

KACM200003392012



**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 18th day of February, 2025.

O.S. No.19/2012

Plaintiff : Sri. K.B. Nageshappa,
S/o Late Bogappa,
Aged about 70 years,
Agriculturist Retd. Teacher,
R/at P. Kodihalli Village,
Yagati Hobli, Kadur Taluk,
Chikkamagaluru District.

(Plaintiff by: Sri. K.N.R., Advocate)

-V/s-

Defendants : 1. Sri. K.B. Govindappa,
S/o Late Bhogappa, ,
Aged about 67 years,
Agriculturist,



2. Smt. B.N. Sharadamma,
W/o Late K.B. Gangahdarappa,
Aged about 60 years,
House-wife,
3. Sri. K.G. Thippeshappa,
S/o Late K.B. Gangahdarappa,
Aged about 33 years,
Teacher,
4. Sri. K.G. Devaraju,
S/o Late K.B. Gangahdarappa,
Aged about 31 years,
Agriculturist,
5. Sri. K.G. Sathisha,
S/o Late K.E. Gangadharappa,
Aged about 28 years,
Teacher,
6. Sri. K.B. Onkarappa,
S/o Late Bhogappa,
Aged about 60 years,
Agriculturist,
7. Sri. K.B. Kallegowda,
S/o Late Bhogappa,
Aged about 55 years,
Agriculturist,
8. Sri. K.B. Mahesha,
S/o Late Bhogappa,
Aged about 50 years,
Teacher,



Defendants No.1 to 8 are
R/at P. Kodihalli Village,
Yagati Hobli, Kadur Taluk,
Chikkamagaluru District.

9. Smt. Lakkamma,
D/o Late Bhogappa,
W/o Halappa,
Aged about 73 years,
House-wife,
R/o Biluvala Village at & Post,
Kasaba Hobli, Kadur Taluk.
10. Smt. Jayamma,
W/o M.V. Puttaswamy,
D/o Late Bhogappa,
Aged about 65 years,
House-wife,
R/o M.G. Dibba Village at & Post,
Hosadurga Taluk,
Chitradurga District.
11. Smt. Bhagyamma, ,
W/o Gundamallaihana Kumaranna,
Aged about 35 years,
House-wife,
R/o Pura Village, Yagati Post,
Kadur Taluk,
Chikkamagaluru District.
12. Sri. K.N. Laxmikanth,
S/o K.B. Nageshappa,
Aged about 49 years,
Agriculturist,



R/o P. Kodihalli Village,
Yagati Hobli, Kadur Taluk,
Chikkamagaluru District.

13. Smt. Yashodha,
W/o Late K.N. Bhagappa,
Aged about 35 years,
House-wife,
R/o P. Kodihalli Village,
Yagati Hobli, Kadur Taluk,
Chikkamagaluru district.
14. Sri. Murthaiah,
S/o Late Shivaiah,
Aged about 58 years,
R/o Mavinahalli Village,
Yagati Hobli, Kadur Taluk,
Chikkamagaluru District.

(Defendants No.1, 6 & 14 by: Smt. K.B.H., Advocate)
(Defendants No. 9, 10, 12 & 13 by: Sri. K.V.M.,
Advocate)

(Defendants No.2 to 5 by: Sri. T.H.R., Advocate)
(Defendants No.7 & 11 by: Sri. H.M.P., Advocate)
(Defendant No.8 by: Sri. H.N.S., Advocate)

RANK OF THE PARTIES ON I.A.NO.38

Applicant /
12th defendant : Sri. K.N. Lakshmikanth.

-V/s-

Opponents /
Defendants : Sri. K.B. Govindappa & others.



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 12th defendant as plaintiff</i>
iii	<i>The date on which the application is filed</i>	<i>05.02.2025.</i>
iv	<i>Number of the application</i>	<i>38</i>
v	<i>The date on which the objections are filed by different opponent</i>	<i>11.02.2025. by the defendants No. 3 to 5</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>18.02.2025.</i>

*When the case is posted for plaintiff's evidence,
the 12th defendant has filed this application.*

ORDER ON I.A.38

The applicant / 12th defendant has filed this IA, under Order I Rule 10(6) R/w Sec.151 of C.P.C., and prays to transpose him as plaintiff in this suit, in the interest of justice and equity.

2. This application is supported by an affidavit filed by the 12th defendant. The gist of the application averments is that he is the 12th defendant and 13th defendant is her sister-in-law i.e., wife of his



brother – Late K.N. Bhogappa. The plaintiff / his father has filed this suit for the relief of partition and separate possession of the suit schedule properties. The defendants No.2 to 5 have filed their written statement stating that some of the properties stands in the name of applicant and also in the name of 13th defendant, hence the court has permitted to implead them as defendants No.12 and 13. On 06.02.2015, this court decreed the said suit and thereafter the defendants No.2 to 5 filed appeal in RA No.18/2015 against the said judgment and decree before Prl. District and Sessions Court, Chikkamagaluru and also 5th defendant has filed RA No.15/2015 before the same court. After hearing, the said appeals are remanded for fresh trial. Thereafter, this court again after the trial decreed the suit of the plaintiffs by granting relief as sought in the plaint. Thereafter, the defendants No.2 to 5 filed RA No.179/2022 before the District Court and again remanded the said case for fresh trial. After the remand and during the pendency of the appeals, his father died on 18.10.2023, thereafter the defendants No.2 to 5 not impleaded the



legal heirs of his father in the appeal courts and also they have not informed regarding death of his father. Hence, it is just and necessary to allow him to proceed with the case, because his father is no more and being a legal heirs of deceased, he has right to proceed with the case as plaintiff. Hence, it is just and necessary to allow the application by granting permission to proceed with the case for adjudication of the real controversy. Accordingly, sought to allow the application.

3. This application has been resisted by the defendants No.3 to 5 by denying the application averments and contended that the 12th defendant has got no locustandy to file the application and he cannot seek the amendment of plaint. The 12th defendant being represented through an Advocate cannot file the said application through another Advocate. The 12th defendant failed to mention that he is exercised due diligence earlier and he could not file the said application before the trial. The 12th defendant is in the habit of filing such application so as to prolong the case. The application is filed only in



order to drag on the proceedings and to harass them to make wrongful gain. Accordingly, sought to dismiss the application.

4. Heard on both sides.

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

1. Whether the applicant / 12th defendant has made out grounds for transposition?

2. What order?

6. 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

7. **Point No.1:** It is a matter of record that the instant suit is for the relief of partition and separate possession and as per the orders of Hon'ble First Appellate Court in RA No.179/2022, dated 10.01.2025, this matter is remitted back with certain



directions for fresh disposal. The 12th defendant marked his appearance and filed this application seeking to transpose him as plaintiff by contending that his father K.B. Nageshappa demised during the pendency of the appeals and being the legal heir, he is entitled to prosecute the suit. On reference to the case records, it is noticed that the defendants No.12 and 13 have been subsequently impleaded in the original proceedings and it is a matter of record that the 12th defendant has not filed any written statement. The contention of the 12th defendant that the original plaintiff – K.B. Nageshappa demised is not disputed by the contesting defendants in their objections. On reference to the judgment and appellate decree in RA No.179/2022, it is apparent that the death of K.B. Nageshappa has been recorded and his legal heirs i.e., Lakshmidevi and Pushpa appears to have been brought on record.

8. Now under this application, the 12th defendant has sought for his transposition stating that there is no one to prosecute the suit. It is a matter of record that the Hon'ble Appellate Court



under RA No.179/2022 had while remanding the case specifically directed the parties to appear before this court on 24.01.2025 to proceed with the case, but on the stipulated date, no one appeared on behalf of the plaintiffs (Smt. Lakshmidevi and Pushpa). When there was a specific direction, it was incumbent upon the parties to appear before this court and to proceed with the suit in accordance with law. However by considering the facts that the original plaintiff – K.B. Nageshappa is no more and the 12th defendant being his son intends to prosecute the suit, it is just and essential to transpose him as the plaintiff in order to prosecute the suit. No harm or prejudiced would be caused to the other side and more so the 12th defendant being one of the legal heirs of late K.B. Nageshappa is also entitled to come on record to prosecute the suit. 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.38 filed by the applicant
/ 12th defendant under Order 1 Rule
10(6) R/w Sec.151 of CPC is
allowed.

The applicant / 12th defendant
is permitted to transpose himself 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 18th day of February, 2025)

Sd/-

(IRFAN)
Senior Civil Judge,
Kadur.