ITEM NO.35 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
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 33181/2025

[Arising out of impugned judgment and order dated 25-10-2025 in CRP No. 19/2014 passed by the High Court of Karnataka at Bengaluru]

DAYANANDA PAI & ORS. Petitioner(s)

VERSUS

MAQSOOD ALI & ORS. Respondent(s)

Date : 16-11-2026 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.V. VISWANATHAN
HON'BLE MR. JUSTICE ARUN PALLI

For Petitioner(s) :
Mr. C A Sundaram, Sr. Adv.
Ms. Rohini Musa- 1907, AOR
Mr. Badri Vishal, Adv.

For Respondent(s) :
Mr. Mukul Rohatgi, Sr. Adv.
Mr. Ashutosh Thakur- 3620, AOR
Mr. Abhishek Pandey, Adv.
Mr. Amit Kumar, Adv.

Mr. Anand Sanjay M Nuli, Sr. Adv.
Mr. Ali Farooq, Adv.
Mr. Suraj Kaushik, Adv.
Mohd. Moizuddin Khan, Adv.
Mr. Shyam Gupta, Adv.
For M/S. Nuli & Nuli- 2021, AOR

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

1. Heard Mr. C.A.Sundaram, learned senior counsel appearing for the petitioners, Mr. Mukul Rohatgi, learned senior counsel for respondent No.1 and Mr. Anand Sanjay M.Nuli, learned senior counsel for respondent Nos. 2 and 3.

Signature Not Verified
Digitally signed by VISHAL ANAND
Date: 2026.11.23 17:27:24 IST
Reason:

2. A simple application for restoration has lingered on for the past 19 years.

3. Brief facts are that the petitioners claimed to have purchased lands from the original respondent Nos. 4, 5 and M/s.Maqsood and Maqdoom Benefit Trust in 1991. For the purpose of disposal of this matter, it is enough if we refer to the suits filed in 2002. On 28th October, 2002, OS No. 7295 of 2002, OS No. 7296 of 2002, and OS No. 7297 of 2002 were filed by respondent Nos. 1 to 3 and others against the petitioners and respondent Nos.4 and 5, claiming that the properties belonging to a Trust have been illegally alienated. The sale deed dated 26th November, 1991, under which the properties were purchased, was directly called in question.

4. On 29th October, 2007, the Trial Court dismissed OS No. 7295 of 2002 for default.

5. On 2nd November 2007, Misc.Petition No. 850 of 2007 was filed by the plaintiffs, seeking restoration of OS No. 7295 of 2002.

6. It is this petition which ultimately came to be allowed by the Trial Court on 31st October, 2013, and the said restoration has been confirmed by the High Court, by the impugned order, in revision.

7. Learned senior counsel for the petitioners contended that Misc. Petition No. 850 of 2007 for restoration could not have been allowed, as repeatedly the parties on whose behalf it was claimed to have been filed have reported to the Courts below that they do not want to press the petition. Learned senior counsel first drew pointed attention to page 269 (pdf 295) which is a memo dated 21st January, 2011 filed by respondent Nos. 1 to 3 (with respondent No.3 then being a minor, represented by respondent No.2), stating as follows (page 269):

"ANNEXURE P-20

IN THE COURT OF THE CITY CIVIL JUDGE AT BANGALORE

MISC. PETITION No.850/2007

BETWEEN:

Maqsood Ali & others *Petitioner*

And:

H. Yeshwanth Shoney and others *Respondents*

MEMO

The Petitioners begs to state as follows:

In view of the settlement of the dispute between the Petitioners and the Respondents herein, as per the

terms and conditions of the compromise Petition filed in OS. No.496/2008, on the file of the Hon'ble City Civil Court at Bangalore, the above Petition has become infructuous.

WHEREFORE, the Petitioners pray that, this Hon'ble Court be pleased to dismiss the above petition as not pressed, in the interest of justice and equity.

Advocate for Petitioner No.1 *Petitioner No.1*

Advocate of Petitioner No.2 *Petitioner No.2*
and also on behalf
Petitioner No.3
who is minor

Bangalore,
Dated: 21-1-11"

In fact, this memo was signed by respondent Nos. 1 and 2, who are now contesting this matter here.

8. Learned senior counsel for the petitioners further contended that, apart from this, there are other factors which would warrant the dismissal of Misc. Petition No. 850 of 2007. Learned senior counsel contended that the other two suits, namely, OS Nos. 7296 and 7297 of 2002, as well as OS No. 496 of 2008, a suit filed by the petitioners herein seeking declaratory reliefs to title of the properties purchased, have all ended in an amicable compromise between the parties.

9. A compromise decree in OS No. 496 of 2008 was passed on 14th November, 2008. OS No. 7296 of 2002 was dismissed on account of the memo filed by the plaintiffs and equally OS No. 7297 of 2002 was also dismissed on account of the memo filed by the plaintiffs on account of the compromise.

10. Learned senior counsel drew pointed attention to the order of the Trial Court restoring the suit, especially, to paragraph 21, which reads as under:

"21. As the right of the minor petitioner no.3 is being contested against the petitioner no.1 and 2 namely the uncle and mother of the minor petitioner, in order to safe guard the interest of minor petitioner determination by the competent court of law is required on the disputed issues. Such being the case, the dismissal order passed by this court on the grounds stated in the main petition requires to be restored by imposing the cost on the contesting petitioners. In the result, I answer the points no.1 and 2 in the affirmative and pass the following:

ORDER

The Mis.Petition No:850/2007 filed by the petitioners under Order 9 Rule 4 of CPC is allowed on cost of Rs.1,000/-."

11. The contention of the learned senior counsel was that since the suit was restored only because the Court felt that minor respondent No.3, who was plaintiff No.3 and a minor at that stage, his interests had to be safeguarded, and hence, even though there was a memo not wanting to pursue Misc. Petition No. 850 of 2007, it chose to restore the suit.

12. Learned senior counsel emphasized that as far as respondent Nos.1 and 2 herein were concerned, at no point, they were keen on restoring the suit and that they had expressly given up any claim for restoration by virtue of the memo referred to above.

13. This order was carried in Revision to the High Court by the petitioners.

14. Learned senior counsel referred to the memo filed before the High Court in the pending Civil Revision Petition being No. 19 of 2014 signed by respondent Nos. 2 and 3 wherein respondent Nos. 2 and 3 reported that they were not pressing the restoration application and had no objection if the Civil Revision Petition is allowed, setting aside the order of restoration.

15. Learned senior counsel also drew attention to the proceedings of the High Court dated 16th September, 2021 insofar as respondent No.1 is concerned and the order dated 14th September, 2021 insofar as respondent Nos. 2

and 3 are concerned wherein it is recorded as under:

"ORDER 16.09.2024

1. Respondent No.1 - Mr.Maqsood Ali also known as Lucky Ali is present before this Court in pursuance of the earlier directions. He submits that he has engaged the services of Mr.Arvind Sharma, iearned advocate to represent him in this matter.

2. Mr.Arvind Sharma, learned advocate submits that he has filed the vakalathnama with the registry yesterday i.e., 15.09.2021. Registry is, therefore, directed to delete the names of Mr.Mohamad Akhil as also Mr.M.S.Mukarram, learned advocates as that appearing for respondent No.1 and print the name of Mr.Arvind Sharma, learned advocate as that appearing for respondent No.1.

3. To establish the identity of Mr.Maqsood Ali, a copy of the electronic passport bearing No.Z3273554 has been made available to this Court, which has been verified, which stands in the name of Mr.Maqsood Mahmood Ali. He is also identified by Mr.Arvind Sharma, learned advocate. Hence, his identity being established and confirmed is taken on record.

4. Mr.Maqsood Ali - respondent No.1, submits that he intends to prosecute the above matter and it is for this reason that he has engaged the services of Mr.Arvind Sharma, learned advocate. The said submission is placed on record.

5. A memo dated 21.01.2011, which has been filed in Misc. Petition No.850/2007, has been shown to Mr.Maqsood Ali-respondent No. 1. He confirms that he has signed the said memo and the signature is his. This verification was done in view of the controversy which has arisen as regards whether he has signed the memo or not as also in furtherance of the order passed by the Co-ordinate Bench of this Court dated 25.08.2021.

6. Re-list on 20.09.2021.

7. Interim order earlier granted is extended till next date of hearing.

8. Since the statement of respondent No.1 is recorded, his presence on the next date of hearing is dispensed with.

Order 14/09/2021

Despite the order dated 25.08.2021 and 01.09.2021, respondent No.1 is not present before the Court either physically or through video conferencing

2. Therefore, he could not be physically present before the Court 2. Sri Arvind Sharma, learned counsel for respondent No.1 submits that respondent No.1 is unwell. Therefore he could not be physically present before the Court.

3. A perusal of order dated 01.09.2021 categorically indicates that there was no requirement for respondent No.1 to be physically present he was also given an option to appear through video conferencing since it had been submitted that respondent No.1 was held up in Bombay on last occasion due to which he could not be present before this Court, Despite indulgence having been executed by this Court same has not been availed by respondent No. 1.

4. Sri Arvind Sharma, learned counsel seeks for two days time to keep respondent No.1 present either physically or through video conferencing. Though no such indulgence is required to be extended, in the Interest of justice two day's time is granted.

5. He also submits that he has filed vakalathnama in the matter along with Mr. M.S. Mukarram and Mrs. Nazima. This Court, way back on 23.03.2016 had directed the said counsels' names to be removed from that appearing for respondent No.3 since respondent No.3 had categorically made his submission before this Court that he did not want to be represented by the said Advocates. By way of the said order dated 23.03.2016, the said Advocates were

also called upon to produce necessary documentation that they were engaged to appear for respondent No.1. Though order was passed on 23.03.2016, till date no such documentation has been produced and the said counsel name is found on record indicating that they continue to appear for respondent No.1.

6. Respondent Nos.2 and 3 are before this Court represented by Sri Rahul Cariyappa and identified by him. Their Aadhar and Driving License has been produced. Both are residing at the very same address and are stated to be son and wife of Maqdoom Ali, respectively.

7. On enquiry, respondent No.2 Bilquees Maqdoom Ali submits that she indeed had entered into compromise in O.S.No.496/2008 dated 13.11.2008 for herself as also on behalf of respondent No.3 who was minor on that day. She has received 3 acres in terms of the said compromise. Compromise has been acted upon. Thereafter, she has entered into a joint development agreement as regards 3 acres exercising her right of ownership with the petitioner or petitioner's group herein. She submits that she does not intend to contest the above matter and she would abide by the terms of compromise entered into in O.S.No.496/2008.

8. Sri Mezaan Maqdoom Ali Respondent No.3, who is also before this Court identified by Mr. Rahul Cariyappa submits that he would abide by the compromise entered into by his mother in O.S.No.496/2008 and he also does not wish to contest the above matter and the compromise entered into by his mother during his minority is in his interest and he is acceptable to the same.

9. The said submissions are taken on record the identity have been established by Driving License and Aadhar card respectively as also by their counsel Mr. Rahul Cariyappa.

10. In fact once earlier a memo has been filed by respondent Nos.2 and 3 on 15.03.2018 adverting to the above. However, they were not present on that day since there was identity issue, now they are present. The said memo dated 15.03.2008 is also accepted."

16. Learned senior counsel for the petitioners drawing attention to the impugned order of the High Court submitted that no reference has been made to any of these aspects, namely, the memo filed before the Trial Court, the memo filed before the High Court, and the proceedings of 14th September, 2021 and 16th September, 2021, and the civil revision has been dismissed, maintaining the order of restoration.

17. Mr. Mukul Rohatgi, learned senior advocate appearing for respondent No.1 vehemently opposed the submissions of the petitioners. Learned senior counsel submitted that what is in issue is about the correctness of the order restoring the suit dismissed for default. Learned senior counsel submitted that while the suit was dismissed for default on 29th October, 2007, restoration came to be filed on 2nd November, 2007 on the ground that the lawyer, who was appearing for all the plaintiffs, was engaged in another court and as such could not appear. Learned senior counsel submitted that it was a routine application which has come to be allowed and the only question is whether on 29th October, 2007 when the suit was dismissed for default, there was sufficient cause for non-appearance.

18. Learned senior counsel submitted that there was no case for exercise of jurisdiction under Article 136 with concurrent orders restoring the suit. Learned senior counsel submitted that while the memo filed in the Trial Court was not signed by the guardian of respondent No.3 (page 269), the memo filed in the High Court (page 347) was not signed by respondent No.1.

19. At this stage, the Court put to the learned senior counsel that the factum, of respondent No.1 not interested in pursuing Misc. Petition No. 850 of 2007 is recorded in the order of 16th September, 2021, learned senior counsel submitted that he would place his arguments on the issue on the next date of hearing. Learned senior counsel submitted that independent of all the suits, there is a suit filed by the court guardian being O.S.No.921 of 2013 challenging the compromise arrived at in the other suits.

20. Learned senior counsel for the petitioners, in response, submitted that based on the compromise, not only had the petitioners acted upon and transferred property to Respondent Nos.1 and 2, but respondent Nos.1 and 2 have in fact transferred property to third parties.

21. Before we decide on the correctness of the order, we put to learned senior counsel for the parties whether the parties are prepared to amicable resolution through mediation proceedings since it is a long pending matter. Both the parties have favourably responded.

22. We request Hon'ble Mr. Justice A.S.Bopanna, former Judge of this Court to take up the matter and explore an amicable resolution.

23. The parties shall get in touch with the learned Mediator. The fees and other terms payable to the learned Mediator shall be fixed in consultation with the learned Mediator.

24. A copy of this order shall be forwarded to Hon'ble Mr. Justice A.S.Bopanna, former Judge of this Court forthwith.

25. List on 22nd January, 2027.

(ANITA MALHOTRA)
DEPUTY REGISTRAR

(AKSHAY KUMAR BHORIA)
COURT MASTER