

**(2012) 09 KAR CK 0177**

**In the Karnataka High Court**

**Case No :** Regular Second Appeal No. 1811 of 2011 (DEC-INJ)

Sri. Seetappa Since deceased by LRs. Late K.S. Muniraju APPELLANT  
Since deceased by his LRs. (K.M. Savithamma and Others)  
and Sri. K.S. Muthanna Since deceased by LRs. (K.L. Lalitha,  
K.M. Murali and K.M. Sandhya)

Vs

Sri. Byrappa Since deceased by his LRs Seenappa Since RESPONDENT  
deceased by his LRs. (Smt. Bharathi and Others) R-1(d) to  
R-1(i), since minors are rep. by natural guardian Mother -  
Bharathi All are, Smt. Sallapuramma and Smt. Jayamma

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**Date of Decision :** 04-09-2012

**Acts Referred:**

**Citation :** (2012) 09 KAR CK 0177

**Hon'ble Judges :** S. Abdul Nazeer, J

**Bench :** Single Bench

**Advocate :** M.S. Bhagwat, for the Appellant; H.M. Somashekaraiah, for C/R-2  
and C/R-3 and R-1(a) to R-1(i), for the Respondent

**Final Decision :** Allowed

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## Judgement

S. Abdul Nazeer, J.—This appeal is directed against the judgment and decree in R.A. No. 142/2010 dated 31.5.2011 on the file of the Fast Track Court-IV, Bangalore Rural District, Bangalore, confirming the judgment and decree in O.S. No. 423/1999 dated 3.6.2010 on the file of the II Additional Civil Judge (Sr. Dn.), Bangalore Rural District, Bangalore. The appellants are the plaintiff's in the suit. Respondent Nos. 1(a) to 1(i) are the legal representatives of defendant No. 1 and respondent Nos. 2 and 3 are defendant Nos. 2 and 3 before the trial Court. The suit filed by the plaintiffs is for declaration and permanent injunction in respect of the suit schedule property. As noticed above, the trial Court has dismissed the suit on 3.6.2010, which has been confirmed by the Lower Appellate Court in R.A. No. 142/2010 dated 31.5.2011.

2. The contention of the learned counsel for the appellants is that the judgment

and decree passed by the Lower Appellate Court is nullity because Sri. Seenappa, respondent No.1 herein, died on 19.3.2011, the day on which the Lower Appellate Court had reserved the matter for judgment. He has further contended that the Courts below are not justified in dismissing the suit filed by the plaintiffs.

3. On the other hand, learned counsel for the respondents has sought to justify the impugned judgment and decrees.

4. While admitting the appeal, this Court has framed the substantial question of law as under:

Whether the judgment and decree in R.A. No. 142/2010 dated 31.5.2011 on the file of the Fast Track Court-IV, Bangalore Rural District, Bangalore, is nullity as respondent No. 1 died on 19.3.2011, the day on which the appeal was heard and reserved for judgment by the Lower Appellate Court ?

5. It is not in dispute that on 19.3.2011, the Lower Appellate Court has heard the learned Counsel for the parties and reserved the appeal for judgment. On the same day, Seenappa-respondent No. 1 has died. The death of respondent No. 1 should have been informed by the learned Counsel representing him to the Lower Appellate Court. Since the death of respondent No. 1 was not brought to the notice of the Lower Appellate Court, his legal representatives have not been brought on record by the appellants. The suit filed by the plaintiffs-appellants before the Lower Appellate Court is for declaration and prohibitory order of injunction. Since the legal representatives of respondent No. 1 before the Lower Appellate Court have not been brought on record, I am of the view that the decree of the Lower Appellate Court is a nullity. The substantial question of law is answered accordingly.

6. In the result, the appeal succeeds and it is accordingly allowed in part. The judgment and decree in R.A. No. 142/2010 dated 31.5.2011 on the file of the Fast Track Court-IV, Bangalore Rural District, Bangalore, is hereby set aside. The matter is remanded to the Lower Appellate Court for fresh disposal in accordance with law. The appellants are permitted to bring the L.Rs. of respondent No. 1 on record before the Lower Appellate Court. Since the appeal is allowed as above, considering I.A.1/2011 for grant of temporary injunction does not arise. It is accordingly disposed of reserving liberty to the parties to move the Lower Appellate Court for appropriate orders. No costs.