

ORDERS ON IA NO.4

This application is filed by the defendant No.10 under order 1 Rule 10 (6) R/W/S 151 of CPC to transpose him as plaintiff No.2 in the case.

2. In the affidavit filed to the application, it is stated that the plaintiff is his maternal uncle. The mother of the Applicant/defendant No.10 is dead. Therefore, her legal heirs are arrayed as defendant 6 to 10. They have also got vested share in the suit schedule property. The plaintiff is not showing interest in progress of the case. He is not leading evidence. He is not interested in prosecuting the case for the reasons best known to him. There is no adverse interest between the defendant No.10 and the plaintiff. The defendant No.10 is entitled to a

share in the share of his mother. The suit may get dismissed for non-prosecution. On such event the rights of defendant No.10 will be seriously damaged. He may be driven to file another suit. Therefore, he wants to continue the suit as plaintiff. Hence, the present application is filed to transpose him as plaintiff No.2.

3. The defendant No.3, 7 and 11 have objected the present application by filing statement of objections. It is contended that the defendant No.1 is not only the legal heir of his mother. His father filed his written statement contending that there is no joint family. The brother and sisters of the applicant have contended that there is already partition. The defendant No.10 has no right to contest the suit in the absence of the plaintiff. He is not a sharer as there is no joint family. If he has any right over the suit schedule properties, he can urge the same in a separate proceeding. Therefore, it is prayed to dismiss the present application.

4. Heard and perused.

5. The point that arises for my consideration is as follows ;

Whether the defendant No.10 has made out sufficient grounds to transpose him as plaintiff No.2 in the case?

6. My answer to the above point is in the **Negative** for the following ;

REASONS

7. The present suit is filed for partition and separate possession claiming that the suit schedule properties are ancestral and joint family properties. The defendant No.7 to 10 are legal heirs of a sister of the plaintiff. The defendant No.7 and 11 along with the defendant No.3 filed their written statement by taking several contention. They *Inter alia* have taken plea of earlier partition. The defendant No.10 has not filed his written statement. In the affidavit filed to the application he has stated that there is no adverse interest between him and the plaintiff. Without filing written statement, it cannot be said that the interest of the plaintiff is not adverse to the interest of the defendant No.10. Therefore, the defendant No.10 cannot be permitted to be transposed as plaintiff No.2.

8. In a suit for partition, it is a well settled law that the plaintiffs are defendants and defendants are plaintiffs. If the defendants in partition suit claim that they are also entitled to partition, suit of the plaintiff cannot be dismissed for non-prosecution. In such cases, when the plaintiff does not show interest in prosecuting the case, the court can proceed to record the evidence of defendants and to pass Judgment. In this case the defendant No.10 has not filed his written statement. Therefore, it cannot be

said that whether he claims his share in the suit schedule properties or he prays to dismiss the suit of the plaintiff. When such being the case, it cannot be said that there is no adverse interest between the plaintiff and defendant No.10. Therefore, the defendant No.10 cannot be permitted to transpose him as plaintiff No.2. Accordingly, the above point is answered in the **“Negative”**. Hence, this court proceeds to pass the following:

ORDER

IA No.4 is filed Under order
1 Rule 10 (6) R/W/S 151 of
CPC is hereby dismissed.

The plaintiff evidence as last
chance. Call on 17.04.2026

**I-Addl. Senior Civil Judge & JMFC.,
Maddur.**