

KAMD300005482016



**ORDER ON IA-XV**

The Defendant No.1(a) Shankaralingaiah has filed this application u/o 23 rule 1 A r/w 151 of CPC him as defendant No.1(a) in the suit.

2. The defendant No.17 has filed objections.

3. Heard both side.

4. Having heard both sides and perusal of necessary materials on record, this court answers the above points are:

***1. Whether the applicant has made out grounds to transpose himself a plaintiff No.2?***

***2. What order ?***

5. Now, the findings of this Court to the above points are as under :-

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

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

**REASONS**

**6. POINT No.1** :-It is the say of the applicant that his father has filed this suit for partition and separate possession of his share. His father has given him GPA to given evidence. The defendant No.1-Chikkathayamma is his aunt i.e., his father's sister. She expired and aunt did not have any children. Therefore, she has executed a will dated 7/3/22 in his favour in so far as her alleged share is concerned. Therefore, he had filed an application for his impleadment as her legal heir on record and it has been allowed by this court. He has acquired share of his aunt Chikkatayamma. After he giving the evidence before this court, these developments have taken place. There are no contradictory interest between him and his father who is the plaintiff in this suit. Therefore, he is to be permitted to be transposed as plaintiff No.2.

7. The first objection of the defendant No.17 is that the applicant has invoked order 23 rule 1 (A) of CPC which is a wrong

provision. As per the said provision, only when the plaintiff abandon his right, the defendant can transpose as party. In the present the plaintiff admittedly has not abandoned his right or claim in the suit properties. Therefore the application. But this contention of the defendant is not acceptable. Because, it is well settled provision that invoking wrong provision or quoting wrong provision itself should not be ground for rejection of relief. Because even under order 1 rule 10 of CPC, the court can, either on the application of the parties or suomoto add and delete/strike off the parties at any stage of the proceedings. Therefore, if the applicant satisfies the requirements either of order 1 rule 10(2) CPC or of order 23 rule 1(A) CPC, then he can be transposed as plaintiff.

8. As rightly contended by the defendant No.17, Order 23 rule 1(A) can be invoked only when the plaintiff abandons his interest or claim in the suit properties. But in the present, it is not the case of the applicant/defendant No.1 (a) that the plaintiff has abandoned his right and hence to proceed further in the mater he is to be transposed as plaintiff. It is well settled principle of law

that in suit for partition, the ranking of parties would not be important for granting the relief. The plaintiffs and defendants would stand in same footing. Even a party who is defendant can support the claim of the plaintiff. But only with an intention to support the claim of the plaintiff, the defendant cannot be transposed as plaintiff. Similarly, just because there is no conflicting interest between the plaintiff and defendant, a defendant cannot be transposed as plaintiff under this provision. Therefore, order 23 rule 1(A) as rightly contended by the defendant No.17 is not attracted to the present situation.

9. Now the question is with regard order 1 rule 10 (2) of CPC. For clarity and convenient the said provision is reiterated here.

**Rule 10(2): Court may strike out or add parties: *“The court may at any stage of the proceedings, either upon or without the application of either party, an on such terms as may appear to the court to be just, order that the name of any party improperly jointed, whether as plaintiff or defendant be struck out, and that the name of any***

***person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settled all the questions involved in the suit, be added.”***

10. A careful examination of above provision, it disclose that it deals with the powers of the court to add or delete the parties from a suit. But it is circumscribed by the situations given under the said provision of law. The court can exercise such powers to delete a party only when such a party is improperly joined. Similarly, the court can add a party if the presence is required to enable the court to effectually and completely adjudicate the questions involved in the suit. In the present case, there is no such situation at all. Because, all the necessary parties are present either as plaintiffs or as defendants. Therefore, there is no necessity of defendant no.1 (a) being transposed as plaintiff. It does not serve any purpose provided either under order 1 rule 10 of CPC or order 23 rule 1 of CPC. As mentioned above, just because there is no conflicting interest,

the application cannot be allowed and the defendant no.1(a) cannot be transposed as plaintiff. Just because the applicant has already given evidence as GPA holder is also in the humble opinion of this court is ground for transposing the defendant No.1(a) as plaintiff in the present case. Therefore, this court does not find any merits in the application filed by the defendant no.1(a) and hence it is to be dismissed. **Accordingly, point No.1 is answered in the affirmative.**

11. **POINT No.2** :- For the reasons stated and findings given on Points, this court proceed to pass the following :

### **ORDER**

IA No.17 filed by defendant no.1(a) under order 23 rule 1(A) read with section 151 of CPC is hereby dismissed.

It is noticed that since long time i.e., more than 7 years the case pending due non co-operation. Hence, the defendants are directed to lead their evidence without fail by next date.

Call on 31/8/2023

**(M.C. NANJE GOWDA)  
ADDITIONAL SENIOR CIVIL JUDGE &  
JMFC., MADDUR,**