

OS No.4/2023

ORDER ON I.A.No.XIII & XIV FILED
UNDER ORDER I RULE 10(6) R/w Section
151 OF C.P.C.

1.The LRs of defendant No.1 filed this IA for transposition of them as plaintiffs in this suit. The plaintiff filed this suit for partition and separate possession, she was died during pendency of appeal against judgment and decree passed in this case. The defendants are legal heirs of the deceased plaintiff. The defendant No.1 also died during appeal, these applicants came on record as LRs of deceased defendant No.1. hence there is no plaintiff to proceed

in this case, therefore prayed for the allow this application.

2. On the other side remaining defendants not filed any objection to this IA.
3. Heard counsel for applicants. and perused the record.
4. The following points arise for my consideration:

-/POINTS/-

- 1) *Whether the applicants are entitled for transpose them as plaintiffs?*
- 2) *What order?*

5. My answers to the above points are as follows:

Point No.1 In the Affirmative

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

:-REASONS:-

6. Point No.1:- This is a suit filed by the plaintiff for partition and separate possession. The sole plaintiff was passed away and her LRs are already listed as defendants on the records.

It must also furthermore be borne in mind that in a partition suit where both the parties want partition, a defendant may also be held to be a plaintiff. Ordinarily, a suit for partial partition may not be entertained

Already stated supra the suit is filed for partition. There is no much difference in the plaintiffs and defendants. Plaintiff is a defendant and defendant is as plaintiff. Under Rule 1-A of Order XXIII when plaintiff withdraws or abandons the suit, the defendant can apply to be transposed as plaintiff under Rule 10 of Order I if he shows substantial question to be decided against other defendants. Therefore, in suit for partition unless the defendants who have interest in the suit property without consent for abatement of suit it cannot be abated. The IA No.13 is filed U/O-22 Rule-4 of CPC for bringing Lrs of defendant No.1. the Lrs of deceased defendant No.1 themselves seeking permission to transpose them as plaintiff. Therefore, the applicants are entitled for the transposition as plaintiffs. Hence, point No1 answered in affirmative.

7. Point No.2 :for the above given reasons this court proceed to pass following

:: ORDER ::

I.A No.XIV filed by LR's of defendant No.1 under U/O 1 Rule 10(6) of C.P.C. is hereby allowed.

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The LR's of defendant No.1 are hereby permitted to transpose as plaintiffs. No orders as to costs.

Consequently IA No.13 is hereby allowed. For amendment of pleadings.

Call on 03.06.2025

Civil Judge & JMFC
Afzalpur.