

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8945 OF 2017

(Arising out of SLP (C) No. 4778 of 2016)

LAKSHMI NARASAMMA (SINCE DEAD BY LRS) & ANR. Appellant(s)

VERSUS

SHANTHAMMA & ORS. Respondent(s)

O R D E R

- 1) Leave granted.
- 2) The present appeal arises out of a judgment dated 29.10.2015 passed by the High Court of Karnataka at Bengaluru in which it has reviewed a portion of its earlier judgment dated 10.08.2011 in preliminary decree proceedings between the parties.
- 3) The Review Petition has undoubtedly been filed by the respondents before us three years after the judgment dated 10.08.2011, and after they participated in the final decree proceedings. The only ground for reviewing the earlier order, as stated in para 4 of the judgment, is as follows:-

"4. On hearing learned counsels, I am of the view that there is an error apparent on the face of the record. Notwithstanding the merits of the order passed in the order under review, the question of granting any property to either one of the parties would not arise for consideration in the present proceedings. The present proceedings were only restricted to the extent of declaring the shares of

the parties and as to what each one of the parties is entitled to. To hold that certain property has to be divided to one of the parties is beyond the scope of the case. Therefore, in my opinion, it is an error committed in the order under review.

Consequently, the Review Petition is allowed. The order dated 10.08.2011 passed in RFA No. 883/2008 is recalled. The appeal is restored to file."

4) This ground is obviously an erroneous ground because the earlier judgment had found that item No.3 not being partible, was therefore, to be finally dealt with. Insofar as item No.3 is concerned, the decree was not merely preliminary but final as well. We also find that after the respondents participation in the final decree proceedings this order ought not to have been passed.

5) This being the case, we allow the appeal and set aside the judgment dated 29.10.2015 passed by the High Court.

..... J.  
(ROHINTON FALI NARIMAN)

..... J.  
(SANJAY KISHAN KAUL)

New Delhi;  
July 06, 2017.

ITEM NO.13

COURT NO.12

SECTION IV-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 4778/2016

(Arising out of impugned final judgment and order dated 29-10-2015 in RP No. 236/2014 29-10-2015 in RFA No. 883/2008 passed by the High Court of Karnataka at Bangalore)

LAKSHMI NARASAMMA (SINCE DEAD BY LRS) & ANR. Petitioner(s)

VERSUS

SHANTHAMMA & ORS. Respondent(s)

Date : 06-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN  
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s)      Mr. Basavaprabhu Patil, Sr. Adv.  
                                 Mr. Balaji Srinivasan, AOR  
                                 Ms. Vaishnavi Subrahmanyam, Adv.  
                                 Ms. Pratiksha Mishra, Adv.  
                                 Mr. Abhishek Bharti, Adv.

For Respondent(s)      Mr. Anand Sanjay Nuli, Adv.  
                                 For M/s. Nuli & Nuli, AOR  
  
                                 Mr. Gopal Sankaranarayanan, Adv.  
                                 Mr. Zulfiker Ali P. S, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(R. NATARAJAN)  
COURT MASTER

(SAROJ KUMARI GAUR)  
COURT MASTER

(Signed order is placed on the file)