

**IN THE HIGH COURT OF KARNATAKA AT
KALABURAGI BENCH**

DATED THIS THE 02ND DAY OF NOVEMBER, 2017

BEFORE

THE HON'BLE MRS.JUSTICE B.V.NAGARATHNA

REVIEW PETITION No.200054/2017
(IN R.S.A.No.200085/2017)

BETWEEN:

1. MALLIKARJUN
S/O. BHIMARAYA,
AGE: 48 YEARS,
OCC: AGRICULTURE,
R/O KALBURGI,
TQ: CHITTAPUR,
DISTRICT: KALABURAGI.
2. PADMANNA
S/O. BHIMARAYA
AGE: 43 YEARS,
OCC: AGRICULTURE,
R/O KALBURGI,
TQ: CHITTAPUR,
DISTRICT: KALABURAGI.
3. PITAMBAR
S/O. BHIMARAYA
AGE: 33 YEARS,
OCC: AGRICULTURE,
R/O KALBURGI,
TQ: CHITTAPUR,
DISTRICT: KALABURAGI.

4. CHANDRAPPA
S/O. BHIMARAYA,
AGE: 21 YEARS,
OCC: AGRICULTURE,
R/O KALBURGI,
TQ: CHITTAPUR,
DISTRICT: KALABURAGI. ... PETITIONERS

(BY SRI: AMEET KUMAR DESHPANDE, ADVOCATE)

AND:

1. JAGANNA
S/O. MALLAPPA,
AGE: 31 YEARS,
OCC: AGRICULTURE,
R/O KALBURGI,
TALUK: CHITTAPUR,
DISTRICT: KALABURAGI – 585 211.
2. SMT. SHANTABAI
W/O. MALLAPPA,
AGE: 47 YEARS,
OCC: HOUSE HOLD AND AGRICULTURE,
R/O KALBURGI,
TALUK: CHITTAPUR,
DISTRICT: KALABURAGI – 585 211. ... RESPONDENTS

(BY SRI R.S.SIDDAPURKAR, ADVOCATE ON ADVANCE NOTICE)

THIS REVIEW PETITION IS FILED U/S.114 OF CPC R/W ORDER 47 RULE 1 & 2 OF CPC, OF THE CPC, BY THE ADVOCATE FOR REVIEW PETITIONER PRAYING THAT THIS HON'BLE COURT TO, ALLOW THIS REVIEW PETITION AND SET ASIDE THE JUDGMENT DATED 21.06.2017 PASSED IN RSA NO.200085/2017 PASSED BY THE HON'BLE HIGH COURT OF KARNATAKA KALABURAGI BENCH AND REVIEW THE SAME, IN THE INTEREST OF JUSTICE.

THIS REVIEW PETITION COMING ON FOR ADMISSION THIS DAY, AT PRINCIPAL BENCH BENGALURU THROUGH VIDEO CONFERENCE COURT MADE THE FOLLOWING:

ORDER

Heard learned counsel for petitioner and learned counsel for respondent on advance notice and perused the material on record.

2. Petitioners' counsel submits that certain portions of the suit schedule lands have been acquired and the same has not been taken note of by the Commissioner, appointed by the trial court, when survey was conducted and division has been made, by submitting a Report. He submits that there is a point for review of the judgment of this court dated 21/06/2017 passed in RSA.No.200085/2017.

3. Learned counsel for respondents however, supports the said judgment.

4. Having perused the judgment of this court, in light of the submission made by learned counsel for parties, in the first instance, it is noted that such a submission was not made at the time of admission of the appeal. Secondly, division of the landed properties as well as house properties have been made equally between the appellants and respondents. On perusal of Paragraph Nos.11 to 13 of the judgment under consideration, it would become clear that petitioners herein, who were appellants in the appeal, were not present when the Commissioner visited the spot. Even then, their objections were considered by the trial court and thereafter, Report of the Commissioner has been accepted. Merely because the appellants/petitioners herein seek to file certain fresh documents along with this petition that would not be a reason for reviewing the judgment. The point with regard to acquisition of a portion of the schedule land

is a supervening circumstance which would not be a factor to be taken note of for re-determining the division of the suit schedule property between the parties at the stage of review of the judgment passed in the regular second appeal at the stage of admission, by holding that no substantial question of law arise in the appeal. In the circumstances, I do not find any merit in the review petition. Review petition is hence, dismissed.

In view of the dismissal of the review petition, I.A.Nos.I/17 and 2/17 also stand dismissed.

**Sd/-
JUDGE**

**mvs*