

**(2010) 03 KAR CK 0183**

**In the Karnataka High Court**

**Case No : Writ Petition No. 3433 of 2010**

Smt. Ananda Lakshmi Murthy and Sri. Poorna Chandra Murthy

APPELLANT

Vs

Sri. H. Mahendra

RESPONDENT

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**Date of Decision : 24-03-2010**

**Acts Referred:**

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

**Citation : (2010) 03 KAR CK 0183**

**Hon'ble Judges : K. Bhakthavatsala, J**

**Bench : Single Bench**

**Advocate : A. Madhusudhana Rao, for the Appellant;**

**Final Decision : Dismissed**

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## **Judgement**

K. Bhakthavatsala, J.—The petitioners/legal representatives of the defendant in O.S. No. 10271/2006 on the file of City Civil Judge, Bangalore city, are before this Court praying for quashing the order dated 18.08.2009 passed on I.A. No. I in the above said suit at Annexure "E".

2. Learned Counsel for the petitioners submits that the respondent has filed the suit against deceased Srinivasa Murthy on 23.11.2006 though the defendant died on 02.10.2006. Under such circumstances, the suit filed against the deceased/defendant is bad in law. But the Trial Court erred in allowing I.A. No. I filed by the respondent/plaintiff under Order XXII Rule 4 of CPC, permitting the respondent/plaintiff to bring L.Rs of the defendant on record. Learned Counsel for the petitioners relies upon the decision reported in 1963 (2) MLJ 341 (C. Muthu v. Bharat Match Works, Sivakasi).

3. In view of the decision rendered by the Apex Court, the decision relied upon by the learned Counsel for the petitioners is of no avail.

4. In Para No. 2 of the affidavit annexed to I.A. No. I filed under Order XXII Rule 4 of CPC, it is stated that after going through the shara of the Court notice which was returned unserved, the respondent/plaintiff came to know about the death

of the defendant and also ascertained that the deceased defendant Srinivasa Murthy has left his wife Amanda Lakshmi and son Poornachandra and therefore, filed an application to bring L.Rs of the deceased defendant on record and the Trial Court has allowed the same. In this regard, it would be useful to refer to the decision reported in AIR 1993 SC 41 (Karuppaswamy and Ors. v. C. Ramamurthy). In the said case, suit was instituted by the plaintiff against the sole defendant and the summons in the suit was returned with remarks that the defendant was dead. Thereafter, the petitioner filed an application under Order XXII Rule 4 of CPC after expiry of the limitation period for impleading the L.Rs of the deceased. A counter-statement was filed by the LPs of the deceased stating that as against a dead person, suit was non est. High Court taking the view that mistake of suing against the deceased was in good faith and hence, proviso to Section 21(1) of Limitation Act, 1963 attracted and the Apex Court held that the High Court rightly applied the proviso on being satisfied about good faith and consequently, application for impleading the L.Rs deemed to have been filed on the date of original plaint and as such within the limitation period.

5. The case is applicable on all the fours to the case on hand. The Trial Court has rightly allowed the application filed by the respondent/applicant under Order XXVI Rule 2 of CPC. There is no good ground to entertain the writ petition.

6. In the event of dismissing the writ petition, learned Counsel for the petitioners seeks at least 15 days from today to file written statement.

7. In the result, the petition fails and the same is hereby dismissed. Granted 15 days from today to file written statement in the suit.