

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8th DAY OF APRIL 2026

BEFORE

THE HON'BLE MR. JUSTICE H. T. NARENDRA PRASAD

WRIT PETITION NO. 6059 OF 2026 (GM-CPC)

BETWEEN:

SMT. B K SUDHA @ SHANTHAMMA
D/O C RAMA RAO AND
CHANDRAVATHI BAI
W/O LATE B S KRISHNA
AGED ABOUT 80 YEARS
R/AT NO 131, 5TH CROSS
3RD MAIN, DUO HEIGHTS LAYOUT
BEGUR ROAD, BANGALORE-560 068.

REPRESENTED THROUGH HER
POWER OF ATTORNEY HOLDER,
SHRI. B K RAGHAVENDRA
S/O B K SUDHA
AGED ABOUT 56 YEARS
R/AT SAME ADDRESS AS ABOVE.

... PETITIONER

(BY SRI. AJAY J NANDALIKE, ADVOCATE)

AND

1. R KRISHNA MURTHY
S/O LATE C RAMA RAO
AGED ABOUT 73 YEARS
NO. 1, 2ND MAIN, 4TH BLOCK
THYAGARAJANAGAR
BANGALORE-560028.

2. R RADHAKRISHNA RAO
S/O LATE C RAMA RAO
AGED ABOUT 82 YEARS
SY. NO.56, VIJAYARAJA ESTATE
CHOKKANAHALLI, JAKKUR POST
BANGALORE-560064.
3. T V SRIDHARA
AGED ABOUT 52 YEARS
S/O LATE SMT SUNDARAMMA
HAVING ADDRESS AT
"SREENIKETHANA", PUTTANNA ROAD
NEAR DS MAX SUSHEELA SCION
HENNUR VILLAGE, HBR LAYOUT
BANGALORE-560 043.
4. T V VEDAVYASA
AGED ABOUT 60 YEARS
S/O LATE SMT SUNDARAMMA
HAVING ADDRESS AT
"SREENIKETHANA", PUTTANNA ROAD
NEAR DS MAX SUSHEELA SCION
HENNUR VILLAGE, HBR LAYOUT
BANGALORE-560 043.
5. T V VIJAYA
AGED ABOUT 52 YEARS
S/O LATE SMT SUNDARAMMA
HAVING ADDRESS AT
"SREENIKETHANA", PUTTANNA ROAD
NEAR DS MAX SUSHEELA SCION
HENNUR VILLAGE, HBR LAYOUT
BANGALORE-560 043.
6. T V KAMALA @ KAMALA NAGARAJAN
AGED ABOUT 55 YEARS
D/O LATE SMT SUNDARAMMA
HAVING ADDRESS AT
32/14, SHANTHI STREET
VETRINAGAR EXTN, CHENNAI
TAMIL NADU-600082.
7. SMT. KRISHNAVENI

D/O LATE C RAMA RAO
AGED ABOUT 76 YEARS
SY. NO. 58, VIJAYARAJA ESTATE
CHOKKANAHALLI, JAKKUR POST
BANGALORE-560064.

8. SRI BIDDAPPA
AGED ABOUT 102 YEARS
S/O LATE BIJJAPPA
R/AT ELLANAPALYA
ARABIC COLLEGE POST
BANGALORE-560 045.
9. SMT. GOWRAMMA
AGED ABOUT 92 YEARS
D/O BIDAPPA
R/AT ELLANAPALYA
ARABIC COLLEGE POST
BANGALORE-560 045.
10. SRI K SIRINIVAS
AGED ABOUT 51 YEARS
S/O SRI KRISHNAPPA
R/AT NO. 685, 11TH CROSS
4TH MAIN, VIJAYANAGAR
BANGALORE-560 040.
11. SMT. JAT JATHURUTHA
AGED ABOUT 69 YEARS
D/O CHOWRI REDDY
R/AT ELLANAPALYA
ARABIC COLLEGE POST
BANGALORE-560045.
12. SMT. K K SUNITA
AGED ABOUT 57 YEARS
D/O KEMPAIAH
R/AT PATEL MUNIVEKATAPPA LAYOUT
NAGAVARA, ARABIC COLLEGE POST
BANGALORE-560 045.
13. M/S MANYATA PROMOTERS
PRIVATE LIMITED

1ST FLOOR, CLASSIC COURT
NO.9/1, RICHMOND ROAD
BENGALURU-560 025.
REPRESENTED BY ITS
MANAGING DIRECTOR,
SRI REDDY VEERAIMA.

14. SRI R MADHU
S/O RADHAKRISHNA RAO
MAJOR IN AGE
R/AT CHOKKANAHALLI VILLAGE
NEAR D J FARM, JAKKUR POST
BANGALORE-560 064.
15. SRI SANJEEV SHAKHAPUR
AGED ABOUT 66 YEARS
S/O SRI A R SHAKHPUR
R/AT NO.11-1822, VIDYANAGAR
GULBARGA-585103.
16. SRI MAHENDRA KARLE
S/O LATE L T KARLE
MAJOR IN AGE
NO.151, INDUSTRIAL AREA, NEAR
YESHWANTHPURA, OPP. METRO
BANGALORE-560 022.
17. SMT. KALPANA JAGADEESH
@ KALPANA BELUR
W/O JAGADEESH BELUR
MAJOR IN AGE
NO.151, INDUSTRIAL AREA, NEAR
YESHWANTHPURA, OPP. METRO
BENGALURU-560 022.
18. SMT. LAKSHMI S NARAYANA
D/O N S VENKATARAMU
MAJOR IN AGE
NO.151, INDUSTRIAL AREA
NEAR YESHWANTHPURA, OPP. METRO
BENGALURU-560 022.
19. SRI G R BHASKAR

S/O SRI G N RAMASWAMY
MAJOR IN AGE
NO.151, INDUSTRIAL AREA
NEAR YESHWANTHPURA, OPP. METRO
BENGALURU-560 022.

20. M/S VAJRAM ESTATES PVT LTD.,
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 2003.
SY.NO.58, 60, 61/1
CHOKKANAHALLI, THANISANDRA
MAIN ROAD, BANGALORE-560 064.
THROUGH ITS MANAGING DIRECTOR,
MR. VAJRAM PAVAN KUMAR

... RESPONDENTS

(BY SRI. MANUPRABHAKAR KULKARNI, ADVOCATE FOR C/R20:
SRI. D R RAVISHANKAR, SENIOR ADVOCATE FOR
SRI. ARUN PRADESH, ADVOCATE FOR C/R14:
SRI PRAKASH T HEBBAR, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, QUASHING THE IMPUGNED ORDER DATED: 29.01.2026 AT ANNEXURE-A PASSED BY THE PRINCIPAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU IN OS NO.2430/2003 WHEREBY THE PETITIONER'S APPLICATION UNDER SECTION 151 CPC SEEKING RECALL OF THE ORDER DATED: 05.01.2026 HAS BEEN DISMISSED AND ETC.

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 26.03.2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

CAV ORDER

This writ petition is filed by defendant No.4 under Article 227 of the Constitution of India, challenging the order dated 29.01.2026 passed by the XLIII Additional City Civil and Sessions Judge, Bengaluru (for short, 'the trial court'), on an I.A. filed by the petitioner/defendant No.4 under Section 151 of the Code of Civil Procedure (for short, 'CPC), in O.S. No.2430/2003, whereby the application seeking to recall the order dated 05.01.2026 has been dismissed.

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

3. The plaintiff filed a suit in O.S.No.2430/2003 for partition and declaration, claiming a 1/6th share in the suit schedule properties. Upon service of summons, defendant No.4 appeared through counsel

and filed a written statement along with a counter-claim on 20.01.2025. Thereafter, on 26.06.2025, on an application filed by the plaintiff, an ad-interim injunction order was granted by partly allowing the application, whereby the defendants (excluding defendant Nos. 11, 13 and 18) were restrained from alienating the suit schedule properties till the disposal of the suit.

4. On 05.01.2026, the plaintiff filed a memo seeking leave of the trial court to dismiss the suit as not pressed. On the same day, the said memo was accepted and the suit was dismissed as not pressed. Immediately, thereafter, on 07.01.2026, defendant No.4, who is the petitioner herein, filed an application under Section 151 of the CPC seeking to recall the order dated 05.01.2026. By the impugned order, the said application came to be dismissed. Being aggrieved, defendant No.4 is before this Court.

5. The learned counsel appearing for the petitioner/ defendant No.4 has raised the following contentions:

(i) Firstly, in a suit for partition, all parties claiming shares stand on equal footing. The original plaintiff cannot unilaterally withdraw the suit so as to defeat the substantive claims of the other co-sharers/coparceners.

(ii) Secondly, the memo for withdrawal was filed on 05.01.2026 and the petitioner/defendant No.4 had not given consent for such withdrawal of the suit. Without hearing the petitioner/defendant No.4, the order permitting the withdrawal was passed. Furthermore, on the same day, in the evening, the petitioner/defendant No.4 made a submission before the trial court objecting the withdrawal of the suit. Immediately thereafter, the I.A. was filed seeking to recall the said order of withdrawal. In support of this

contention, reliance is placed on the judgment of this Court in **SMT. GOWRAMMA vs. NANJAPPA AND OTHERS**, reported in **ILR 2001 KAR 4853**, wherein it is held that in a partition suit, when the suit is dismissed or withdrawn as settled out of court, the Court should issue notice of such application or memo to all parties and hear them. Without considering the said judgment, the impugned order has been passed.

(iii) Thirdly, with regard to the maintainability of an application seeking to recall an order dismissing the suit as withdrawn, it is contended that permitting withdrawal of a suit simpliciter does not result in a "decree" appealable under law. Therefore, an application under Section 151 of CPC is maintainable. In support of the said contention, reliance is placed on the judgment of the Apex Court in **JET PLYWOOD (P) LTD. AND ANOTHER vs. MADHUKAR NOWLAKHA AND OTHERS**, reported in **(2006) 3**

SCC 699. It is further contended that, in the absence of a specific provision in the CPC providing for recalling of such an order, the inherent powers under Section 151 of CPC can be invoked in the interest of justice. Reliance is also placed on the order passed by this Court in W.P. No.19377/2015, disposed of on 09.07.2015. It is argued that the trial court, without considering these aspects and without proper application of mind, has rejected the aforesaid application. Hence, the writ petition deserves to be allowed.

6. Per contra, Sri D.R. Ravishankar, learned Senior Counsel appearing for respondent No.14, has raised the following contentions:

(i) Firstly, once a final order has been passed in the suit, the appropriate remedy available to the parties is to file an appeal and hence, an application for recalling an order of dismissal is not maintainable.

(ii) Secondly, the petitioner/defendant No.4 has also filed a separate suit for partition in O.S.No.737/2022 before the Principal Senior Civil Judge, Bengaluru Rural, which is pending consideration. It is further submitted that the petitioner can seek for inclusion of all joint family properties in the said suit and prosecute the same. Therefore, the acceptance of the memo for withdrawal does not cause any prejudice to her.

(iii) Thirdly, in view of the judgment of the Apex Court in **JET PLYWOOD (P) LTD. (supra)**, an application for recalling an order of dismissal can be allowed only at the instance of the plaintiff who had withdrawn the suit, particularly if such withdrawal was made due to mistake or misrepresentation. In such circumstances, the Court may invoke its inherent powers *ex debito justitiae* to do real and substantial justice. Furthermore, in the said judgment relied upon

by the petitioner, the application under Section 151 of CPC was filed by the plaintiff, whereas, in the present case, the application is filed by a defendant. Hence, it is not maintainable.

(iv) Fourthly, the notice of withdrawal was duly served upon the petitioner/defendant No.4 by virtue of which she had all the opportunity to object to the withdrawal before the final order was passed.

7. Sri Manu Prabhakar Kulkarni, learned counsel appearing for respondent No.20, contended that an application under Section 151 of CPC is maintainable only in a pending suit. Once the suit is dismissed as withdrawn, such an application is no longer maintainable. In support of the same, reliance is placed on the order passed by this Court in W.P.No.102807/2022 (disposed of on 12.02.2025), as well as the judgments in **RAM PRAKASH AGARWAL AND ANOTHER vs. GOPI KRISHAN (DEAD**

THROUGH LRs.) AND OTHERS, reported in **(2013) 11 SCC 296 (paragraphs 13 and 14)**, and **DR. P. NALLA THAMPY THERA vs. B.L. SHANKER AND OTHERS**, reported in **1984 Supp SCC 631**.

Accordingly, the dismissal of the writ petition is sought.

8. By way of a rejoinder, learned counsel for the petitioner submits that in the judgments relied upon by the respondents, the suits had been decided on merits after adjudication. In such circumstances, an application under Section 151 of CPC for recalling is not maintainable. However, in the present case, the suit has been dismissed as withdrawn without any adjudication on merits. Therefore, the said judgments are not applicable to the facts of the present case.

9. Heard the learned counsel for the parties and perused the writ petition papers.

10. The plaintiff filed a suit for partition and declaration. After appearance, defendant No.4, through counsel, filed a written statement and counter-claim. On 05.01.2026, the plaintiff filed a memo seeking withdrawal of the suit. The said memo has been annexed to this writ petition. Notably, the petitioner/defendant No.4 has not made any endorsement indicating that she has no objection to the withdrawal prior to the order of dismissal. On the same day, the memo was accepted and the suit was dismissed as withdrawn and the specific case of the petitioner/defendant No.4 is that, on the very same day, i.e., 05.01.2026, she mentioned before the trial court that she had an objection to the withdrawal of the suit. Immediately thereafter, she moved for advancement of the matter. As per the order sheet, the matter was advanced to 07.01.2026. On that day, she filed an application under Section 151 of CPC

seeking for recalling of the order dated 05.01.2026. The matter was then posted to 14.01.2026 for hearing. After hearing the parties on the said application, the impugned order came to be passed on 29.01.2026 by the trial court.

11. The point for consideration in this writ petition is that,

If the suit for partition is dismissed as withdrawn, whether the IA filed under Section 151 of CPC to recall the said order is maintainable?

12. As per the judgment of the Apex Court in **JET PLYWOOD (P) LTD. (supra)**, if a suit is dismissed as withdrawn and an application is filed seeking the recall of that order, such an application is maintainable. The relevant paragraphs are extracted below:

"23. As indicated hereinbefore, the only point which falls for our consideration in these appeals is whether the trial court was entitled in law to recall the order by which it had allowed the plaintiff to withdraw his suit.

24. From the order of the learned Civil Judge (Senior Division), 9th Court at Alipore, it is clear that he had had no intention of granting any leave for filing of a fresh suit on the same cause of action while allowing the plaintiff to withdraw his suit. That does not, however, mean that by passing such an order the learned court divested itself of its inherent power to recall its said order, which fact is also evident from the order itself which indicates that the court did not find any scope to exercise its inherent powers under Section 151 of the Code of Civil Procedure for recalling the order passed by it earlier. In the circumstances set out in the order of 24-9-2004, the learned trial court felt that no case had been made out to recall the order which had been made at the instance of the plaintiff himself. It was, therefore, not a question of lack of jurisdiction but the conscious decision of the court not to

exercise such jurisdiction in favour of the plaintiff.

25. The aforesaid position was reiterated by the learned Single Judge of the High Court in his order dated 4-2-2005 though the language used by him is not entirely convincing. However, the position was clarified by the learned Judge in his subsequent order dated 14-3-2005 in which reference has been made to a Division Bench decision of the Calcutta High Court in Rameswar Sarkar [AIR 1986 Cal 19 : (1985) 2 CHN 482] which, in our view, correctly explains the law with regard to the inherent powers of the Court to do justice between the parties. There is no doubt in our minds that in the absence of a specific provision in the Code of Civil Procedure providing for the filing of an application for recalling of an order permitting withdrawal of a suit, the provisions of Section 151 of the Civil Procedure Code can be resorted to in the interest of justice. The principle is well established that when the Code of Civil Procedure is silent regarding a procedural aspect, the inherent power of the court can come to its aid to act ex debito justitiae for

doing real and substantial justice between the parties. This Court had occasion to observe in Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal [1962 Supp (1) SCR 450 : AIR 1962 SC 527] as follows: (SCR p. 459)

"It is well settled that the provisions of the Code are not exhaustive for the simple reason that the legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them."

26. Based on the aforesaid principle, the Division Bench of the Calcutta High Court, in almost identical circumstances in Rameswar Sarkar case [AIR 1986 Cal 19 : (1985) 2 CHN 482], allowed the application for withdrawal of the suit in exercise of inherent powers under Section 151 of the Code of Civil Procedure, upon holding that when through mistake the plaintiff had withdrawn the suit, the court would not be powerless to set aside the order permitting withdrawal of the suit."

13. This Court has expressly held in W.P.No.19377/2015, disposed of on 09.07.2015, that the application under Section 151 of CPC to recall the

order of withdrawal/dismissal of the suit is maintainable. The relevant paragraphs are extracted below:

"16. As per the facts in the case of JET PLYWOOD (supra), Madhukar Nowlakha, the respondent therein, had filed an application to dismiss the suit as withdrawn. On 11.7.2004, the learned judge had allowed the said application, but liberty had not been granted to file a fresh suit on the same cause of action. Within a month thereafter, i.e. on 23.8.2004, Madhukar Nowlakha, plaintiff in Title Suit No.32/03 filed an application for recalling the order by which the suit had been dismissed as withdrawn. It was his case that he was misrepresented in making such application and on account of such misrepresentation made by Biswarup Bannerjee and other co-owners that they would sell the property to him, he had withdrawn the suit.

17. The learned Civil Judge (Senior Divn.) of Alipore had rejected the said application filed by Madhukar Nowlakha. Thereafter he filed a second title suit in Title

Suit No.87/04 and it was pending. His prayer for interim injunction in Title Suit No.87/04 had been rejected. On 23.12.2004, Madhukar filed an application before the High Court of Calcutta in C.O.3982/04 challenging the trial court's order dated 24.9.2004 refusing to recall its earlier order dated 11.2.2004. The said petition filed under Article 227 of the Constitution of India had been admitted.

18. On 4.2.2005 the learned single Judge of the Calcutta High Court allowed the petition, C.O.3982/04 and restored Title Suit No.32/02 for trial before the Civil Judge (Senior Divn.) at Alipore. This was called in question before the Hon'ble apex court by Banerjee and other co-owners mainly on the ground that their advocate could not attend the hearing on 4.2.2005 and therefore they had filed the application in CAN. No.1999/05 before the learned single Judge to recall the order dated 4.2.2005. The said application was dismissed by order dated 14.3.2005 after contest and thus the order restoring the suit on 4.2.2005 was reaffirmed.

19. As a result of the same, two Special Leave Petitions came to be filed before the Hon'ble apex court, one in regard to the restoration of title suit by order dated 4.2.2005 and another questioning the order dated 14.3.2005 rejecting the application for recalling the order dated 4.2.2005. Both the S.L.Ps. were taken up together for common hearing. The question that was framed by the Hon'ble apex court while considering the S.L.Ps. was as follows:

Whether the learned single Judge of the High Court of Calcutta acted within his jurisdiction in restoring the suit of the 1st respondent-plaintiff despite leave neither having been asked for nor granted, but specifically refused?

It had been contended before the Hon'ble apex court on behalf of JET PLYWOOD that in the absence of any prayer for leave to file a fresh suit and specific prohibition being included in Order XXIII Rule 1, C.P.C., permitting withdrawal of the application filed to get the suit withdrawn, was impermissible, incorrect and improper and therefore, there was no scope for the trial court or the High Court to

allow the application for withdrawal of the suit by order dated 11.7.2004.

20. On the basis of the submission made by the learned counsel representing the respondent therein, it was relevant for the Supreme Court to give a finding as to whether in the circumstances, such a power should have been exercised or not under Section 151, C.P.C. Since the learned judge of the trial court did not choose to exercise the power vested in the court under Section 151, C.P.C., the High Court stepped in, in exercise of its powers under Article 227 of the Constitution of India in order to restore the suit filed by the 1st respondent therein.

21. In fact reliance has been placed on a Division Bench decision rendered by the Hon'ble High Court of Calcutta in the case of RAMESWAR SARKAR (supra) wherein it has been reiterated that the civil court has inherent power under Section 151, C.P.C. to allow withdrawal of a suit, after setting aside the order dismissing the suit for non-prosecution. It is further reiterated that Order XXIII Rule 1,

C.P.C. provides for withdrawal with or without liberty to file a fresh suit. It is further stated that Section 151, C.P.C. is wide enough and the court is not powerless to allow withdrawal of an application for withdrawal of a suit in exercise of inherent power, if there are justifiable reasons for allowing withdrawal of application for withdrawal of suit.

22. As per the facts of the case in RAMESWAR SARKAR, a revision petition under Section 115, C.P.C. before the High Court of Calcutta had been filed by Rameswar Sarkar against the State of West Bengal. Section 115, C.P.C. had not yet been amended providing the embargo to question the orders passed on interlocutory applications, and such an embargo is found in the proviso which has come into effect from 1.7.2002 in Section 115, C.P.C.

23. On a combined reading of the decisions in the case of JET PLYWOOD and RAMESWAR SARKAR (both supra), it is abundantly clear that any order passed under Section 151, C.P.C. is amenable to be

questioned by filing a petition under Article 227 of the Constitution of India, though ultimately a suit would get revived on a petition under Article 227 being allowed. Even otherwise, as per the events that took place in the case of JET PLYWOOD, the Code of Civil Procedure had already been amended and it was in force from 1.7.2002 and the dates which are forthcoming in that case are subsequent to 1.7.2002. The petition was filed under Article 227 of the Constitution of India since the trial court had not invoked power under Section 151, C.P.C. The High Court of Calcutta did exercise inherent power under Section 151, C.P.C. on the ground that the trial court had not exercised the jurisdiction vested in it. Accordingly the petition filed under Article 227 of the Constitution of India is justified.

24. In the case of **GIRIJA VALLABHAN .v. J.B.J.PLANTATION PVT. LTD. & OTHERS ([2012] 2 Kar.L.J. 309)**, the High Court of Kerala has held that 'In both the revision and also a challenge under Article 227 of the Constitution of India, what is involved is exercise of supervisory jurisdiction of the High

Court. A remedy by way of revision, which is not linked with the substantive right of the party, is available to impeach the order of the subordinate court by itself would not debar the aggrieved person from invoking the constitutional remedy under Article 226/227 in cases where a writ of certiorari or the exercise of supervisory jurisdiction to keep the subordinate court within the bounds of its authority is made out.'

25. In the present case, in order to pursue her substantive right in the suit filed by her, the plaintiff wanted to invoke the inherent power in terms of Section 151, C.P.C. and set aside the order of dismissal of the suit made on the memo filed by her. Accordingly point no.(1) is, therefore, answered in the affirmative."

14. In view of the above judgments, it is clear that, particularly in a partition suit, all parties claiming a share stand on equal footing and that if the suit is dismissed as withdrawn, without hearing all the parties, an affected party is entitled to agitate his/her

substantive right by filing an application seeking to recall such an order in the interest of justice.

15. Since the trial court has not adjudicated the suit on merits, the order of dismissal as withdrawn does not amount to a decree that can be challenged by way of an appeal. Therefore, the application filed by the petitioner/defendant No.4 under Section 151 of the CPC, seeking to recall the order dated 05.01.2026, allowing the withdrawal of suit is maintainable before the trial court.

16. The judgments relied upon by the respondents pertain to cases that were decided either on merits or by way of ex parte decrees. In those cases, suits were not dismissed as withdrawn. Hence, the said judgments are not applicable to the facts of the present case as this is a case of dismissal by way of withdrawal and without adjudication on merits.

17. The specific case of the petitioner/defendant No.4 is that she did not give consent for the withdrawal of the suit and that without giving any opportunity to all the parties much less the petitioner herein, the withdrawal memo has been accepted. The learned counsel for the petitioner/defendant No.4, relying upon the judgment of this Court in **SMT. GOWRAMMA (supra)**, contended that the order dated 05.01.2026 was passed contrary to the said judgment of this Court. The relevant paragraph is extracted below:

"16. The procedure to be adopted by Courts in a partition suit, when a plaintiff wants to withdraw the suit, or when plaintiff wants the suit to be dismissed as settled out of Court with some defendants, can be summarised thus :

(i) When a plaintiff wants a partition suit to be dismissed or withdrawn as settled out of Court, the Court should require notice of such application or memo

to all other parties (not only all defendants, but co-plaintiffs if any) and hear the parties.

(ii) If all parties are agreeable for the dismissal or withdrawal, the Court may grant the request.

(iii) If any defendant has already sought partition and separate possession by paying Court Fee and opposes the dismissal/ withdrawal, it shall permit such defendant to transpose himself/herself as plaintiff and continue the suit, irrespective of whether he makes an application for transposition or not.

(iv) Even if no defendant has sought the relief of partition and separate possession, till then, the Court may in appropriate cases permit any defendant who files an application in that behalf, to get himself transposed as plaintiff and claim partition and separate possession by paying necessary Court Fee and continue the suit. Refusal to grant such permission should be for valid reasons to be assigned by the Court."

18. From the above judgment it is very clear that in a partition suit if the parties want to withdraw the suit, the court is required to hear all the parties before granting such a leave. The petitioner herein has filed an application for recalling the order dated 05.01.2026 and has taken up all these contentions while relying upon the judgments of this Court.

Despite the same, the trial court, while passing the impugned order, has not considered the said contentions raised by the petitioner/defendant No.4, and there is no finding with respect to the said aspects. The impugned order is not a speaking order. On this ground alone, the writ petition deserves to be allowed. Hence, the point raised for consideration in this writ petition is answered in the affirmative.

19. Accordingly, the following order is passed:

(i) The writ petition is allowed.

(ii) The impugned order dated 29.01.2026 passed on the application filed by the petitioner/defendant No.4 under Section 151 of CPC in O.S. No.2430/2003 by the XLIII Additional City Civil and Sessions Judge, Bengaluru, is hereby set aside.

(iii) The application filed by the petitioner/defendant No.4 under Section 151 of CPC is hereby restored to the file of the trial court.

(iv) The trial court is directed to reconsider the said application in accordance with law.

(v) All the contentions of the parties are left open.

Sd/-
(H. T. NARENDRA PRASAD)
JUDGE

Cm/-