CNR: KAHC010467922024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 22702 OF 2024 (GM-CPC)

BETWEEN:

SRI. GOVINDARAJU
SINCE DEAD BY HIS LR'S,

1. SRI.G.NARAYANA SWAMY,
   S/O LATE GOVINDARAJU,
   AGED ABOUT 50 YEARS,

2. SMT.KALA.N
   D/O LATE GOVINDARAJU,
   AGED ABOUT 40 YEARS,

3. SMT. BHUVANESHWARI.N
   D/O LATE GOVINDARAJU,
   AGED ABOUT 37 YEARS,

   ALL ARE RESIDING AT NO.92,
   JANATHA COLONY, NEAR RAILWAY GATE HORAMAVU
   AGARA, HORAMAVU POST, BANGALORE – 560 043.

Digitally signed by JAI JYOTHI J
Location: HIGH COURT OF KARNATAKA

...PETITIONERS

(BY SRI. RAMESH KUMAR.V., ADVOCATE FOR
SRI. NARAYANA SWAMY.P.M., ADVOCATE)

AND:

SRI. K.M.BHOJARAJ SHETTY
S/O LATE MAHABALA SHETTY,
AGED ABOUT 53 YEARS,
RESIDING AT NO.314,
FLAT NO.002, 6TH A MAIN,

OPP. GOVT. LIBRARY,
KALYANA NAGAR,
BANGALORE – 560 043.

…RESPONDENT

(BY SRI. JEEVAN.K., ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED 29.05.2024 PASSED IN OS NO.4555/2021, BEFORE THE XI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BANGALORE (CCH-8) AS PER ANNEXURE-A IN RESPECT OF IA NO.6 ORDER XXII RULE 4 R/W SEC 151 OF CPC CONSEQUENTLY DISMISS THE I.A NO. 6, FILED BY THE RESPONDENT UNDER ORDER XXII RULE 4 R/W SEC 151 OF CPC, FILED IN OS NO. 4555/2021, BEFORE THE XI ADDL. CITY CIVIL AND SESSION JUDGE AT BANGALORE (CCH-8) AS PER ANNEXURE-D.

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

CORAM: **HON'BLE MS. JUSTICE TARA VITASTA GANJU**

ORAL ORDER

1. The present petition seeks to challenge an order dated 29.05.2024, passed on O.S.No.4555/2021 by the XI Additional City Civil and Sessions Judge, Bengaluru [hereinafter referred to as the 'Impugned Order'], passed on IA No. 6. By the Impugned Order, an application under Order 22, Rule 4 of the Code of Civil Procedure, 1908 [hereinafter referred to as the 'CPC'] has been allowed and

a legal representative of the sole defendant has been brought on record.

2. Learned counsel for the petitioner submits that the suit has been filed for injunction simplicitor. Since the sole defendant has died, the suit cannot proceed. Hence, the application under Order 22, Rule 4 of the CPC ought not to have been allowed. Learned counsel for the petitioner in support of his contentions, relied on an oral order of the Delhi High Court in the matter of ***Smt. Bhagwanti vs. Shri.Kanshi Ram Through legal Heirs***[1].

3. Learned counsel for the respondent on the other hand submits that the Impugned Order does not suffer from any infirmity. He seeks to rely upon the judgments of the Supreme Court in the case of ***Puran Singh And Others vs. State of Punjab And Others***[2] and the judgment of the Coordinate Bench of this Court in the case

[1] RSA No.152-158/2006, dtd.08.02.2011
[2] (1996) 2 SCC 205

of ***Chennaiya @ Doddachennaiah And Others vs. Bylappa And Others***[3].

4. This Court has examined the plaint filed. The suit has been filed seeking injunction in relation to the suit schedule property. The suit references that the defendant has no connection with the suit schedule property and he has tried to interfere with the possession of the plaintiff and also threatened the plaintiff. The suit also sets out that the respondent/plaintiff is the owner of the suit schedule property.

5. The prayers of the plaint, however, seek a restriction against the defendant, as well as any person claiming under the defendant. The relevant extract of the plaint, its prayer as well as, the schedule property is below:

> *7. The plaintiff submit that defendant is nothing to do with the suit schedule property.* ***Even otherwise Defendant is not the owner of the adjacent property or near to the schedule property. Defendant stated that his mother Sarojamma was the owner of the property. As per the record it is***

[3] RSA No.743/2011, dtd. 11.04.2022

very clearly states that Sarojamma purchased the property during the year 1963 and her husband P. Muniyappa sold the said property in favour of one Abbaiah during the year 1971, the previous vendor of the plaintiff herein. *In the said sale deed recitals it is very clear that before one year of executing said sale deed, said Sarojamma was no more. Defendant is factious person and he is not the son of P. Muniyappa. Plaintiff started for putting up boundary wall in the suit schedule property, defendant tried to interfere the suit schedule property without any right, title, and interest over the suit schedule property.*

9. The plaintiff submits that the plaintiff is the owner of the suit schedule property and he is having right, title and interest over the suit schedule property.

Wherefore, the above named plaintiff prays that this Hon'ble Court may be pleased to pass a judgment and decree for permanent injunction, ***in favor of the plaintiff and against the defendant, restraining the defendant or anybody claiming under the defendant, either from interfering with the peaceful possession*** *and enjoyment of the suit schedule property by the plaintiff or from not to stop construction work of boundary wall in the suit schedule property, together with such other relief or relief's as this Hon'ble Court may deem fit and proper in the circumstances of the case justice and equity.*

SCHEDULE

All the piece and parcel of the property Katha No. 145/3, Property No. 12/3, situated at Horamavu Village, K.R Puram Hobli, Bengaluru East Taluk, Now comes within the jurisdiction of BBMP measuring East to West 63 feet and North to South 30 Feet totally measuring 1890 Sq. Feet and bounded on the

East by :- Property belonging to Angadi

	Narayanappa
West by :-	*Road*
North by :-	*Private Property*

[Emphasis Supplied]

6. Clearly from a reading of the plaint itself it can be seen that although the suit has been filed for Injunction Simplicitor, it is not a personal suit. The relief that has been sought is not only against the defendant, but also anybody claiming under the defendant.

7. The learned Trial Court has discussed this aspect of the matter and has while relying on the judgments of the Supreme Court in the ***Puran Singh*** case has found that this cannot be made applicable to suits such as the present case. Thus, the application has been dismissed.

8. The Supreme Court in the ***Puran Singh*** case has clarified that where Order 22, Rule 2 of the CPC would be made applicable. It has been stated therein that in a personal action, which is taken against in such as in a case of damages for defamation, assault or personal injuries, in

relation to such an action, the right to sue would not survive. However, in other circumstances the right to sue would survive. The relevant extract of the Puran Singh is set out below:

> ***"4. A personal action dies with the death of the person on the maxim actio personalis moritur cum persona. But this operates only in a limited class of actions ex delicto, such as action for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the granting of the relief would be nugatory. (Girja Nandini Devi v. Bijendra Narain Choudhury²)*** *But there are other cases where the right to sue survives in spite of the death of the person against whom the proceeding had been initiated and such right continues to exist against the legal representative of the deceased who was a party to the proceeding.* ***Order 22 of the Code deals with this aspect of the matter. Rule 1 d of Order 22 says that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. That is why whenever a party to a suit dies, the first question which is to be decided is as to whether the right to sue survives or not.*** *If the right is held to be a personal right which is extinguished with the death of the person concerned and does not devolve on the legal representatives or successors, then it is an end of the suit. Such suit, therefore, cannot be continued.* ***But if the right to sue survives against the legal representative of the original defendant, then procedures have been prescribed in Order 22 to bring the legal representative on record within the time prescribed. In view of Rule 4 of Order 22 where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant dies and the right to sue survives, the Court, on an application being made in that behalf, shall cause***

> ***the legal representatives of the deceased defendant to be made a party and shall proceed with the suit. If within the time prescribed by Article 120 of the Limitation Act, 1963*** *no application is made under sub-rule (1) of Rule 4, the suit shall abate as against the deceased defendant. This rule is based not only on the sound principle that a suit cannot proceed against a dead person, g but also on the principle of natural justice that if the original defendant is dead, then no decree can be passed against him so as to bind his legal representative without affording an opportunity to them to contest the claim of the plaintiff. Rule 9 of Order 22 of the Code prescribes the procedure for setting aside abatement."*
>
> [Emphasis Supplied]

9. A reading of the provisions of Order 22, Rule 4 of the CPC also would make this clear. It sets out:

> *"4. Procedure in case of death of one of several defendants or of sole defendant.—(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendants to be made a party and shall proceed with the suit.*
>
> *(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.*
>
> *(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.*
>
> *(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and*

judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where—
(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and (b) the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application with the period specified in the said Act, the Court shall, in considering the application under the said section 5 have due regard to the fact of such ignorance, if proved.]"

10. The judgment that has been relied upon by the petitioner in the case of ***Smt. Bhagwanthi*** would not come to his aid as it is clearly stated in that judgment that the allegations in the plaint were made against the defendant in his personal capacity and not against the legal heirs of the defendant.

11. Concededly, in the present case, the action of the petitioner is not a personal action so as to be covered by the judgment in the case of ***Puran Singh***.

12. In view of the afore going discussions, this Court finds no ground to interfere with the Impugned Judgment in exercise of its powers of superintendence under Article 227, of the Constitution of India. The petition is accordingly dismissed. All pending applications stand close.

Digitally signed by TARA VITASTA GANJU
Location: HIGH COURT OF KARNATAKA

(TARA VITASTA GANJU)
JUDGE

JJ
List No.: 1 Sl No.: 46