

KACM200002252022



IN THE COURT OF THE SENIOR CIVIL JUDGE,
AT: KADUR.

Present:- Sri. IRFAN.

B.A., LL.B.,

Senior Civil Judge & JMFC,
Kadur, Chikkamagaluru District.

Dated : This the 5th day of September, 2024.

O.S. No.70/2022

Plaintiff :

Sri. Malleshappa,
S/o Late Shankarashetti,
Aged about 52 years,
Agriculturist,
R/at Chikkadevanoor (V)
Devanoor Post,
Sakharayapatna Hobli,
Kadur Taluk,
Chikkamagaluru District.

(Plaintiff by: Sri. K.P. Neelakantappa, Advocate)

-V/s-

Defendants :

1. Sri. Shekarashetti,
S/o Late Shankarashetti,

Aged about 57 years,
Agriculturist,
R/at Chikkadevanoor (V)
Devanoor Post,
Sakharayapatna Hobli,
Kadur Taluk.

2. Sri. Lohith S,
S/o Shekarashetti,
Aged about 30 years,
Agriculturist,
R/at Chikkadevanoor (V)
Devanoor Post,
Sakharayapatna Hobli,
Kadur Taluk.
3. Smt. Shankaramma,
W/o Channaveerashetti,
D/o Late Shankara Shetti,
Aged about 63 years,
House wife,
R/o Devanoor Village at & Post,
Sakharayapatna Hobli,
Kadur Taluk.
4. Smt. Kamalamma,
W/o Govindappa,
D/o Late Shankara Shetti,
Aged about 61 years,
House wife,
R/o Kalgundi Village at & Post,
Kanakatte Hobli,
Arasikere Taluk,
Hassan District.

5. Smt. Radhamma,
W/o Shankarappa,
D/o Late Shankara Shetti,
Aged about 59 years,
House wife,
R/o J.C. Pura Village at & Post,
Metikurke Hobli,
Arasikere Taluk,
Hassan District.

(Defendants No.1 & 2 by: Sri. B.Raju, Advocate)

(Defendants No.3 & 4 by: Sri. P. Gowtham Patel, Advocate)

(Defendant No.5 by: Sri. C.G. Rajashekhar, Advocate)

RANK OF THE PARTIES ON I.A.NO.VI

Applicants /

Defendant No.5 : Smt. Radhamma.

-V/s-

Opponent /

Plaintiff : Sri. Malleshappa.

i	<i>Provision under which the application is filed</i>	<i>U/O 1 Rule 10 (6) R/w Sec.151 of CPC</i>
ii	<i>Relief sought for</i>	<i>Transpose the defendant as 2nd plaintiff.</i>
iii	<i>The date on which the application is filed</i>	<i>10.11.2023.</i>
iv	<i>Number of the application</i>	<i>VI</i>

v	<i>The date on which the objections are filed by different opponent</i>	14.02.2024
vi	<i>The date on which the orders were passed on the said application</i>	05.09.2024.

ORDER ON I.A.VI

The applicant / 5th defendant has filed I.A.No.VI, under Order I Rule 10(6) R/w Sec.151 of C.P.C., and prays to transpose her as 2nd plaintiff in this suit, in the interest of justice and equity.

2. This application is supported by an affidavit filed by the 5th defendant. The gist of the application averment is that the plaintiff has instituted this suit seeking for the relief of partition, wherein the 5th defendant on appearance had filed her written statement claiming her legitimate 1/5th share in the suit schedule property. It is contended under the present application that the plaintiff in collusion with other defendants is intentionally avoiding to prosecute the suit and therefore in order to prosecute the suit, the 5th defendant sought to transpose accordingly.

3. The learned counsel for the plaintiff has filed a memo submitting no objection to this application.

4. This application has been resisted by the defendants No.1 and 2 vide detailed objections denying the application averments and any sort of right of neither the plaintiff nor other defendants. It is specifically asserted that there has already a partition taken place between Veerabhadra Shetty, Shankara Shetty and defendants No.1 and 2 herein. The plaintiff being well aware of the said aspect is intentionally avoiding to appear before this court. Accordingly, sought to dismiss the application.

5. Heard on both sides.

6. The Points arise for my consideration is as follows;

1. Whether the applicant / 5th defendant has made out grounds for transposition?

2. What order?

7. My answer on the above points are as follows:-

Point No.1 - In the affirmative;

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

REASONS

8. **Point No.1:** It is a matter of record that the instant suit is for the relief of partition and separate possession, wherein 5th defendant in her written statement has also claimed for the allotment of her specific share in the suit schedule properties. The records further discloses that when the case is posted for cross-examination of PW-1, the plaintiff remained absent on several occasions and finally his counsel filed a memo on 14.02.2024 stating that due to illness the PW-1 is not in a position to attend the court and stated no objections for transpositions of 5th defendant as 2nd plaintiff. This aspect by itself go to show that the plaintiff is not intending to

prosecute the suit. The respective parties under this suit are seeking for co-parcenary rights, wherein the 5th defendant has also claimed her legitimate share. Under the facts and circumstances of case on hand, since the plaintiff is not actively prosecuting the case, it is open for the 5th defendant to claim her legitimate share by transposing herself to prosecute the suit. No doubt, under the objections the defendants No.1 and 2 have totally denied any sought of right of plaintiff and 5th defendant to claim for partition, but all those aspects needs to be determined after a full fledged trial and at this stage the 5th defendant has made out grounds for transposition as 2nd plaintiff. Accordingly, the point under consideration is answered in the affirmative.

9. Point No.2: In view of the above findings on point No.1, the following;

ORDER

I.A.No.VI filed by the
applicant / 5th defendant under

Order 1 Rule 10(6) R/w Sec.151 of CPC is allowed.

The applicant / 5th defendant is permitted to transpose herself as 2nd plaintiff and to proceed with the case in accordance with law.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by me in open Court on this the 5th day of September, 2024)

Sd/-

(IRFAN)
Senior Civil Judge,
Kadur.