

ORDERS ON I.A NO.XVI FILED BY THE DEFENDANT NO.2
UNDER ORDER 1 RULE 10 R/W ORDER 23
RULE 1A OF CPC

An instant application filed by the defendant No.2 U/o 1 Rule10(2) R/w order 23 Rule 1A of CPC for permit to transpose as plaintiff No.2 in the suit.

2. In the affidavit annexed to the application, it is stated that brother of the defendant No.2 who is plaintiff filed the suit for partition and separate possession over the suit property, the plaintiff is not ready to proceed with the matter. The defendant No.2 is having share in the suit property, the same is contending in the written statement. It is necessary to transpose as plaintiff No.2 to get his legitimate share in the suit property. Hence, prays to allow the application.

3. On the other hand, inspite of giving sufficient opportunity to the plaintiff and defendant No.1, 3 and 4, they did not file any objection to the present application, instead objection of plaintiff and defendant No.1,3 and 4 has taken as not filed on 12.02.2024.

4. Heard on learned counsel for the defendant No.2 and perused materials on records.

5. On perusal of the records, it appears that the plaintiff has filed the present suit for the relief of partition and separate possession over the suit property. It is specifically asserted by the plaintiff that the plaintiff and defendants are joint family

members and suit properties are in joint possession and cultivation of plaintiff and defendants. Admittedly, the defendant No.1 to 3 are co brothers of the plaintiff and they are sons of Bhujang Patil and Gangubai Patil. Further, it is stated that the plaintiff and defendants No.1 to 3 are class I legal heirs of propositus i.e., Bhujang. Apart from that, the application U/s 151 of CPC recall the order dated 29.07.2019 i.e., disposing the suit as not pressed is ordered as the application filed U/s 151 of CPC is hereby allowed and order dated 29.07.2019 is hereby recalled, the suit restored to its original stage on 24.05.2022 wherein it is observed that on perusal of the memo and order sheet it is clear that the defendant No.2 had not knowledge about the memo of the plaintiff seeking for withdrawal of the suit. It is material to note that even though plaintiff had got order of withdrawal of the suit, the suit was restored in original stage on the application of the defendant. In this context, the Hon'ble Apex Court, AIR 1965 SC 1812, Maddanappa V/s Chandramma, pleased to observed that "the power under order 1 Rule 10(2) of CPC is exercisable by the Court even sumoto. As pointed out the Privy Council in Bupendra V/s Rajeshwar, 58 Ind App 228, the power ought to be exercised by the Court for doing complete justice between the parties." In view of the same, the complete adjudication of the matter and to avoid multiplicity of the proceedings, it is necessary to transpose as plaintiff No.2 in the interest of justice and equity. Under such circumstances the

defendant No.2 has made out grounds to transpose as plaintiff No.2 in the suit. Accordingly, I proceed pass the following;

ORDER

I.A. No.XVI filed by the defendant No.2 under Order 1 Rule 10(2) R/w order XXIII Rule 1(a) of CPC is hereby allowed.

As a result, the defendant No.2 is transposed as plaintiff No.2 in the interest of justice and equity and permitted to amend the plaint and amended plaint as per the said order.

Call on 28.10.2024.

(Dictated to the stenographer on computer, typed by her, the same is corrected, signed and then pronounced by me in the open court on this the 15th day of October 2024*)

**II Addl. Civil Judge & JMFC
Belagavi**