

ORDERS ON I.A.

The 24th defendant moved an application under Order 1 Rule 10 R/w Sec. 151 of CPC praying this court to transpose him as one of the plaintiff in this suit in the interest of justice and equity.

2. This 24th defendant by name Deepak S/o Vasant Rege has filed his detailed objections and also has taken up contention that 2nd plaintiff with first plaintiff had filed a present suit for the reliefs of partition and separate possession and his father is also one of the plaintiff. His father plaintiff No.1 herein died on 4.6.2016 and as he being the only son to his father, he becomes his legal representative and he has to be transposed as one of the plaintiffs. According to this person, on an earlier occasion as he had conflict of interest with his father and other plaintiffs, he did not signed the plaint, hence he has been arrayed as one of the defendant as he is the L.Rs., prayed for the application reliefs.

3. On the other hand, the 9th defendant has filed the objection opposed the

application on the ground that at the outset this application requires to be rejected as this 24th defendant cannot be transposed on account of he filing separate written statement which only show that there is conflict of interest with his deceased father and on these grounds opposed to this application.

4. Heard the arguments.

5. The only point that arises for my consideration is:

1) Whether the application of the 24th defendant filed under Order 1 Rule 10 R/w 151 of CPC deserves to be allowed?

6. After carefully going through the materials available on record, my answer to the above point is in the **NEGATIVE** for the following:

REASONS

7. **POINT NO.1:-** It is known fact that, in a Hindu partition suit even if co-sharer made as the defendant for all practical purpose he considered as one of the plaintiff.

But in the instant case the scenario is totally different. It is the very admission of 24th defendant, if at all he has been made as the 24th defendant, it is the only on account of the fact that, he had conflict of interest with his father i.e. deceased first plaintiff. It is also stated by this deponent that, as he did not accepted the view of his father which is contened in the plaint, hence he was made one of the defendants. Now there is no dispute that, he is the son of the first plaintiff but in the given circumstances of the case, that itself is not sufficient because as I have stated earlier, even though right to sue survive to the L.Rs. of the deceased first plaintiff but it is the admission of this 24th defendant that, there is s conflict of interest. Moreover in the capacity of 24th defendant, he can still his contention as the alleged joint family member. In this regard the 9th defendant was right in opposing the application that this 24th defendant cannot retract his own admission that he had conflict of interest with his father/first plaintiff. Under these circumstances this 24th defendant cannot be transposed as the plaintiff No.1(a). Hence, **I have answered**

this point in the Negative and proceed to pass the following:

ORDER

**THE APPLICATION FILED BY
THE 24th DEFENDNT UNDER
ORDER 1 RULE 10 R/W 151 OF
CPC IS HEREBY REJECTED.**

NO CAST.

(Dictated to the Stenographer, transcribed and computerized by him, script corrected and then pronounced by me in the Open Court on this the 18th day of July 2017)

(S.V. SRIKANT),
I Addl. Senior Civil Judge & CJM.,
Dharwad.