HC-KAR

NC: 2026:KHC:39665
WP No. 6219 of 2022

CNR: KAHC010130182022

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 6219 OF 2022 (GM-CPC)

BETWEEN:

1. M/S. NEW PRAVEEN TRAILERS
REGISTERED PARTNERSHIP FIRM
REPRESENTED BY ITS PARTNER:

a). SMT. RENUKAMMA
W/O SRI SHANTARAJ
AGED ABOUT 46 YEARS
KONDAJJI BASAPPA COMPLEX
RMC ROAD, DAVANAGERE – 577 003.

...PETITIONERS

(BY SRI B.S. SATHYANAND, ADVOCATE)

AND:

1. M/S. SHIVA STEEL SUPPLIES
PARTNERSHIP FIRM
REPRESENTED BY ITS PARTNER:

1A. MR. K.M. SHIVASWAMY
S/O. MR.K.M. MURUGENDRAIAH
AGED ABOUT 57 YEARS
NO.55, RPP AND CCS COMPLEX
P.B.ROAD, DAVANAGERE 577 001.

1B. MRS. K.S. MANJULA
W/O. MR. K.M. SHIVASWAMY
AGED ABOUT 47 YEARS
NO.55, RPP AND CCS COMPLEX
P.B.ROAD, DAVANAGERE 577 001.

...RESPONDENTS

(BY SRI G.S. MARULAIAH, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDERS PASSED ON MEMO DATED 07.08.2021/03.09.2021, BY THE LEARNED PRINCIPAL DISTRICT JUDGE AT DAVANAGERE, DATED 05.01.2022, IN COM.OS.NO.34 OF 2020 VIDE ANNEXURE-'A'.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 24.07.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV JUDGMENT

This writ petition is filed challenging the order dated 05.01.2022 passed in Com.O.S.No.34/2020 by the Principal District and Sessions Judge, Davanagere, (for short, the 'Commercial Court').

2. Sri.B.S.Sathyanand, learned counsel appearing for petitioner submits that the respondent filed a suit seeking recovery of money against the petitioner-defendant firm. It is submitted that the defendant No.1(a) died on 16.05.2021. Subsequently, the plaintiff filed a memo dated 07.08.2021 indicating that since the defendant is a registered partnership firm, the question of bringing the legal heirs of the deceased partner would not

arise. However, when a person is inducted as a partner of the defendant firm, necessary steps would be taken to implead the said person as a party to the proceedings. The Trial Court allowed the memo and directed the plaintiff to bring the legal heirs of the deceased defendant No.1(a) on record, which is impermissible. It is submitted that when one of the partners out of the two partners died, the partnership firm will not survive and it is deemed to have been dissolved. It is submitted that a memo is filed stating that there is no necessity to bring the legal heirs of deceased respondent No.1(a) on record and contrary to that, the Trial Court passed the order which is impermissible. In support of his contentions, he placed reliance on ***MOHAMMAD LAIQUIDDIN AND ANOTHER Vs. KAMALA DEVI MISRA (DEAD) BY LRS. AND OTHERS[1].*** Hence, he seeks to allow the petition.

[1] (2010) 2 SCC 407

3. Per contra, Sri.G.S.Marulaiah, learned counsel for respondent supports the impugned order of the Trial Court and submits that the suit is for recovery of money. It is submitted that even after the death of one of the partners, the suit remains against the firm, the decree can be granted and the said decree is executable under Order XXI Rule 50 of the Code of Civil Procedure, 1908 (for short, 'the CPC') as well as under Order XXX Rule 6 and 7 of the CPC. It is further submitted that the Trial Court, considering the various decisions, had made a distinction on facts with regard to the decision of the Hon'ble Supreme Court in the case of ***MOHAMMAD LAIQUIDDIN AND ANOTHER,*** referred *supra* and hence, there is no merit in the contention of the petitioner. It is also submitted that the clause in the partnership deed states that the legal heirs of the partners would continue as the partners of the firm. Hence, he seeks to dismiss the petition.

4. I have heard the arguments of the learned counsel for the petitioner, the learned counsel for the respondent and meticulously perused the material available on record.

5. The respondent had filed Com.O.S.No.34/2020 against the petitioner herein, for a judgment and decree for recovery of a sum of Rs.18,90,730/- together with current and future interest @ 18% p.a. on Rs.12,29,232/- from the date of the suit till the date of realisation. The petitioner filed a written statement. The defendant filed a memo indicating that the defendant No.1(a) died on 16.05.2021. Thereafter, the plaintiff filed a memo indicating that since the defendant is a registered partnership firm constituted under the provisions of the Indian Partnership Act, 1932, which is a creation of the statute, the question of bringing the legal heirs of the deceased partner i.e. defendant No.1(a) would not arise. However, it is submitted that as and when a person is

inducted as the partner of the defendant firm and the same is intimated in the case, the plaintiff firm will take necessary steps to implead the inducted partner as a party to the proceeding in place of the deceased defendant No.1(a). The Trial Court considered the rival contentions, decisions placed on both the sides and passed the impugned order allowing the memo filed by the plaintiff by permitting the plaintiff to take steps to bring the legal heirs of the deceased defendant No.1(a) on record, in the suit, which is challenged.

6. The contention of the petitioner-defendant is that there are only two partners in the defendant firm and on demise of one of the partners, nothing survives in the partnership and the firm is deemed to be dissolved. To substantiate the same, he placed reliance on paragraphs 23 to 26 of the decision of ***MOHAMMAD LAIQUIDDIN AND ANOTHER*** which are extracted hereinbelow:

> "***23.*** *Clause 22 of the Partnership deed reads as follows:*

> *"The partnership shall be in force for a period of 42 years certain from this date and the death of any partner shall not have the effect of dissolving the firm."*

This clause clearly states that death of any partner shall not have the effect of dissolving the firm. However, in the facts and circumstances of the case, we are not in a position to give absolute effect to this clause of the deed of partnership.

24. *The learned counsel for the Respondents contended that since the parties agreed that in spite of the death of any of the partners, the firm shall continue for 42 years irrespective of the death of the original plaintiff (since deceased). They further, argued that it clearly contemplates that the legal representative of the partner, who dies, would be under a duty to enter into a fresh deed of partnership. The legal representatives were precluded from claiming benefits if they deny entering into a fresh partnership agreement.*

25. *In order to arrive at the conclusion that the partnership firm stood dissolved on account of death of one of the partners, the High Court had rightly placed reliance on Smt. S. Parvathammal v. CIT (1987 Income Tax Reports 161), wherein this Court held that in a firm consisting of two partners on account of death of one of the partners, the* *firm automatically dissolved and observed as follows:*

> *"A partnership normally dissolves on the death of the partner unless there was an agreement in the original partnership deed. Even assuming that there was such an agreement in a partnership consisting of two partners on the death of one of them the partnership automatically comes to an end and there is no partnership which survives and into which a third party can be introduced. Hence on the death of S, the original partnership was dissolved. The subsequent taking in of the assessee as a partner was only as a result of entering into of a new partnership between R and the assessee. Partnership was not a matter of heritable status but purely one of contract."*

26. *In the light of aforementioned case, it is clear that when there are only two partners constituting the partnership firm, on the death of one of them, the firm is deemed to be dissolved despite the existence of a clause which says otherwise. A partnership is a contract between the partners. There cannot be any contract unilaterally without the acceptance by the other partner. The Appellants, the legal representatives of original plaintiff (since deceased) was not at all interested in continuing the firm or constitute a fresh firm and they cannot be asked to continue the partnership, as there is no legal obligation upon them to do so as partnership is not a matter of heritable status but purely one of contract, which is also clear from* *the definition of partnership under Section 4. Therefore, the trial court was justified in holding that the firm dissolved by virtue of death of one of the partners and the first appellate court as well as the High Court have taken the correct view in upholding the same."*

7. The aforesaid decision of the Hon'ble Supreme Court is by considering Clause 22 of the partnership deed in the said case and the earlier decision of the Hon'ble Supreme Court in the case of ***SMT.S.PARVATHAMMAL Vs. CIT***[2], which makes it clear that the partnership consisted of two partners and there was death of one of the partners, under such circumstances, the Court held that the partnership automatically comes to an end and subsequent taking in of the assessee as a partner was only as a result of entering into new partnership between the earlier partner and the assessee and that the partnership was not a matter of heritable status but purely one of contract.

[2] 1987 Income Tax Reports 161

8. It would be useful to extract clause 20 of the partnership deed as extracted in the impugned order at paragraph 13, which reads as under:

> *"Firm not to be dissolved on death of any partner, notwithstanding anything contained in the Indian Partnership Act, It is hereby mutually agreed to by an between the parties that in case of death of any one parties the firm shall not be dissolved but shall continue to be carried on by and between the surviving partners and legal heirs and or representatives of the deceased partners as a continuing concern o the same terms and conditions incorporated in this deed or on such terms and conditions as may be agreed to by and between them from time to time. Further, it is also clarified that it shall be deemed as change in constitution and not succession that with respect to any matter connected with the affairs of the firm, which is not specifically provided for the partners may make such agreements and may set in such manner with regard their to as maybe agreed upon by and between themselves."*

9. The aforesaid clause of the partnership deed mentions that the firm will not dissolve on the death of any partner notwithstanding anything contained in the Act and in case of death of any one partner, the firm shall not be dissolved but shall continue to be carried on by and between the surviving partners, the legal heirs and or the representatives of the deceased partner as a continuing concern on the same terms and conditions incorporated in the deed or on such terms and conditions as may be agreed to by and between them from time to time. The contention of the respondent that the aforesaid clause creates a deemed partner on the demise of one of the partners and the legal heirs of one of the partners would become automatic partners on the demise of one of the partners, being the purport and intent of Clause 20 of the partnership deed cannot be appreciated as it stands opposed to the law.

10. It would be useful to refer to the relevant paragraphs of the decision of the Hon'ble Supreme Court in the case of ***COMMISSIONER OF INCOME TAX, MADHYA PRADESH Vs. SETH GOVINDARAM SUGAR MILLS LTD.***[3] which are extracted hereinbelow:

> *"**6.** The question is whether on the death of Nandlal his heirs i.e. the members of his branch of the family, automatically became the partners of the said firm. The answer to the question turns upon Section 42 of the Indian Partnership Act, 1932 (Act 9 of 1932), the material part of which reads:*
>
> > *"Subject to contract between the partners a firm is dissolved by the death of a partner."*
>
> *While for the appellant the learned Attorney-General contended that Section 42 applied only to a partnership consisting of more than two partners, for the respondent Mr Karkhanis argued that the section did not impose any such limitation and that on its terms it equally applied to a partnership comprising only two partners. It was argued that the contract mentioned in the overriding clause was a contract between the partners and that, if the parties to the contract agreed that in the event of death of either*

[3] AIR 1966 SC 24

of them his successor would be inducted in his place, the said contract would be binding on the surviving member. On the death of one of the partners, it was said, his heir would be automatically inducted into the partnership, though after such entry he might opt to get out of it. This conclusion, the argument proceeded, was also supported by Section 31 of the Partnership Act. Section 31 of the Partnership Act reads:

> *"(1) Subject to contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners."*

Converting the negative into positive, under Section 31 of the Partnership Act if there was a contract between the partners, a person other than the partners could be introduced as a partner of the firm without the consent of all the existing partners. A combined reading of Sections 42 and 31 of the Partnership Act, according to the learned counsel, would lead to the only conclusion that two partners of a firm could by agreement induct a third person into the partnership after the death of one of them.

7. *There is a fallacy in this argument. Partnership, under Section 4 of the Partnership Act,* *is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Section 5 of the said Act says that the relation of partnership arises from contract and not from status. The fundamental principle of partnership, therefore, is that the relation of partnership arises out of contract and out of status. To accept the argument of the learned counsel is to negative the basic principle of law of partnership. Section 42 can be interpreted without doing violence either to the language used or to the said basic principle. Section 42(c) of the Partnership Act can appropriately be applied to a partnership where there are more than two partners. If one of them dies, the firm is dissolved; but if there is a contract to the contrary, the surviving partners will continue the firm. On the other hand, if one of the two partners of a firm dies, the firm automatically comes to an end and, thereafter, there is no partnership for a third party to be introduced therein and, therefore, there is no scope for applying clause (c) of Section 42 to such a situation. It may be that pursuant to the wishes or the directions of the deceased partner the surviving partner may enter into a new partnership with the heir of the deceased partner, but that would constitute a new partnership. In this light Section 31 of the Partnership Act falls in* *line with Section 42 thereof. That section only recognizes the validity of a contract between the partners to introduce a third party without the consent of all the existing partners : it presupposes the subsistence of a partnership : it does not apply to a partnership of two partners which is dissolved by the death of one of them, for in that event there is no partnership at all for any new partner to be inducted into it without the consent of others.*

8. *There is a conflict of judicial decisions on this question. The decision of the Allahabad High Court in Lal Ram Kumar v. Kishori Lal [AIR 1946 All 259] is not of any practical help to decide the present case. There, from the conduct of the surviving partner and the heirs of the deceased partner after the death of the said partner, the contract between the original partners that the partnership should not be dissolved on the death of any of them was inferred. Though the partnership there was only between two partners, the question of the inapplicability of Section 42(c) of the Partnership Act to such a partnership was neither raised nor decided therein. The same criticism applies to the decision of the Nagpur High Court in Chainkaran Sidhakaran Oswal v. Radhakisan Vishwanath Dixit [AIR 1956 Nag 46] . This question was directly* *raised and clearly answered by a Division Bench of the Allahabad High Court in Mt. Sughra v. Babu [AIR 1952 All 506, 507] against the legality of such a term of a contract of partnership consisting of only two partners. Agarwala, J., neatly stated the principle thus:*

> *"In the case of a partnership consisting of only two partners, no-partnership remains on the death of one of them and, therefore, it is a contradiction in terms to say that there can be a contract between two partners to the effect that on the death of one of them the partnership will not be dissolved but will continue…. Partnership is not a matter of status, it is a matter of contract. No heir can be said to become a partner with another person without his own consent, express or implied."*

This view accords with that expressed by us earlier. In Narayanan v. Umaval [AIR 1959 Mad 283, 284] Ramachandra Iyer, J., as he then was, said much to the same effect when he observed thus:

> *"…if one of the partners died, there will not be any partnership existing to which the legal representatives of the deceased partner could be taken in. In such a case the partnership would come to an end by the death of one of the two partners, and if the legal representatives of the deceased partner joins in the business later, it should be referable to a new partnership between them."*

But Chatterjee, J., in Hansraj Manot v. Gorak Nath Pandey [(1961) 66 CWN 262, 264] struck a different *note. His reasons for the contrary view are expressed thus:*

> *"Here the contract that has been referred to is the contract between the two partners Gorak Nath and Chanpala … Therefore, it cannot be said that the contract ceased to have effect because a partner died. The contract was there. There was no new contract with the heirs and there was no question of a new contract with the heirs because of the original contract, and by virtue of the original contract the heirs become partners as soon as one of the partners died … As soon as there is the death, the heirs become the partners automatically without any agreement between the original partners by virtue of the original agreement between the partners while they were surviving. There is no question of interregnum. As soon as the death occurs the right of somebody else occurs. The question of interregnum does not arise. The heirs become partners not because of a contract between the heirs on the one hand and the other partners on the other but because of the contract between the original partners of the firm."*

With great respect to the learned Judge, we find it difficult to : appreciate the said reasons. The learned Judge seems to suggest that by reason of the contract between the original partners, the heirs of the deceased partner enter the field simultaneously with the removal by death of the other partner from the partnership. This implies that personality of the deceased partner projects into that of his heirs, with *the result that there is a continuity of the partnership without any interregnum. There is no support either on authority or on principle for such a legal position. In law and in fact there is an interregnum between the death of one and the succession to him. We accept the view of the Allahabad and Madras High Courts and reject the view expressed by Nagpur and Calcutta High Courts."*

11. It would further be useful to refer to the relevant paragraphs of the decision of the Apex court in ***S.P. MISRA & ORS. Vs. MOHD. LAIQUDDIN KHAN & ANR.***[4] which are extracted hereinbelow:

*"**16.** In the case on hand, as much as there were only two partners, the partnership itself stands dissolved, in view of death of a partner.*

***17.** It is true that as per the deed of partnership, the partners have agreed, in the event of death of either party, their respective legal representatives shall automatically become partners in the partnership firm and they shall continue to act as partners of the firm, till the venture envisaged under the said partnership is*

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[4] (2019) 10 SCC 329

completed and such legal representatives who become partners shall have the same rights and shall be subject to same liabilities and responsibilities, as the deceased partner.

18. *At this stage, it is to be noticed that once the partnership comes to an end, by virtue of death of one of the partners, there will not be any partnership existing in which legal representatives of late Smt Hashmatunnisa Begum could be taken in. The judgment and decree obtained by late Shri Jai Narayan Misra against late Smt Hashmatunnisa Begum, in pursuance of partnership deed dated 14-4-1982, cannot bind the legal representatives of late Smt Hashmatunnisa Begum, as such, decree is not executable against them. The legal representatives of late Smt Hashmatunnisa Begum are not the partners of the original partnership deed dated 14-4-1982. When such legal representatives are not parties to the contract, such contract cannot confer rights or impose obligations arising under it on any third party, except parties to it. No one but the parties to the contract can be entitled under it or borne by it. Such principle is known as "Privity of Contract". When the partnership stands dissolved by operation of law under Section 42(c) of the*

> *Partnership Act, 1932, the question of execution in pursuance of the decree does not arise. There cannot be any contract unilaterally without acceptance and agreement by the legal heirs of the deceased partner. If there are any clauses in the agreement, entered into between the original partners, against the third parties, such clauses will not bind them, such of the clauses in the partnership deed, which run contrary to the provisions of the Partnership Act, 1932, are void and unenforceable. Such clauses are also opposed to public policy."*

12. The partnership firm in question admittedly consisted of only two partners. In view of the decisions of the Hon'ble Supreme Court in ***COMMISSIONER OF INCOME TAX VS. SETH GOVINDRAM SUGAR MILLS LTD., MOHAMMAD LAIQUIDDIN AND ANOTHER***, and ***S.P.MISRA Vs. MOHD. LAIQUDDIN KHAN,*** referred *supra*, the death of one of the two partners in a partnership firm results in the automatic dissolution of the partnership notwithstanding any clause in the partnership deed providing otherwise. A partnership is founded upon

contract and not upon status and the legal heirs of a deceased partner do not automatically step into the shoes of the deceased as partners of the firm. Any continuation of the business by the surviving partner along with the legal representatives of the deceased partner can only be by constituting a fresh partnership.

13. In the present case, Clause 20 of the partnership deed cannot be construed as creating an automatic induction of the legal heirs into the partnership. It is therefore clear that when there are only two partners constituting a partnership firm, on the death of one of them, the firm is deemed to be dissolved despite the existence of a clause which says otherwise. A partnership is a contract between the partners. There cannot be any contract unilaterally without the acceptance by the other partner. Consequently, the plaintiff could not have sought to continue the proceedings against the dissolved firm by reserving liberty to implead a future inducted partner. The

Trial Court, while allowing the memo filed by the plaintiff, failed to appreciate the settled principles of law referred *supra* and thereby committed an error. Accordingly, the writ petition deserves to be allowed.

14. For the aforementioned reasons, I proceed to pass the following:

ORDER

(i) The writ petition is ***allowed***.

(ii) The order dated 05.01.2022 passed in Com.O.S.No.34/2020 by the Principal District and Sessions Judge, Davanagere, is set aside. Consequently, the memo filed by the respondent-plaintiff dated 07.08.2021/ 03.09.2021 stands rejected.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 1 Sl No.: 1