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**

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

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**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 Natarathnakar 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 1/4th share of the each of the Plaintiffs, as well as certain 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 1/4th of the of the Schedule Property. The Petitioner filed 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/-.

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 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**

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| **DATES** | **EVENTS** |
| 14.03.1963 | 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. \_\_ to \_\_\_ ).** |
| 05.08.1963 | 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. |
| 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 Sale deed dated 01.01.1979 executed between Smt. Lalithamma and K Mohammed Ali is annexed herewith and marked as **ANNEXURE-P/2 (Pgs. \_\_ to \_\_ ).** |
| 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. \_\_ to \_\_\_)**. |
| 12.10.1987 | Smt. Lalithamma passed away intestate, leaving behind her son, Sh. Balasubramanya as her only surviving class-I heir. A true copy of death certificate of Smt. Lalithamma dated 12.10.1987 is annexed herewith and marked as **ANNEXURE-P/4 (Pg. \_\_ to \_\_\_).** |
| 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. \_\_ to \_\_).** |
| 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. \_\_ to \_\_\_).** |
| 31.07.2004 | Schedule Property came to be transferred in the name of Sh. Balasubramanya, as evinced by Khata Extract dated 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. \_\_ to \_\_\_).** |
| 30.05.2006 | 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. \_\_ to \_\_ )**. |
| 31.07.2003 | 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. \_\_\_\_ to \_\_\_\_).** |
| 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. \_\_ to \_\_ ).** |
| 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. \_\_\_ to \_\_\_)** and a true copy of endorsement ofcomplaint vide acknowledgment dated 29.08.2003 is annexed herewith and marked as **ANNEXURE-P/12 (Pgs. \_\_\_ to \_\_\_ )**. |
| 22.12.2004 | A Sale Deed was executed and registered in respect of the Schedule Property by its absolute owner, Sh. 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. \_\_\_ to \_\_\_).** |
| 27.12.2004 | 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. \_\_ to \_\_\_).** |
| NIL | 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 Commissioner of Police Bangalore City is annexed herewith and marked as **ANNEXURE-P/15** **(Pg. \_\_ to \_\_\_).** |
| 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. \_\_ to \_\_\_) 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. \_\_ to \_\_). |
| 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. \_\_ to \_\_\_).** |
| 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. \_\_\_ to \_\_\_\_).** |
| 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 by the Sub Registrar Ghandinagar Bangalore to St. B Sarojamma is annexed herewith and marked as **ANNEXURE-P/20 (Pgs. \_\_ to \_\_ )**. |
| 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 dared 10.04.2007 is annexed herewith and marked as **ANNEXURE-P/21(Pg. \_\_ to \_\_).** |
| 29.05.2007 | The Plaintiffs got examined the 3rd 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. \_\_ to \_\_).** |
| 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. \_\_ to \_\_ ).** |
| 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. \_\_ to \_\_ ).** |
| 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. \_\_ to \_\_ ).** |
| 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 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. \_\_ to \_\_)**. |
| 29.07.2009 | 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. \_\_ to \_\_)** |
| 15.09.2009 | 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 (3/4th in total) of the Schedule Property, and that the Plaintiffs were entitled to partition and separate possession of their respective 1/4th 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. \_\_ to \_\_ ).** 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. \_\_ to \_\_).** |
| 19.11.2009 | 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. \_\_ to \_\_ ).** The judgment of the Trial Court came was stayed by the Hon’ble High Court. |
| 05.07.2012 | During the pendency of the Petitioner’s appeal, the original Plaintiffs got executed a so-called ‘*Partition Deed’* 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 filed before the Hon’ble High Court of Karnataka at Bengaluru are annexed herewith and marked as **ANNEXURE-P/31** (Pg. \_\_ to \_\_). |
| 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. \_\_ to \_\_ ).** |
| 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 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. \_\_ to \_\_\_). |
| 26.03.2023 | 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. \_\_ to \_\_).** |
| 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 **(IMPUGNED JUDGMENT**). 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. |

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

KARNATAKA RESPONDENT NO. 1 RESPONDENT NO. 1

1. SRI B. YOGESH

S/O. LATE BALASUBRAMANYA

AGED MAJOR

NO. 43, SUBEDAR CHATRAM ROAD,

BANGALORE-560009

KARNATAKA RESPONDENT NO. 2 RESPONDENT NO. 2

1. SMT. B. SAROJAMMA,

W/O. LATE BALASUBRAMANYA

AGED MAJOR,

NO. 43, SUBEDAR CHATRAM ROAD,

BANGALORE-560009

KARNATAKA RESPONDENT NO. 3 RESPONDENT NO. 3

1. 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. 5

1. M/S. HOTEL ADORA

NO. 43 (UPSTAIRS),

SUBEDAR CHATRAM ROAD,

BANGALORE-560009.

REPRESENTED BY ITS

PROPRIETOR, SH. JANAB AHMED

RESPONDENT NO. 6 RESPONDENT NO. 6

1. 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 RESPONDENT NO. 7

1. SMT. NAGALAKSHMI

W/O. LATE A. SH. SRINIVASA SHETTY.

AGED MAJOR

NO. 16/1, ‘SUKHI’,

5TH CROSS, R. K. PURAM,

BANGALORE-560009.

KARNATAKA

RESPONDENT NO. 7A RESPONDENT NO. 7A

1. SRI S. ARUNA KUMAR,

S/O. LATE A. SRINIVASA SHETTY

AGED MAJOR

NO. 16/1, ‘SUKHI’,

5TH CROSS, R. K. PURAM,

BANGALORE-560009

KARNATAKA

RESPONDENT NO. 7B RESPONDENT NO. 7B

1. SRI S. VENKATESH BABU

S/O. LATE A. SRINIVASA SHETTY

AGED MAJOR,

RESIDING AT:

NO. 9, 5TH CROSS,

R. K. PURAM,

BANGALORE-560009

KARNATAKA

RESPONDENT NO. 7C RESPONDENT NO. 7C

ALL THE ABOVE RESPONDENTS ARE CONTESTING RESPONDENTS

TO,

THE HON’BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF THE HON’BLE SUPEREME 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.

1. **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:

* 1. 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?
  2. 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?
  3. 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?
  4. 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?
  5. 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?
  6. 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?
  7. 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?
  8. 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?
  9. 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?
  10. 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?
  11. 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?

1. **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.

1. **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.

1. **GROUNDS:**

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:

1. 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.
2. Because the Hon’ble High Court completely failed to take into account the principles that govern amendment of plaints and production of additional evidence.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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 Cooperation 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 R***ajkumar Gurawara v. S. K. Sarawgi and Co. (P) Ltd.,*** (**2008) 14 SCC 364.**
12. 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.
13. 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.
14. 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.
15. 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.
16. **GROUNDS 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 theImpugned 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.

1. **MAIN PRAYER :**

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

1. 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
2. Pass any other orders as this Hon’ble Court may deem fit in the facts and circumstances of the instant case.
3. **PRAYER FOR INTERIM RELIEF :**

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

1. 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.
2. 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

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

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2024

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)

IN THE MATTER OF:

M/s. Rajesh Exports Limited ... Petitioner

Versus

Sri B. Devaraj and Others ... Respondents

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

To,

The Hon'ble Chief Justice of India and his companion Justices of the Supreme Court of India.

The humble petition of the Petitioner above named

**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioner above named has filed the accompanying present Special Leave Petition in this Hon’ble Court under Article 136 of the Constitution of India 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 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.
2. That the facts of the case and the grounds arising there from have been stated in the accompanying petition and are not being reproduced here for the sake of brevity. The Petitioner craves leave to rely on the said facts and grounds, and they may be considered part and parcel of the instant application.
3. That it is respectfully submitted that since the matter is of an urgent nature and the appointment of an official translator and the translation of the vernacular document from the vernacular to the English will take considerable time and it will delay the hearing of the matter.
4. That the Petitioner states that he has got the translation of the Annexure Nos. P/1, P/2, P/6, P/7 and P/8 which is correct to the best of his knowledge.
5. That it is in the interest of justice that the English translation of the documents, which are originally in vernacular as supplied by the Petitioner may be accepted for the purpose of hearing of the instant Petition.

**PRAYER**

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

1. Exempt the Petitioner from filing the official translation of the documents in the vernacular being Annexure Nos. P/1, P/2, P/6, P/7 and P/8 filed with the instant Application; and
2. Pass any further Orders this Hon'ble Court may deem fit in and proper under the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL BE EVER GRATEFUL.**

**FILED BY:**

**(M/S AP&J CHAMBERS)**

**ADVOCATE FOR THE PETITIONER**

**NEW DELHI**

**DATED: 08.02.2024**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2024

IN

SPECIAL LEAVE PETITION (C) NO. OF 2024

IN THE MATTER OF:

M/s. Rajesh Exports Limited ... Petitioner

Versus

Sri B. Devaraj and Others ... Respondents

**APPLICATION FOR CONDONATION OF DELAY IN REFILING SPECIAL LEAVE PETITION**

To,

The Hon'ble Chief Justice of India

and his companion Justices of the Supreme Court of India.

The humble petition of the Petitioner above named

**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioner above named has filed the accompanying present Special Leave Petition in this Hon’ble Court under Article 136 of the Constitution of India 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 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.
2. That the facts of the case and the grounds arising there from have been stated in the accompanying petition and are not being reproduced here for the sake of brevity. The Petitioner craves leave to rely on the said facts and grounds, and they may be considered part and parcel of the instant application.
3. That the delay in refiling of the accompanying SLP has been occurred in view of the fact that
4. That the documents were filed before the High Court in 16.11.2009 which were in vernacular language and were also dim/illegible. Thus to file legible copies the Petitioner first applied before the Ld. Trial Court for certified copies of the said documents.
5. On receiving of said certified copies of documents, it was noticed that most of the documents were in vernacular language and/or require to be retyped for the purpose of filing before this Hon’ble Court.
6. Thus to cure the defects and to file the annexures in proper form the steps were taken by the Petitioner to get the said documents translated and typed.
7. That due to the aforesaid reasons a delay of \_\_\_ days has been occurred in refiling the accompanying SLP. That the said delay, which has occurred, is unintentional and hence does not suffer from any latches.
8. That hence, the instant petition does not suffer from any latches as the delay, if any, in refiling this petition is unintentional and as such, the delay which has so occasioned may be condoned.

**PRAYER**

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

1. Allow the application and condone the delay of \_\_\_\_ days in refiling Special Leave Petition; and
2. Pass any further Orders this Hon'ble Court may deem fit in and proper under the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL BE EVER GRATEFUL.**

**FILED BY:**

**(M/S AP&J CHAMBERS)**

**ADVOCATE FOR THE PETITIONER**

**NEW DELHI**

**DATED: 01.04.2024**