

ORDER ON I.A.NO.11

When the case posted for cross of DW2, the instant application being filed by the defendant No.1.

2. The instant application is filed by the defendant No.1 under order I Rule 10(6) of CPC with a prayer to transpose the defendant No.4 as the plaintiff No.2 in the above suit.

3. In support of the application, the applicant has sworn to the affidavit and averred that, the defendant No.4 and the plaintiff are the common intention and also defendant No.4 filed the counter claim. If the defendant No.4 is transpose the plaintiff No.2, is not cause any inconvenience or injustice to the case of the plaintiff.

4. Per contra, the plaintiff and the defendant No.4 filed their objection contending that, the application is not maintainable either in the law or on the facts of the case. The plaintiff filed the suit for the partition in respect of his father properties. The defendant No.1 to 3 are the joint family members and defendant No.4 is the sister of plaintiff's father. There is no need to transpose the defendant No.4 as plaintiff No.2. Hence, prayed to dismissal of the application.

5. Heard from both side and perused the materials available on record.

6. The points that arise for my consideration are:

- 1. Whether the proposed defendant No.1 has made out ground to allow the instant application as sought for?*
- 2. What order?*

7. My findings to the above points are hereunder:

Point No.1 : In the "**Negative**"

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

:- R E A S O N S :-

8. Point No.1:- It is pertinent to note that, the present suit is filed by the plaintiff against the defendants seeking a relief of partition and separate possession in respect of the suit schedule properties contending that the suit schedule properties is originally belongs to his father. She has demanded for the partition to the defendants, but the defendants denied the share and thereby left with no other alternative have filed the present suit for partition.

9. It is pertinent to note that, the instant application is filed by the defendant No.1 contending that, the defendant No.4 has supported the plaintiff's claim and no adverse interest with the plaintiff and defendant No.4 has also filed the counter claim in respect of item No.2 suit schedule property.

10. Admittedly, on the basis of the pleadings available on record, it could be said the defendant No.1 to 3 and plaintiffs are the joint family members. The defendant No.4 is the sister of plaintiff's father. In the partition suit, all the plaintiffs are defendants and defendants are plaintiffs as per the decision of the Hon'ble Apex Court. Hence, there is no valid reason assigned by the defendant No.1 to allow the present application. Hence, looking fact and circumstances of the case, the defendant No.1 not made out ground to allow the instant application. Hence, in

the interest of justice and equity, this court answered the point no.1 in the "Negative"

11. Point No.2:- In view of the above discussion, this court proceed to pass the following;

ORDER

The I.A.No.11 filed by the defendant No.1 under order I Rule 10(6) of CPC is hereby rejected with cost of Rs.1,000/-.

Sd/-

(YOGESHA M.R.)
Prl. Civil Judge & JMFC,
MUDIGERE.