

COMMON ORDERS ON MEMO FOR DISMISSAL
AND IA NO.III

During the stage of hearing on I.A.No.I filed seeking temporary injunction, the plaintiff has filed a memo seeking for dismissal of the above suit as not pressed.

2. Subsequent to filing of said memo, the defendant No.2 and 3 have filed I.A.No.III under Order 1 Rule 10(6) r/w Section 151 of CPC seeking their transposition as plaintiffs.

3. In support of the present application learned counsel for defendant No.2 and 3 has filed memo of facts submitting that the defendant No.2 and 3 have sought for counter claim seeking the relief of permanent injunction against the plaintiff and the defendant No.1 restraining them from trespassing into and dispossessing the defendant No.2 and 3 from the suit schedule property. The plaintiff now sought for dismissal of suit with an intention to defraud the defendant No.2 and 3. The plaintiff and defendant No.1 have alienated the suit schedule property and trying to dispossess the defendant No.2 and 3 forcibly. The defendant No.2 and 3 have instituted the suit against the purchaser of the suit schedule property. Thus, the suit cannot be dismissed without considering the counter claim of defendant No.2 and 3. On these averments the defendant No.2 and 3 seeks for their transposition as plaintiffs.

4. Learned counsel appearing for plaintiff has submitted that he has got no objections on the present application and seeks for dismissal of suit filed by the plaintiffs.

5. Heard both side and also perused the entire materials on record.

6. The following points do arise for consideration of the above application:

- 1) Whether the defendant No.2 and 3 have made out sufficient grounds to transpose them as plaintiffs?
- 2) What Order?

7. This Court answers the above points in the following:

Point No.1: In **Affirmative**.

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

REASONS

8. **Point No.1:** The present suit is filed by the plaintiff for bare injunction with respect to the suit schedule property which is a plantation land measuring 2.06 acres in Sy.No.71 of Nadavinmadkal Village, Kasaba Hobli, Mudigere Taluk. When the suit is at the stage of hearing on I.A.No.I filed seeking temporary injunction, learned counsel for plaintiff has filed memo dtd:

28.11.2022 submitting that the suit may be dismissed as not pressed. The said memo contains the signature of plaintiff.

9. Herein the present case the plaintiff who has filed the present suit for permanent injunction has now sought for absolute dismissal of the suit. But the defendant No.2 and 3 have filed the application under I.A.No.III submitting that they require to be transposed as plaintiffs in the present case as they have sought for counter claim against the plaintiff.

10. On perusal of the materials available on record, the defendant No.2 and 3 have filed counter claim seeking permanent injunction against the plaintiff and defendant No.1 with respect to the plantation land measuring 2.06 acres in Sy.No.71 of Nadavinmadkal Village, Kasaba Hobli, Mudigere Taluk. Thus, the claim of the plaintiff and the counter claim of defendant No.2 and 3 is with respect to the plantation land measuring 2.06 acres in Sy.No.71 of Nadavinmadkal Village.

11. It is relevant here to read Order 23 Rule 1A of Code of Civil Procedure which speaks about transposition of parties and reads as under:

“1A. When transposition of defendants as plaintiffs may be permitted:

Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.”

It is also germane here to refer the decision of Hon'ble Apex Court in the case of **R.Dhanasundri V/s A.N.Umakanth** reported in **(2019) 4 SCR 648** wherein it has been held as under:

“10. As per Rule 1-A ibid., in the eventuality of plaintiff withdrawing the suit or abandoning his claim, a pro forma defendant, who has a substantial question to be decided against the co-defendant, is entitled to seek his transposition as plaintiff for determination of such a question against the said co-defendant in the given suit itself. The very nature of the provisions contained in Rule 1-A ibid. leaves nothing to doubt that the powers of the Court to grant such a prayer for transposition are very wide and could be exercised for effectual and comprehensive adjudication of all the matters in controversy in the suit. The basic requirement for exercise of powers under Rule 1-A ibid. would be to examine if the plaintiff is seeking to withdraw or to abandon his claim under Rule 1 of Order XXIII and the defendant seeking transposition is having an interest in the subject-matter of the suit and thereby, a substantial question to be adjudicated against the other defendant. In such a situation, the pro forma defendant is to be allowed to continue with the same suit as plaintiff, thereby averting the likelihood of his right being defeated and also obviating the unnecessary multiplicity of proceedings.”

12. On co-joint reading of order 23 Rule 1A of CPC along with the decision in R.Dhanasundari supra, it is thus clear that if

the plaintiff withdraw the suit then the right arises to the defendant having interest over the subject matter having substantial question to be adjudicated against any of the other defendants. Hearing the case on hand, admittedly the plaintiff is seeking dismissal of suit as not pressed and the defendant No.2 and 3 have put forth their claim over the subject matter not only against the defendant No.1 but also against the very plaintiff. Now the question arises that can the counter claim against plaintiff be considered for transposing the defendant No.2 and 3 as plaintiffs. It is no doubt that the subject matter of suit and so also that of that of the counter claim is same and the counter claim is against the defendant No.1 and so also the plaintiff. Thus, it is clear that the defendant No.2 and 3 have got substantial question to be decided as against plaintiff and defendant No.1. If the prayer of defendant No.2 and 3 for transposition is rejected, then it would definitely lead for multiplicity of proceedings. Thus, keeping in view the provision of law, decision referred supra along with the claim of defendant No.2 and 3 against plaintiff and defendant No.1, this Court considers to order for transposing the defendant No.2 and 3 as plaintiff No.1 and 2 respectively and the plaintiff as defendant No.2. Hence, Point No.1 is answered in Affirmative.

13. Point No.2: In view of the reasons recorded on Point No.1, this Court considers it fit to allow the above application by dismissing the suit of plaintiff as not pressed. Hence, the following:

ORDER

Suit of the plaintiff is dismissed as not pressed.

I.A. No.III filed by the defendant No.2 and 3 under Order I rule 10 of Code of Civil Procedure, is hereby allowed.

Defendant No.2 and 3 are transposed as plaintiff No.1 and 2 respectively and plaintiff is transposed as defendant No.2.

Defendant No.2 and 3 are directed to file amended counter claim by making necessary arrangements in the cause title.

Sd/-

(VISHWANATH.A)
ADDL. CIVIL JUDGE & JMFC.,
MUDIGERE