

O.S.26/2018

ORDER ON I.A.No.4

The applicant/ defendant No.2 has filed this application u/o 1 rule 10(6) R/w 151 of CPC along with affidavit for transposition as plaintiff in the case.

2. In support of the application the applicant has filed the affidavit and sworn that, the plaintiff has filed the suit against the defendants for the relief of partition and separate possession of the suit schedule properties and he has contested the suit by filing her written statement. It is further case of the plaintiff that, in her written statement she also prayed for decree for her share in the suit schedule property. Though this court has given sufficient opportunity to the plaintiff for her evidence, the plaintiff did not appear and contested the suit. In the meantime the plaintiff colluding with the defendant No.5 has executed relinquishment deed in favour of the defendant No.5 on 03.07.2009 and this fact came to notice of defendant No.2 recently from reliable sources. The defendant No.2 further sworn that she has ready to contest the suit and as such it is necessary to permit her to transpose as plaintiff to proceed in the case. Therefore the defendant No.2 prayed to allow the application.

3. Though this court has given an opportunity to the plaintiff to file objection, the plaintiff has not filed any objection. On the other hand the learned counsel for the plaintiff submits no objection to I.A.

4. In light of the above rival contentions the following points are arrayed for my consideration :

POINTS

1. Whether the applicant/ defendant No.2 has made out sufficient grounds to permit her to transpose as plaintiff No.2 in the case ?

2. What order ?

5. Heard argument and perused material available on record.

6. My answer to the above points are follows :

Point No.1 : In the Affirmative

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

REASONS

7. **Point No.1 :** In the present case, the plaintiff has filed the suit for partition and separate possession of her share contending that, the suit schedule properties are ancestral and joint family properties of herself and defendants and they are in joint possession and enjoyment. The defendant No.2 has filed her written statement and contested the suit. In her written statement the defendant No.2 admitted the relationship given by the plaintiff and also the fact that, the suit schedule properties are ancestral and joint family properties of herself, plaintiff and other defendants. She also contended that, she has share in the suit schedule property and prayed to decree the suit towards her share. On perusal of record it appears that, on the basis of pleading this court has framed issues and posted the case for evidence. Though this court has sufficient opportunity the plaintiff is not come forward to give her evidence. Now the defendant No.2 has sought for permission of this court to transpose herself as plaintiff No.2 to contest the suit, as the plaintiff colluding with defendant No.5 not come forward to give her evidence. It is well settled law that, in a suit for partition there is no bar for plaintiff to become defendant and similarly defendant can file application to implead as plaintiff. Therefore having regard to the facts and circumstances of the case this court is of the opinion that, it is fit case to permit the defendant No.2 to transpose her as plaintiff No.2 and proceed with the case. Accordingly I answer point No.1 in the Affirmative.

8. **Point No.2 :** In view of my answer and reasons stated at point No.1, I proceed to pass the following :

ORDER

- I.A.No.4 u/o 1 rule 10(6) R/w 151 of CPC for permit to transpose her as plaintiff No.2 and proceed with the case is allowed.
- The plaintiff is hereby directed to amend the plaint and filed amended plaint on next date of hearing.
- No order as to cost.

For amendment by 17.02.2020

Addl. Sr. Civil Judge & MACT
Srirangapattana.