SUBEDAR CHATRAM ROAD,  
BANGALORE-560009  
KARNATAKA    RESPONDENT NO. 2    RESPONDENT NO. 2
3. SMT. B. SAROJAMMA,  
W/O. LATE BALASUBRAMANYA  
AGED MAJOR,  
NO. 43, SUBEDAR CHATRAM ROAD,  
BANGALORE-560009  
KARNATAKA    RESPONDENT NO. 3    RESPONDENT NO. 3
4. M/S. VOLGA RESTAURANT  
NO. 43 (UPSTAIRS),  
SUBEDAR CHATRAM ROAD,  
BANGALORE-560009  
REPRESENTED BY ITS  
PROPRIETOR, SH. V. K. ABDULLA  
RESPONDENT NO. 5    RESPONDENT NO. 4
5. M/S. HOTEL ADORA  
NO. 43 (UPSTAIRS),  
SUBEDAR CHATRAM ROAD,  
BANGALORE-560009.  
REPRESENTED BY ITS  
PROPRIETOR, SH. JANAB AHMED  
RESPONDENT NO. 6    RESPONDENT NO. 5
- SH. SRINIVASA SHETTY  
PROPRIETOR OF M/S. ARUNA STORES  
NO. 45, SUBEDAR CHATRAM ROAD,  
BANGALORE-560009.  
SINCE DECEASED, AND



REPRESENTED BY HIS LRs.

RESPONDENT NO. 7

6. SMT. NAGALAKSHMI  
W/O. LATE A. SH. SRINIVASA SHETTY.  
AGED MAJOR  
NO. 16/1, 'SUKHI',  
5<sup>TH</sup> CROSS, R. K. PURAM,  
BANGALORE-560009.  
KARNATAKA

RESPONDENT NO. 7A

RESPONDENT NO. 6

7. SRI S. ARUNA KUMAR,  
S/O. LATE A. SRINIVASA SHETTY  
AGED MAJOR  
NO. 16/1, 'SUKHI',  
5<sup>TH</sup> CROSS, R. K. PURAM,  
BANGALORE-560009  
KARNATAKA

RESPONDENT NO. 7B

RESPONDENT NO. 7

- 8 SRI S. VENKATESH BABU  
S/O. LATE A. SRINIVASA SHETTY  
AGED MAJOR,  
RESIDING AT:  
NO. 9, 5<sup>TH</sup> CROSS,  
R. K. PURAM,  
BANGALORE-560009  
KARNATAKA

RESPONDENT NO. 7C

RESPONDENT NO. 8

ALL THE ABOVE RESPONDENTS ARE CONTESTING RESPONDENTS

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUDGES OF THE HON'BLE SUPREME  
COURT OF INDIA

THIS HUMBLE PETITION OF THE PETITIONERS ABOVENAMED  
MOST RESPECTFULLY SHOWETH:

1. That the instant petition seeking special leave to appeal is being filed by the Petitioner above named against the final judgment and order dated 08.12.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1165 of 2009 (PAR) whereby the Hon'ble High Court has allowed the Petitioner's appeal, but has erroneously allowed the interlocutory applications preferred by Respondents No. 1 to 3 for amendment of their plaint, and to adduce additional evidence, and consequently remanded the original suit (OS No. 914/2005) to the Trial Court for fresh consideration in light of such amendments and additional evidence.

1A. No LPA, Special Appeal & Writ Petition/Writ Appeal lies against the Impugned order.

1B. It is clarified that the Petitioner company is represented by its Chairman before this Hon'ble Court.

2. QUESTIONS OF LAW:

The following questions of law of general public importance arise in the facts of the instant case which merits an authoritative determination from this Hon'ble Court:

- A. Whether the Hon'ble High Court erred by allowing an amendment to the plaint which is entirely contrary to the Respondent No. 1 to 3's originally pleaded case?
- B. Whether the Hon'ble High Court erred in allowing an amendment to the plaint at the appellate stage which is contrary to provisions of Order 6, Rule 17 CPC, in as much as nothing was brought on record to show that the Plaintiff exercised due diligence despite which the subject-matter of the amendment could not be brought on record in the plaint?
- C. Whether the Hon'ble High Court's order relating to the Respondent No. 1 to 3's applications seeking amendment of their plaint and production of additional evidence is perverse on account of being entirely unreasoned and without consideration of any of the Petitioner's objections?
- D. Whether the Hon'ble High Court overlooked the settled law, that an amendment to one's plaint can only be permitted if such

amendment does not (i) result in injustice/prejudice to the other side, and (ii) that the amendment is not contrary or conflicting with the originally pleaded case, and does not seek to set up an entirely new case?

- E. Whether the Hon'ble High Court failed to appreciate that the Respondent No. 1 to 3's application for introduction of additional documents as well as for amendment of their plaint was grossly belated, and that no legally tenable reasons were provided to allow such applications despite such delay?
- F. Whether the Hon'ble High Court failed to appreciate that the amendments sought to be made and documents sought to be introduced by the Respondent No. 1 to 3 were with a *mala fide* intent, only with a view to defeat the Petitioner's claim over the Schedule Property?
- G. Whether the Hon'ble High Court erred in failing to issue any finding on the applicability of Section 14 of the Hindu Succession Act, 1956 in relation to the ownership and transference of the Schedule Property?
- H. Whether the Hon'ble High Court failed to appreciate that the entire case set up by the Respondents No. 1 to 3 as well as the documents

produced in support thereof was originally that Sh. Balasubramanya was Smt. Lalithamma's only heir, and that his purported sibling, Smt. Pramila, was explicitly denied by the Respondents No. 1 to 3?

- I. Whether having denied the existence of Smt. Pramila for almost a decade, Respondent No. 1 to 3 could have been permitted to amend their plaint so as to now recant on such denial?
- J. Whether the Hon'ble High Court failed to appreciate the law laid down by this Hon'ble Court in 2022 SCC Online SC 1128, (2019) 4 SCC 332, and (2008) 14 SCC 364?
- K. Whether the High Court erred in allowing the Respondent No. 1 to 3's applications for amendment and production of additional documents, and consequently in remanding the original suit for fresh consideration by the Trial Court?

3. DECLARATION IN TERMS OF RULE 3 (2) :

The Petitioner states that no other Petition seeking special leave to appeal has been filed by the Petitioner against the impugned order/judgment.

4. DECLARATION IN TERMS OF RULE 5 :

The Petitioner states that the annexures being Annexures P/1 to P/34 produced along with the present Special Leave Petition are true and correct copies of their respective originals and formed a part of the record of the Court(s) below against whose Order/Judgment the leave to appeal is sought in the present Petition.

5. GROUND:

The instant petition seeking special leave to appeal is being filed on, among others, the following grounds which may be considered as being without prejudice to each other:

- A. Because the Hon'ble High Court failed to appreciate that amendments sought to be made by the Respondents were mala fide, and opportunistic, only with a view to defeat the Petitioner's claim over the Schedule Property.
- B. Because the Hon'ble High Court completely failed to take into account the principles that govern amendment of plaints and production of additional evidence.

- C. Because nothing was brought on record to show that the amendments could not have, after exercise of due diligence, been made a part of the plaint before its original filed pleadings.
- D. Because nothing prevented the original Plaintiffs from making such amendment during the continuance of the trial, when Defendant No. 5/DW-2 disclosed during his cross about the purported existence of Smt. Pramila.
- E. Because the Hon'ble High Court's order is in contravention of the statutory mandate encapsulated in Order 6, Rule 17 of the Code of Civil Procedure, 1908.
- F. Because the Hon'ble High Court failed to provide any reasons for allowing amendment of the Respondent No. 1 to 3's plaint and production of additional documents on their behalf.
- G. Because the Hon'ble High Court failed to provide any consideration to the grounds of objection raised by the Petitioner herein against the applications for amendment of plaint and production of additional documents preferred by the Respondents No. 1 to 3.
- H. Because the Hon'ble High Court failed to appreciate that the amendment sought to be made by the Respondents No. 1 to 3 would

completely change the nature of their suit, and their claim, and would be highly prejudicial to the Petitioner.

- I. Because the Hon'ble High Court failed to appreciate that there were no cogent and/or legally tenable reasons provided by Respondents No. 1 to 3 for seeking such belated production of documents that they were always in possession of.
- J. Because the Hon'ble High Court failed to see that the applications for amendment and production of additional documents were not motivated by truthful considerations, but only with vexatious intent of defeating the Petitioner's claim which was bound to succeed in view of the clear mandate of Section 14 of the Hindu Succession Act, 1956.
- K. Because the Hon'ble High Court completely ignored settled law in relation to amendment of plaints, as laid down by this Hon'ble Court in *Life Insurance Co-operation of India v. Sanjeev Builders Pvt. Ltd.* 2022 SCC Online SC 1128, as well as in *M. Revanna v. Anjanamma* (2019) 4 SCC 332, and *Rajkumar Gurawara v. S. K. Sarawgi and Co. (P) Ltd.*, (2008) 14 SCC 364.
- L. Because the Hon'ble High Court failed to even consider the fact that Respondents No. 1 to 3, in every piece of documentary material



produced by them (as well as issued on their behalf) have always consistently denied the existence of Smt. Pramila. This was all the more apparent when the one defendant (D5) who deposed to the existence of Smt. Pramila was cross-examined by the counsel for the Respondents No. 1 to 3 and suggested that his testimony about existence of Smt. Pramila was false.

- M. Because the Hon'ble High Court failed to consider that a party having once sought to deny the existence of a fact, cannot at a later point in time be permitted to rely on the same fact. Doing so, besides polluting the stream of justice, encourages deceitful and disingenuous conduct, which cannot be condoned and must be deprecated.
- N. Because the Hon'ble High Court failed to take into account that the Partition Deed dated 05.07.2012 was squarely hit by the doctrine of *lis pendens*, as encapsulated in Section 52 of the Transfer of Property Act, 1882, and as such could not and ought not to have been judicially appreciated.
- O. Because the Hon'ble High Court failed to issue any finding whatsoever on the applicability of Section 14 of the Hindu

Succession Act, 1956 in context of the competing claims over the Schedule Property.

6. GROUND FOR INTERIM RELIEF :

- (1) That the instant petition seeking special leave to appeal is being filed by the Petitioner above named against the final judgment and order dated 08.12.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1165 of 2009 (PAR) whereby the Hon'ble High Court has, while allowing the Petitioner's appeal, also erroneously allowed applications preferred by Respondents No. 1 to 3 for amendment of their plaint and for production of additional documents, and consequently remanded the original suit (being O.S. No. 914/2005 for fresh consideration by the Trial Court).
- (2) That the Petitioner has a good prima facie case in law and has every hope to succeed in the instant Special Leave Petition.
- (3) That the balance of convenience is also in the favour of the Petitioner and the Petitioner will suffer grave hardship if the interim relief as prayed for is not granted.

- (4) That the Petitioner will suffer great irreparable harm if the Impugned Order is not stayed during the pendency of the instant Special Leave Petition. In fact, pursuant to impugned judgment, the Trial Court has already begun proceedings afresh, and their continuance is causing great prejudice to the Petitioner.
- (6) That therefore it is in the interests of justice that the Impugned order dated 08.12.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1165 of 2009 (PAR) may be stayed during the pendency of the instant Special Leave Petition.

7. MAIN PRAYER :

In the facts and circumstances mentioned above and in light of the grounds mentioned above, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

- a. Grant special leave to appeal against the final judgment and order dated 08.12.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1165 of 2009 (PAR); and
- b. Pass any other orders as this Hon'ble Court may deem fit in the facts and circumstances of the instant case.

8. **PRAYER FOR INTERIM RELIEF :**

In the facts and circumstances mentioned above and in light of the grounds mentioned above, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

- a. Stay the operation and effect of the final judgment and order dated 08.12.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1165 of 2009 (PAR) to the extent of directions contained in paragraphs (iii), (iv), (v), (vi), and (vii) of the operation order of the said final judgement and order;
- b. Stay of the proceedings in O. S. No. 914/2005 pending before the XXXVIII Addl. City Civil and Sessions Judge, Bangalore; and
- c. Pass any other orders as this Hon'ble Court may deem fit in the facts and circumstances of the instant case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY**

**DRAWN & FILED BY:**

**M/S AP&J CHAMBERS  
ADVOCATE FOR THE PETITIONER**

**DRAWN ON:  
FILED ON: 08.02.2024  
NEW DELHI**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. . OF 2023

IN THE MATTER OF:

M/s: Rajesh Exports Limited

... Petitioner

Versus

Sri. B. Devaraj and Others

... Respondents

CERTIFICATE

"Certified that the Special Leave Petition is confined only to the court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given to the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose Affidavit is filed in support of the Special Leave Petition."

FILED BY:

M/S AP&J CHAMBERS

ADVOCATE FOR THE PETITIONER

NEW DELHI:

FILED ON: 08.02.2024

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2024

IN THE MATTER OF:

M/s. Rajesh Exports Limited

...Petitioner

Versus

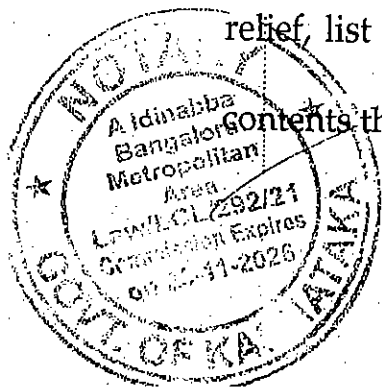
Sri B. Devaraj and Others

...Respondents

AFFIDAVIT

I, Rajesh Mehta, S/o Late Jaswantra Mehta, aged about 58 years, the Chairman of Petitioner Company having Registered Office At No. 4, Batavia Chambers Kumara Krupa Road, Kumar Park East, Bangalore-560001 Karnataka do hereby solemnly affirm and state as follows:-

1. I say that I am the Chairman of Petitioner Company in the present Special Leave Petition and I am well conversant with the facts, proceedings and circumstances of the case and hence competent to swear this affidavit.
2. That I have read and understood the contents of the Paras 1 to 8 at Pages (26-40) of the Special Leave Petition, along with the interim relief, list of dates at Pages (B - V) and the I.A.s and I say that the contents thereof are true and correct to the best of my knowledge.



woc 2

For RAJESH EXPORTS LTD

Authorised Signatory

3. I say that the Annexures filed alongwith the Special Leave Petition are true copies of their respective originals.
4. I say that I have not filed any other Special Leave Petition in this Hon'ble Court against the impugned judgment and order.
5. I say that the averments of facts stated herein above are true to my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

For RAJESH EXPORTS LTD  
DEPONENT  
Authorised Signatory

VERIFICATION

I, the deponent above named do hereby verify and state that the contents of the Special Leave Petition and List of dates are true and correct to the best of my knowledge and belief.

- 5 FEB 2024

Verified on this \_\_\_\_ day of \_\_\_\_\_, 2024 at Bangalore.

- 5 FEB 2024

For RAJESH EXPORTS LTD  
DEPONENT  
Authorised Signatory

- 5 FEB 2024

A. IDINABBA, B.Sc., LL.B  
ADVOCATE AND NOTARY  
No. 2282/E, HAL 2nd Stage,  
18th Main Road, Indiranagar  
BANGALORE - 560 008  
Mob. 9845011966

