

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1416 OF 2022

Gurupad Mayappa Pujari
Since deceased through his legal heirs
Sadashiv Gurupad Pujari and Ors. ..Petitioners

Versus
Banndu Aannu Magdum
Since deceased through his legal heirs
Bhupal Bandu Magdum and Ors. ..Respondents

Mr. Pramod G. Kathane, for the Petitioners.

CORAM : NITIN W. SAMBRE, J.

DATE : 15th FEBRUARY, 2022

PC.

1. In a suit for permanent injunction based on tenancy rights, the Trial Court rejected the prayer of the petitioner/defendant No.1 preferred under Order XXII Rule 3 of the CPC wherein the abatement of suit was prayed.

2. The aforesaid prayer was based on the plea that right to sue does not survive as the plaintiff died on 12th September, 2018. The Trial Court vide impugned order dated 6th January, 2022 passed below Exh.158 rejected the said prayer. As such, this petition.

3. The contentions are, considering the nature of pleadings

in the plaint and relief sought therein, the petitioner/defendant was justified in invoking provisions of Order XXII Rule 3 of the CPC as the right to sue does not survive in the legal heirs. Reliance is placed on the cause of action and the pleadings.

4. Considered submissions.

5. The suit in question is for permanent injunction based on the tenancy rights. There cannot be dispute on the issue as to such tenancy rights which are pleaded in the plaint are inheritable, as such legal heirs will succeed to the interest of the plaintiff to that extent. As such, right to sue survives in the legal heirs of plaintiff.

6. That being so, the Trial Court was justified in rejecting the prayer. No case for interference in the extraordinary jurisdiction of this Court is made out.

7. The petition as such stands dismissed.

[NITIN W. SAMBRE, J.]