



CNR: KAHC010052072021

NC: 2026:KHC:43815  
W.P. No.2537/2021

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**  
**DATED THIS THE 17<sup>TH</sup> DAY OF AUGUST, 2026**  
**BEFORE**  
**THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL**  
**WRIT PETITION NO.2537/2021 (GM-CPC)**

**BETWEEN:**

GERALD REBELLO  
S/O ANTHONY REBELLO  
AGED ABOUT 77 YEARS  
R/AT. GEM REIGN, NEAR CROWN OIL MILL  
NIDAMBALLI ROAD, KALLAINPUR  
MOODUTHONSE VILLAGE  
UDUPI TALUK & DISTRICT 576114.

...PETITIONER

(BY SRI. SACHIN B.S. ADV.,)

**AND:**

1. CLEMENT D'SILVA  
AGED ABOUT 66 YEARS  
S/O FRANCIS XAVIER D'SILVA.
2. FLOSSY FURTADO  
W/O CLEMENT D'SILVA  
AGED ABOUT 68 YEARS.
3. RUBEAN D'SILVA  
S/O CLEMENT D'SILVA  
AGED ABOUT 52 YEARS.
4. ROYAN D'SILVA  
S/O CLEMENT D'SILVA  
AGED ABOUT 47 YEARS.

Digitally signed  
by RUPA V

Location: HIGH  
COURT OF  
KARNATAKA



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RESPONDENT NO.1 TO 4 ARE  
R/AT HOUSE NO.1-15, SILVA GARDEN  
BEHIND RC CHURCH  
UDAYAVARA POST  
UDYAVARA  
UDUPI TALUK & DISTRICT 576114.

5. STANLEY D'SILVA  
D/O FRANCIS XAVIER  
AGED ABOUT 81 YEARS  
R/AT D'SILVA, THALE HITHLU  
KEMMANU POST  
UDUPI TALUK AND DISTRICT 576114.

6. HERALD D'SOUZA  
AGED ABOUT 72 YEARS  
S/O FRANCIS XAVIER D'SILVA  
R/AT D'SILVA GARDEN  
DENDOORKATTE  
MANIPURA GRAMA AND POST  
VIA MOODABELLE  
UDUP TALUK AND DISTRICT 576114.

...RESPONDENTS

(R1 TO R6 ARE SERVED)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED 08.01.2021 PASSED IN O.S.NO.96 OF 1999 ON IA NO.25 ON THE FILE OF ADDITIONAL SENIOR CIVIL JUDGE AND ACJM AT UDUPI, AS PER ANNEXURE-A AND CONSEQUENTLY ALLOW I.A.NO.25 AS PRAYED FOR & ETC.

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

**CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL**



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### **ORAL ORDER**

This petition is filed seeking the following reliefs:

*"i. Issue writ of certiorari or any other appropriate writ or order to quash the impugned order dated 08.01.2021 passed in OS.No.96/1999 on IA.No.25 on the file of Additional Senor Civil Judge & ACJM at Udupi, as per ANNEXURE-A and consequently allow IA.No.25 as prayed for.*

*ii. Issue any other writ or order or direction that deems fit to grants in the circumstances of the case in the interest of justice and equity."*

2. The learned counsel for the petitioner has filed a memo for withdrawal of IA.No.25, which reads as under:

*"The undersigned counsel for the Petitioner herewith respectfully prays to withdraw the order impugned I.A.NO.25, with liberty to file fresh application, as the cause show in the order impugned application does not survive for consideration.*

*The Petitioner as on date is bed ridden and is in a vegetative state unable to prosecute the suit. In that view of the matter the Petitioner most respectfully prays that the Hon'ble Court be pleased to grant liberty in favour of the Petitioner to file fresh Application under the changed circumstances or to prosecute the suit by other means accordingly."*



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3. It is to be noticed that the petitioner/plaintiff had filed an application seeking permission to withdraw the suit with liberty to institute a fresh suit, which came to be dismissed by the trial Court under the impugned order on the ground that there is no formal defect.

4. The petitioner/plaintiff has now filed the memo to withdraw the said IA.No.25. The memo for withdrawal of an application would not arise as the said application was considered and dismissed by the trial Court under the impugned order.

5. Learned counsel for the petitioner submits that if the petitioner is able to point out the formal defects in the suit and file fresh application, the same may be considered by the trial Court on its own merits, without being influenced by the earlier rejection of the application. In my considered view, it is open to the petitioner/plaintiff to file fresh application pointing out the formal defects in the suit and if such an application is filed, the trial Court



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shall consider the same on merits *dehors* the earlier rejection. For the aforementioned reasons, the writ petition is ***disposed of*** reserving liberty to the petitioner to file a fresh application as sought for.

Sd/-  
(VIJAYKUMAR A. PATIL)  
JUDGE

ABK  
List No.: 1 Sl No.: 22