HC-KAR

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 22ND DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 108310 OF 2025 (GM-CPC)

BETWEEN:

GEETA D/O. RAGHAVENDRA ATHANI,
SINCE DECEASED BY HER LRS

1. RAMACHANDRA S/O. NEELAKANTH PATIL,
AGE: 75 YEARS, OCC: PENSIONER,
R/O: #4 A/29, KABADI LAYOUT,
PLOT NO.29, 2ND CROSS,
NARAYANAPURA, DHARWAD-580008.

2. ARAVIND S/O. RAMACHANDRA PATIL,
AGE: 44 YEARS, OCC: ENGINEER,
R/O: #4 A/29, KABADI LAYOUT,
PLOT NO.29, 2ND CROSS,
NARAYANAPURA, DHARWAD-580008.

3. JAYALAXMI S/O. RAMACHANDRA PATIL,
(AFTER MARRIAGE JAYALAXMI
W/O. DEEPAK KULKARNI)
AGE: 40 YEARS, OCC: HOUSEWIFE,
R/O #4 A/29, KABADI LAYOUT,
PLOT NO.29, 2ND CROSS,
NARAYANPURA, DHARWAD-580008.
R/BY HER SPA BY PETITIONER NO.4.

4. ANAND S/O. RAMACHANDRA PATIL,
AGE: 37 YEARS, OCC: ENGINEER,
R/O #4 A/29, KABADI LAYOUT,
PLOT NO.29, 2ND CROSS,
NARAYANPURA, DHARWAD-580008.

... PETITIONERS

(BY SRI SHIVASAI M. PATIL, ADVOCATE)

AND:

1. NIL

... RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI BY QUASHING THE IMPUGNED ORDER DATED 06.11.2024 PASSED ON APPLICATIONS FILED U/S 152 OF CPC DATED 22.04.2024 AND U/O VI RULE 17 R/W SEC. 151 OF CPC DATED 19.06.2024 AND 09.07.2024 IN P AND SC NO. 23/2020 BY THE III ADDL. SENIOR CIVIL JUDGE AND CJM, DHARWAD VIDE ANNEXURE-J IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

ORAL ORDER

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

The present petition is directed against the order passed by the learned Probate Court on an application filed under Section 152 of the Code of Civil Procedure, 1908 (for short 'CPC'). By the impugned order, the learned Judge has declined to entertain the application seeking correction of the description of the schedule property.

2. The Court below has proceeded on the premise that the petitioners had earlier availed an opportunity to seek rectification and, therefore, having failed to seek all necessary corrections at that stage, they cannot be permitted to file a successive application. It is in this

background that the petitioners have called in question the legality and correctness of the order impugned.

3. Heard the learned counsel appearing for the petitioners. Perused the records.

4. The records would indicate that the petitioners had initially instituted proceedings under Section 372 of the Indian Succession Act, 1925, seeking issuance of a Succession Certificate in respect of the properties left behind by the deceased. The Probate Court, by order dated 25.02.2021, dismissed the petition. Aggrieved by the said order, the petitioners preferred MFA No.101632/2021 (ISA). The Division Bench of this Court, upon re-appreciation of the material on record, allowed the appeal, set aside the order passed by the Probate Court and directed issuance of Letters of Administration in favour of the petitioners in respect of Schedule 'A' to Schedule 'D' properties. Pursuant to the decree passed by the Division Bench, the petitioners approached the

revenue authorities for effecting mutation and for consequential entries in the revenue records.

5. The grievance of the petitioners is that Schedule 'A' property, as described in the Sale Deed of the year 2003, refers to an RCC house bearing specified measurements and bounded by definite boundaries. It is their specific case that subsequent to the execution of the Sale Deed, the property has been assigned a CTS number. According to the petitioners, though the property has now been brought under the CTS regime, the boundaries remain unchanged and continue to identify the very same property. The petitioners contend that unless the CTS number is incorporated in the decree and corresponding corrections are carried out, the authorities would not effect mutation and consequently, notwithstanding the decree granted by the Division Bench, the petitioners would be deprived of effectively enjoying and dealing with the property. It is in this backdrop that an application came to

be filed under Section 152 of CPC seeking correction of the property description.

6. Section 152 of CPC confers ample power on the Court to correct clerical or arithmetical mistakes or errors arising from accidental slips or omissions in judgments, decrees or orders. The provision is intended to ensure that a successful litigant is not deprived of the fruits of a decree on account of inadvertent mistakes or omissions and that the decree accurately reflects the intention of the Court and the subject matter which was adjudicated upon.

7. This Court, in ***Nareppa vs. Chikka Venkatarayappa and Others,*** reported in ***2019(3) Kar.L.J. 839***, while considering the scope of Section 152 of CPC has held that merely because the suit or proceedings have attained finality, it cannot be said that the Court becomes *functus officio* so far as correction of accidental errors or consequential amendments are concerned. The said judgment is in the nature of

reiteration of the earlier view taken by this Court in ***CRP No.1525/1971***. The consistent view of this Court is that the jurisdiction under Section 152 CPC is intended to advance the cause of justice and cannot be denied on hyper-technical considerations.

8. Even assuming that the petitioners had not been diligent in seeking all corrections when an earlier application under Section 152 of CPC was considered, that by itself could not have constituted a valid ground to reject the subsequent application. The paramount consideration while exercising jurisdiction under Section 152 CPC is whether the correction sought is necessary to effectively work out the decree already granted and whether refusal to permit such correction would result in denial of the benefits flowing from the decree. In the present case, the petitioners have already secured a decree in their favour at the hands of the Division Bench in MFA No.101632/2021 (ISA). If the correction sought is not considered on merits, the petitioners would be left with a

decree incapable of being effectively implemented and would consequently be deprived of enjoying the property in question. Such a consequence would defeat the very object behind the decree granted in their favour.

9. The learned Probate Judge, in the considered opinion of this Court, has failed to exercise the jurisdiction vested in it under Section 152 of CPC in its proper perspective. The approach adopted by the Court below in rejecting the application solely on the ground that the petitioners had earlier availed an opportunity and had not exercised due diligence is unduly hyper-technical. Procedural provisions are intended to facilitate justice and not to thwart substantive rights. If the impugned order is allowed to stand, the petitioners would suffer irreparable prejudice and would be deprived of enjoying the fruits of the decree passed in their favour. The impugned order, therefore, cannot be sustained and warrants interference by this Court. Accordingly, this Court proceeds to pass the following:

ORDER

(i) The writ petition is ***allowed***.

(ii) The order dated 06.11.2024 passed by the Court below on the application filed under Section 152 of the Code of Civil Procedure, 1908 is hereby quashed and set aside.

(iii) The matter is remitted to the Probate Court for fresh consideration of the application filed under Section 152 of CPC, keeping in view the observations made hereinabove and also the law laid down by this Court in ***Nareppa vs. Chikka Venkatarayappa and Others,*** reported in ***2019(3) Kar.L.J. 839***.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

CKK
CT:GSM
List No.: 1 Sl No.: 2