

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,  
HOSAKOTE.**

**PRESENT:**

Sri. Arun Kumar.G. B.A., LL.B.  
Senior Civil Judge & JMFC,  
Hosakote.

**Dated this the 6<sup>th</sup> day of February 2024**

**O.S.No.3353/2022 (Old No.2928/2006)**

**Plaintiff/s** : Sri.Basavarajappa

- V/s -

**Defendant/s** : Sri.Paramashivaiah & Ors.

**Applicant/s** : Smt.Sharadamma

Provision under which the application is filed	1) Order 1 Rule 10 (6) of CPC
Relief sought for	To transpose defendant No.3 as plaintiff No.2.
The date on which the application is filed	
Number of the application	I.A.No.1/2023
The date on which the objection is filed by the different opponents	20-07-2023
The date on which the order is passed on the said application	06-02-2024

**Orders on I.A.No.1/2023**

The defendant No.3 has filed the above application under Order 1 Rule 10 (6) R/w Section 151 of CPC seeking permission to transpose as plaintiff No.2 to contest the case.

2. In the annexed affidavit it is stated that the plaintiff and defendant No.1 and 2 are brothers and defendant No.4 is her sister. The suit schedule properties are the ancestral and joint family properties of both the parties. The defendant No.3 is having legitimate share in the suit schedule properties. Now, the plaintiff by colluding with defendant No.1 and 2 has started illegal activities in respect of suit properties against the defendant No.3. Further, it was learnt that the plaintiff by suppressing the pendency of this suit has entered into a joint development agreement (JDA) on 20-10-2022 with one M/s V.R.Builders and Developers in respect of suit item No.1 and 4 properties. Further, the plaintiff and defendant No.1 and 2 are making hectic efforts to create encumbrance with respect of suit schedule property without allotting the share of this defendant. Further, the plaintiff is trying to drag on the proceedings in order to deceive the rights of this defendants.

Therefore, to safeguard her interest it is just and necessary to transpose herself as plaintiff No.2 to contest the case. Hence, prays to allow the application.

3. The plaintiff filed objections to the above application wherein he denied the entire statement of the defendant and further contended that though the plaintiff is aged about 80 years, he is prosecuting the case without any delay and even though the defendant No.3 has filed application to transpose as plaintiff No.2 without any reasons. The defendant No.1 and 2 through their written statement taken a contention that there was already a partition between the parties and hence this suit is not maintainable. The plaintiff has not colluded with the defendant No.1 and 2. The application is dismissed, no hardship would be caused to the defendant No.3. Hence, on other reasons prays for reject the application with costs.

4. Based upon the above contentions of the plaintiff and defendants, following points arise for consideration of this court:

1. Whether the defendant No.3 has made out sufficient grounds to allow the application?

## 2. What order?

5. Heard arguments. On due perusal of the records, the court findings on the above points are as under:

Point No.1 : In the Affirmative,

Point No.2 : As per final order  
for the following;

### **REASONS**

6. **Point No.1:-** This suit is filed by the plaintiff against the defendants for partition and separate possession in respect of suit schedule properties. The defendants No.1 and 2 filed written statement by denying the statement of the plaintiff and further taken a contention that there was already a oral partition dated 26-10-1986 and there is no existence of joint family and also this suit is barred by limitation.

7. On rival pleadings, this court has framed proper issues. When the case was posted for steps to defendant No.8, the above application is filed by the defendant No.3 to transpose as plaintiff No.2. It is the allegation of the defendant No.3 that the plaintiff in order to deprive her right over the suit properties by colluding with defendant No.1 and 2 has created a JDA and also trying to drag on the proceedings.

8. In support of their allegations, the defendant No.3 has produced the JDA dated 20-10-2022 which shows that the plaintiff and his family members have executed a JDA in favour of M/s V.R.Builders and Developers in respect of suit item No.1 and 4 properties. Further, the defendant No.3 has produced the copy of order sheet of RAH.No.723/2022 filed before the Assistant Commissioner, Doddaballapura by this defendant, copy of vakalath, copy of appeal memorandum and the memo.

9. On perusal of records produced by the defendant No.3 clearly goes to show that there is an existence of joint family between the parties or there is a oral partition alleged to be took place in the year 1986 or not, it requires a full fledged trial. When the plaintiff himself by suppressing the pendency of this suit without permission from this court has executed a JDA as stated supra, it is just and necessary to allow the defendant No.3 to transpose herself as plaintiff No.2 to contest the case.

10. Furthermore, the defendant No.3 is on apprehension that by colluding with defendant No.1 and 2, the plaintiff is trying to create third party interest over the suit properties. Therefore, in

order to protect the rights of the defendant No.3, the I.A. filed by the defendant No.3 can be considered at this stage. Otherwise it may leads to multiplicity of proceedings between the parties and no hardship would be caused to the plaintiff if defendant No.3 is permitted to transpose herself as plaintiff No.2 as she is also claiming an equal share in the suit properties. Hence on the above said reasons, point No.1 is answered in **“Affirmative”**.

11. **Point No.2** :- In view of the aforesaid findings on point No.1, I proceed to pass the following:

### **ORDER**

I.A.No.1/2023 filed under Order 1 Rule 10 (6) R/w Section 151 of CPC is hereby allowed.

The defendant No.3 is hereby permitted to transpose herself as plaintiff No.2 to contest the case.

The plaintiff is hereby permitted to amend the plaint and shall furnish the amended plaint accordingly.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced by me in the open court on this the 6<sup>th</sup> day of February 2024.)

(Arun Kumar.G)  
Senior Civil Judge & JMFC,  
Hosakote.

Order pronounced in the open court vide separate :

**ORDER**

I.A.No.1/2023 filed under Order 1 Rule 10 (6) R/w Section 151 of CPC is hereby allowed.

The defendant No.3 is hereby permitted to transpose herself as plaintiff No.2 to contest the case.

The plaintiff is hereby permitted to amend the plaint and shall furnish the amended plaint accordingly.  
Call on: 02-03-2024.

(Arun Kumar.G)  
Senior Civil Judge & JMFC,  
Hosakote.