



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO.6743 OF 2026 (GM-CPC)

BETWEEN:

1. SMT THIMMAKKA
W/O LATE K M MUNIKRISHNA
AGED ABOUT 47 YEARS
2. SRI. M BHARATH
S/O LATE KM MUNIKRISHNA
AGED ABOUT 24 YEARS
3. KUM. M MOUNA
D/O LATE K M MUNIKRISHNA
AGED ABOUT 23 YEARS

ALL RESIDING AT NO.113,
K GOLLAHALLI VILLAGE AND POST,
NEAR OM SHAKTI TEMPLE, KENGERI,
BENGALURU SOUTH TALUK,
BENGALURU-560 074.

...PETITIONERS

(BY SRI. SUBRAHMANYA KAUSHIK R.S., ADVOCATE)

AND:

SRI D VASANTH KUMAR
S/O SRI. K DAYANAND
AGED ABOUT 44 YEARS
RESIDING AT HOUSE NO.47/10
DAYANANDA BUILDING,
KADIRENAHALLI CIRCLE,
PADMANABHANAGARA,
BANASHANKARI 2ND STAGE,
BENGALURU-560 060

...RESPONDENT

(NOTICE TO RESPONDENT IS D/W ON 27.02.2026)





THIS W.P IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT OR DIRECTION OR ORDER SETTING ASIDE THE ORDER DATED 02.02.2026 PASSED BY THE I ADDITIONAL SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU DISMISSING MISCELLANEOUS PETITION NO. 3/2026, PRODUCED AS ANNEXURE-A AND CONSEQUENTLY, RESTORE MISCELLANEOUS PETITION NO.3/2026 ON THE FILE OF THE SAID COURT.

THIS PETITION, COMING ON FOR *PRELIMINARY HEARING*, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioners seek the following reliefs:

“ (i) Issue a writ in the nature of certiorari or any other appropriate writ or direction or order setting aside the order dated 02.02.2026 passed by the I Additional Senior Civil Judge, Bengaluru Rural District, Bengaluru dismissing Miscellaneous Petition No.3/2026, produced as Annexure-A; and consequently, restore Miscellaneous Petition No.3/2026 on the file of the said Court;

(ii) Grant such other relief/s as this Hon'ble Court may deem fit in the circumstances of the case.”

2. Heard learned counsel for the petitioners and perused the material on record. For the order proposed, notice to respondent is dispensed with.



3. A perusal of the material on record will indicate that the respondent-plaintiff instituted the aforesaid suit against late K.M.Munikrishna, the original defendant, for specific performance of contract and other reliefs. In the said suit, despite having entered appearance, the original defendant-Munikrishna did not file his written statement and did not contest the suit nor adduced any oral or documentary evidence and also did not cross-examine the plaintiff and other witnesses. By judgment and decree dated 21.04.2022, the Trial Court decreed the suit in favour of the respondent-plaintiff against the original defendant K.M.Munikrishna. Subsequently, upon demise of the said defendant-K.M.Munikrishna on 25.11.2023, the petitioners being his wife and children filed a petition in Misc.No.3/2026 under Order IX Rule 13 CPC seeking setting aside of the said *ex-parte* judgment and decree along with applications for stay, condonation of delay etc. along with applications for stay, condonation of delay, etc. When the said Misc.No.3/2026 was posted before the Trial Court on 02.02.2026, the Trial Court proceeded to pass the impugned order dismissing the petition on the ground that the same was not maintainable since the miscellaneous petition could



not have been filed by the legal representatives of the original defendant, who alone could have filed the said petition. In my considered opinion, the right to sue as well as seek setting aside of the *ex-parte* judgment and decree and also to file the said Misc.No.3/2026 has clearly survived on to the petitioners, who are his heirs and legal representatives and consequently, the Trial Court clearly fell in error in dismissing the petition are not maintainable without even issuing notice to the respondent. Under these circumstances, I am of the view that the impugned order deserves to be set aside and Misc.No.3/2026 deserves to be restored to the file of the Trial Court. In this context, it is relevant to state that in the case of ***Singri Minor by guardian mother Rangamma Vs. Doddiah and another – Civil Revn.P.No.74/1952-53 dated 04.12.1952***, the erstwhile Mysore High Court held that an application under Order 9 Rule 13 CPC can be filed not only by the original defendant to a suit but also by his heirs / legal representatives. In fact, In the case of ***Raj Kumar Vs. Sardari Lal and others – (2004) 2 SCC 601***, a *lis pendens* purchaser who comes on record under Order XXII Rule 10 CPC



would also be entitled to challenge a judgment and decree passed in favour of the original plaintiff.

4. In the result, I pass the following:

ORDER

- (i) The petition is hereby allowed.
- (ii) The order dated 02.02.2026 passed in Misc.No.3/2026 by the I Addl. Senior Civil Judge, Bengaluru Rural District, is hereby set aside.
- (iii) Misc.No.3/2026 is restored to the file of the Trial Court.
- (iv) Petitioner is directed to appear before the Trial Court on **16.03.2026**.
- (v) The Trial Court shall hear the learned counsel for the petitioner in Misc.No.3/2026 and proceed further in the matter.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE