

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE &
J.M.F.C. AT: HONNALI.**

PRESENT: Smt. Prema Vasantrya Pawar
B.Com.LL.B.(Spl)
Principal Civil Judge and JMFC,
Honnali.

Original Suit No.29/2015
Dated: 10th October 2017.

Plaintiff:

Defendant:

Smt.Hemavathi W/o
Panchaksharappa D/o
Late.
Channaveerappagowda,
Aged about 35 years,
Agriculturist, R/o Kuruva
village, Honnali Taluk,
Davanagere District, Now
R/o Bhadravathi Town,
Shivamogga District.

V/s.

Smt. Savitramma
W/o Siddappa D/o
Channaveerappagowd
a, Aged about 65
years, R/o Nandigavi
village, Harihara
Taluk, Davanagere
District and others.

**(By Sri. M.S.Shivaswamy.,
Advocate)**

**(By Sri. R.P./B.U. for D-1,
Sri. A.B.Jagadeesh for D-2
and Sri. S.H. for D-3 to 6.,
Advocates)**

PARTIES TO IA NO.2

Applicant:

Opponent:

Smt. Savitramma W/o
Siddappa D/o
Channaveerappagowda,
Aged about 65 years, R/o
Nandigavi village, Harihara
Taluk, Davanagere District.

V/s.

Smt.Hemavathi W/o
Panchaksharappa
D/o Late.
Channaveerappago
wda, Aged about 35
years, Agriculturist,
R/o Kuruva village,

Honnali Taluk,
Davanagere District,
Now R/o
Bhadravathi Town,
Shivamogga
District.

Order on I.A.No.2 U/o 1 Rule 10(2) and Order 23 Rule 1A
R/w Sec. 151 of CPC

The defendant no.1 has filed an application U/o 1 Rule 10 (2) and Order 23 Rule 1A R/w Sec. 151 of CPC prays that permit her to transpose herself as the plaintiff no.2 by striking out her name in the cause title of the defendant no.1 in the interest of justice and equity.

2. In support of this application defendant no.1 has swearing her affidavit.

3. Per contra the plaintiff has filed her objection.

4. Having heard on both the sides.

5. Following points will arise for my consideration:

1. *Whether the defendant no.1 is made out sufficient grounds to transpose her as a plaintiff?*

2. *What order*

6. My answers to the above points are as under:

Point No.1: In Negative

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

REASONS

7. **Point No.1** : The plaintiff has filed this suit against the defendants for the relief of partition and separate possession over the suit schedule properties. The suit summons were served to defendants, the defendant no.1 appeared through her counsel and filed her written statement and she is also seeking her equal share over the suit schedule properties as well as written statement schedule properties. The defendant no.1 has submitted in her affidavit that the plaintiff has not taken any steps to give forward to get include the properties described in the written statement and those properties are also joint family properties of plaintiff and defendants. Further the defendant no.1 has submitted that she has also having equal share over the suit schedule properties along with the written statement schedule properties and if the plaintiff is proceeded without including the written statement schedule properties in the present suit, then she would defeated her legitimate share over the suit schedule properties, therefore it is just and necessary to

adjudicate all the matters in controversy she being transposed as a plaintiff in the above suit and she is no adverse interest against the present plaintiff and she is fit to be transposed as a plaintiff no.2 instead of defendant no.1. Hence the defendant no.1 has prayed that to allow the application.

8. Per contra the plaintiff counsel filed objection contended that the application filed by the defendant no.1 is frivolous and vexatious and not tenable in the eye of law. Further contended that the defendant no.1 come up with a fictitious story to get created the suit in her convenience, since already the Hon'ble Senior Civil Judge, Harihara has judiciously determined the lawful right and share of the respective parties i.e. same plaintiff and defendants in suit O.S.No.187/2002, the said case is disposed on 22-08-2003 and against the said judgment and decree none of the parties are preferred any appeal. Further the plaintiff has contended that the suit O.S.187/2002 it is also partition suit filed by the present defendant no.1 and others against the present defendant no.3 and said suit was decreed and allotted 1/7th share in all the suit schedule properties, except the present suit property and it is clear that the said judgment and decree on the file of Senior Civil Judge, Harihara in respect of other properties has attained finality. Further the plaintiff has

contended that the present suit schedule properties are not included in O.S.No.187/2002 and now in order to get her legitimate share, the plaintiff has filed this suit for partition and separate possession over the suit schedule properties. Further contended that such being the true facts and plaintiff herself is agitating the matter in accordance with law and now present matter is pending for the evidence and such type of application which is not tenable. Hence the plaintiff has prays that to dismiss the application.

9. The learned counsel for defendant no.1 submitted that there is no adverse interest against the plaintiff and defendant no.1 has described the written statement schedule properties and defendant no.1 has also got legitimate share over the suit schedule properties as well as written statement schedule properties. Further the learned counsel for defendant no.1 submitted that the plaintiff has not included the written statement schedule properties in the plaint schedule and those properties are also require for adjudication of the case.

10. Per contra the learned counsel for plaintiff vehemently argued and files a memo along with the order sheet and order on I.A. in FDP No.20/2004 submitted that already suit O.S.No.187/2002 is finally heard and decided and

present defendant no.1 herself filed a suit along with other against the defendant no.3 and wherein the present suit schedule properties are not included, as such the application is not maintainable.

11. In view of the arguments advanced by the either sides and also perusal of the application and objection it reveals that the defendant no.1 has already described the written statement schedule properties in her written statement, now transposed of plaintiff no.2 instead of defendant no.1 which is not tenable, because the defendant no.1 already filed her written statement and also described the written statement schedule properties. On the contrary the plaintiff has produced the documents along with memo i.e. order sheet in FDP No.20/2004 and also produced the order on FDP No.20/2004, therefore these points are to be considered on merit of the case and at this juncture the defendant no.1 has not made out any sufficient grounds to transpose her as a plaintiff no.2, mere averments that plaintiff has not included the written statement schedule properties in the plaint is not as a sufficient grounds to transpose as a plaintiff no.2. When the defendant no.1 herself described the written statement schedule properties in her written statement, the burden shift upon to the defendant no.1 to prove that the written statement

schedule properties are also joint family properties and those properties are also required for the partition in between the either parties, therefore the grounds assigned by the defendant no.1 are not justifiable. Hence for the above reasons the Point No.1 is answered in the Negative.

12. **Point No.2:** In view of above findings, I proceed to pass the following:

ORDER

IA. No.2 U/o 1 Rule 10 (2) and Order 23 Rule 1A R/w Sec. 151 of CPC filed by the defendant no.1 is hereby dismissed.

For the facts and circumstances of the case no cost is awarded.

(Dictated to the Stenographer, she transcribed and computerized by her, corrected by me and then pronounced in Open Court on 10th day of October 2017)

(Smt. Prema Vasant Rao Pawar)
Principal Civil Judge & JMFC.,
Honnali.

