

(1988) 05 KAR CK 0010
In the Karnataka High Court
Case No : C.R.P. No. 69/1987

Kenchappa Kallu Kurubar

APPELLANT

Vs

Balasaheb Kalagouda Patil and Others

RESPONDENT

Date of Decision : 26-05-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4(4)

Citation : (1988) 2 KarLJ 274

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-This matter coming up for orders in regard to vacating stay the main petition is taken for disposal by consent of the counsel for parties.

2. Counsel have been heard and the revision petition is disposed of by the following order:

The revision petitioner was an applicant before the Trial Court in I.A. No. XVIII in O.S No. 245/1978 on the file of the Principal Munsiff, Chikodi. The suit was filed by the plaintiff for partition. There were as many as 34 defendants. The applicant-petitioner is the son of the 32nd defendant who died during the pendency of the suit. It is seen from the order itself that defendant No. 32 having entered appearance engaged a counsel but failed to file a written statement and also failed to appeal on the subsequent date of hearing. In the result of his death, the plaintiff obtained an order under Order 22 rule 4(4) exempting him from bringing the L.Rs on record. In that circumstance, the revision petitioner filed the application to come on record. The learned Trial Judge has dismissed the said application on the ground that in view of the exemption granted earlier to the plaintiff it is not possible to allow the revision petitioner to come on record in place of the deceased defendant No. 32.

3. I do not see how that is prohibited by order XXII or any of the rules made there under. In a suit for partition whether a person has filed a written statement or not unless he is denied to be a member of the family he is entitled to his legitimate share. The fact that the petitioner was entitled to a share is obvious by

the fact that the petitioner's father was made one of the defendants. After the death of defendant No. 32 his son must get the share to which his father was entitled to.

4. In the application for exemption the Trial Court has failed to notice that the applicant-the son of deceased defendant No. 32 was not at all heard and therefore that was an order passed behind his back and as such a nullity.

5. The order in favour of the plaintiff in the trial court is not sustainable. It is set aside and the application I.A. No. XVIII is allowed and the Trial Court is directed to bring the applicant on record as defendant No. 32(a).

Revision petition is allowed accordingly.