

KADG220035962021



IN THE COURT OF THE PRL. CIVIL JUDGE AND
J.M.F.C., CHANNAGIRI

:: Present ::

Shri. Siddalingayya B.Gangadharamath
B.Com. L.L.B., (Spl)
Prl. Civil Judge and J.M.F.C.,
Channagiri.

O.S.No.258/2021

Dated this the 15th Day of February 2025

PLAINTIFFS : Sri.Krishna and Others
V/s

DEFENDANTS : Sri. Kashi and Others

I.A.NO.VII

Applicant/defendant : Sri.Kashi

V/s

Opponent/plaintiffs : Smt. Kamakshi and Others

ORDER ON I.A.NO.VII

1.	Provision under which the application is filed:	:	Under Order 1 Rule 10 of CPC
2.	Relief sought for	:	Transpose the defendant No.1 as a plaintiff No.3
3	Date on which the application is filed	:	01.04.2024

4.	Number of the application	:	IA.No.VII
5.	Date of which the objections are filed by different opponents	:	28.01.2025
6.	The date on which the orders is passed.		15.02.2025

ORDER ON IA NO.VII

This application is under Oder 1 Rule 10 of C.P.C., filed by the defendant No.1 to transpose him as a plaintiff No.3 in this suit.

2. SOME AND SUBSTANCES OF THE AFFIDAVIT.

In the affidavit, the defendant No.1 has sworn that, the plaintiff filed the suit for relief of Mandatory Injunction and for further relief of permanent injunction against the defendants. Wherein, he stated that, the property bearing Sy.No.29 of Chikkasandhi Village was granted to the father of defendant No.1 and he was in cultivation of the same along with his children. Which was to meet out the livelihood of father of defendant No.1. The is continued to be in possession of the sons including the defendant No.1. Father of defendant No.1 died on 26.07.2009, leaving behind his 3 sons and 3 daughters. During the life time of father and mother they were maintained by two sons of defendant No.1, namely, the plaintiffs of this case and as such they are in separate cultivation of 1 Acre 10 Guntas out of Sy.No.29. After the death of father of defendant No.1,

all his children got the compromise decree in O.S.No.311/2019, wherein the defendant No.1 was plaintiff. In the said partition decree the land cultivated by the plaintiffs was allotted to them to their joint share and as such they are in continued possession of the same.

3. The defendant No.1 has further stated that, after passing the decree, his brothers and sisters instigated him to join his hands in the process of execution of registered partition deed dated 27.08.2021, which was not within the knowledge of plaintiffs. Infact the same was not brought to the notice of plaintiffs as per the request of his sisters and brothers. The plaintiffs filed the suit against the defendants and the deponent regarding the acts done by the defendants beyond their back. Now the defendant No.1 realized that, he was committed wrong at the instigation of his siblings and as such is ready to give the consent for the claim of plaintiffs. There is no dispute or controversy between himself and the plaintiffs and as such the defendant No.1 prays to allow the application.

4. DEFENDANT NO.2, 4 AND 8 FIELD OBJECTION TO THE APPLICATION, THE CONTENTS OF IT ARE AS UNDER:

The counsel for defendant No.2, 4, 8 did cross examine the second plaintiff, who examined as PW.1 on 30.01.2023 and 20.03.2024, in fullest sense. When the matter posted for further evidence of plaintiff, the plaintiffs filed I.A.No.V, on 01.04.2024, by mentioning the name of defendant No.1 as a witness on their behalf. The

application is not tenable as the first defendant has prayed for set aside the exparte order without supporting any evidence for the delay. The plaintiffs are the sons of first defendant and they are colluding with each other filed this suit to harass the defendant No.2, 4, 8. Hence, the defendants prayed to reject the application.

5. On the bases of material controversies between the parties, the following points would emerge for my consideration;

POINTS

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

2. What order?

6. Heard the learned counsels appearing for the plaintiff and the defendant No.1. Perused the records. On perusal of the same my findings to aforesaid points as under:

POINTS

Point No.1 : In the Negative,

Point No.2 : As per the final order

for the following,

REASONS

7. **Point No.1:-** At the outset, the plaintiffs filed the suit for the relief of Mandatory Injunction seeking direction against the defendant No.9 and 10 to effect the mutation

entries on the basis of compromise decree passed in O.S.No.211/2019, on 08.02.2020. Further relief of permanent injunction against the defendant No.1 to 8 as to restrain the defendants from interfering in the possession of suit schedule properties. The plaintiffs claim is that, the suit schedule property was reserved for the livelihood of grand parents and upon their death the same would go to the share of plaintiffs. However, the parties entered into compromise in O.S.No.211/2019, including the said term, but in derogation of the said term the defendant No.1 to 8 had again entered the registered partition, on 27.08.2021. The plaintiffs have not filed application for 11E map and at the time of preparation for it they came to know regarding forwarding of J slip to the revenue department. The said fact came to the knowledge of plaintiffs on 07.09.2021 and Accordingly they filed the suit.

8. The defendant No.4 filed the written statement and contended that the compromise decree in O.S.No.211/2019 was nominal and as such the family members divided their properties through a registered partition deed. Accordingly, the parties are in possession of their respective shares and as such the plaintiffs' assertion as regards possession in the suit schedule property is ambiguous and is with an intention to grab the same. There is no cause of action and plaintiffs are never in possession of the same. Accordingly, the defendant No.4 prays to dismiss the suit.

9. The defendant No.10 filed the written statement. The defendant No.10 contended that, without applying for 11E map and without applying for mutation entry, the claim of plaintiffs as against the defendant No.10 is premature and as such the suit is liable to be dismissed. Further, the suit is bad for Non-Joinder of the Chief Secretary of the Government of Karnataka and as also in view of barring clause provided under Section 135 of the Karnataka Land Revenue Act. Accordingly, the defendant no.10 prays to dismiss the suit.

10. Before taking into account of the very procedural aspect with regards to transposition of parties are concerned, I would like to take certain event that led to file the present application. The plaintiff had filed I.A.No.V under Order 16 Rule 1 and 2 of CPC, seeking permission to file the list of witness, on 01.04.2024. The said list included the defendant No.1 also and when this court raised objection as regards the maintainability of such application, the plaintiffs filed the instant application to transpose the defendant No.1 as plaintiff No.3.

11. Admittedly, the plaintiffs have made grave allegation against the defendant No.1 to 8 and have sought for necessary relief of permanent injunction against them as regards their alleged possession is concerned. Under such circumstances, there is no consonance between the parties in order to decide a substantial question against rest of the defendants. Since the plaintiffs have made clear allegation including the defendant No.1 and other

defendants, under such circumstances and factual background, current application is not tenable. Which was filed, only to get an opportunity to examine the defendant No.1 as a witness on behalf of plaintiffs. Moreover, the plaintiffs have made serious allegations of suppression of fact of compromise decree and getting into the registered partition deed by all the defendant No.1 to 8.

12. Having taken note of the aforesaid factual background, which essentiated the defendant No.1 to file the application on hand, this court would like to take relevant provision of transposition of defendants as plaintiffs. Which is Order 23 Rule 1-A, which reads as under;

“Order 23 Rule 1-A. When transposition of defendants as plaintiffs may be permitted –

Where a suit is withdrawn abandoned by a plaintiff under Rule 1, and defendant applies to be transposed as a plaintiff under Rule 10 of Order 1, 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.”

13. Having taken note of the aforesaid provision this court would like take note of the decision of the **Hon'ble Supreme Court of India**, reported in **(2020) 14 SCC 1** in

the matter between **R.Dhanasundari v/s A.N.Umakanth and others** held as under;

"11. As per Rule 1-A ibid., in the eventuality of plaintiff withdrawing the suit or abandoning his claim, a proforma 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 withdrawn or to abandon his claim under Rule 1 of Order 23 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 proforma 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."

14. Having careful reading of the enabling provision and the dictum of the Hon'ble Supreme Court of India, consideration of the application must be on the fundamental ground of withdrawing the claim or abandoning the claim by the plaintiff. The other ground is the proforma defendant must has a substantial question to be decided as against any of the other defendants. In the case on hand, either the plaintiffs are not withdrawing the suit or abandoning the claim. The defendant No.1 has no any substantial question to be decided as against other defendants are concerned. Even the defendant no. 1 is not proforma defendant to consider his request for transposition as serious allegations have been setforth against him also. The entire facts narrated under the plaint makes serious allegations against the defendant No.1 along with the defendant No.2 to 8 as all allegedly suppressed the fact of the compromise decree and got the registered partition deed. It again alleged that the said act was done, in order to conceal the right, title or interest of the plaintiffs in suit schedule property.

15. Under such circumstances, the grounds so stated in the affidavit filed in support of the application would not attracts any of the grounds mentioned in Order 23 Rule 1-A of CPC. Therefore, in my considered opinion, there is no ground at all to transpose the defendant No.1 as plaintiff No.3. The application is pressed into service, only to achieve purpose of supporting the case of plaintiffs. Accordingly, the **Point No.1** is held in the **Negative**.

16. **Point No.2:-** As a result, this court proceeds to pass the following.

ORDER

The IA.No.VII, filed under Order 1 Rule 10 of C.P.C., by the defendant No.1 is hereby rejected.

No order as to costs.

(Dictated to the Stenographer, transcribed and computerized by her, script corrected and then pronounced by me in Open Court on this **15th day of February, 2025.**)

Sd/-

(Siddalingayya B.Gangadharamath)
Prl. Civil Judge & J.M.F.C.,
Channagiri.