

**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : Sri. Ganapathi Prashanth.M, B.A., LL.B.,
Senior Civil Judge, Nanjangud.

Dated : This the 20th day of June, 2019.

O.S.No. 26/2014

Plaintiff/s : Smt. J. Shashirekha and others

-V/s-

Defendant/s : J. Suresh and others.

PARTIES TO I.A.

Applicant/s : Smt. Shobha P. 3rd plaintiff

-V/s-

Opponent/s : J. Suresh and others.
....Defendants

ORDERS ON I.A. UNDER ORDER 23 RULE 1A R/w
ORDER I RULE 10 AND SECTION 151 OF CPC DATED
04.12.2017.

The 3rd plaintiff has filed this I.A. to transpose her as
6th defendant in the suit.

2. The defendant No.4 and 5 have filed objections.

3. Perused the pleadings, evidence and materials on record.

4. The point that arises for consideration is as follows:-

1. Whether the transposition can be ordered as prayed for ?

5. The above point is answered in the **Affirmative** for the following:-

REASONS

6. In the affidavit filed in the support of the present application the 3rd plaintiff pleaded that she has filed application for amendment of plaint and there is conflict in interest as plaintiff No.1 and 2 are not co-operating and hence for effective adjudication she wants to withdraw herself from 3rd plaintiff and transpose as defendant no.6.

7. The objections of the defendant No.4 and 5 is that the memo filed by the 3rd plaintiff on 05.06.2017 is still pending for consideration and the applications u/o VI Rule 17 and u/o VII Rule 14 of CPC are pending and hence

the present I.A. is barred by law and deserves to be rejected. The law does not permit the parties to deviate from the pleadings and independent defence or written statement cannot be permitted to be filed by the transposed party and prayed to dismiss the I.A.

8. It is necessary to observe at the outset that whatever the memo or I.As filed by the present applicant, that will not come in the way of considering the present I.A. on merits. The other representations made by the present applicant can even be considered at a subsequent stage and hence, taking up the present I.A. for consideration at the outset cannot be improper under law.

9. The learned counsel for the plaintiff No.3 relied upon the decision of Hon'ble High Court of Karnataka at Bangalore in W.P., no.36258-36260/2017 (GM-CPC) (Miss. B.S.Usha Vs. Sri. B.S. Jayaram), decided on 04.09.2017 wherein it is observed as follows :-

It is noted that the suit is one for the relief of partition and separate possession of the suit schedule properties. In such a suit, the parties are all plaintiffs and defendants i.e., the plaintiffs are defendants and vice-versa. The adjudication is with regard to their share in the suit schedule properties, when the suit schedule properties are found to be joint family properties and amenable for partition. If plaintiff No.1 and 2 have lost confidence with plaintiff No.3 and they no longer trust plaintiff No.3 and have sought his transposition as defendant No.4, the petitioners who are defendants No.1 to 3 in the suit can have no grievance with regard to the impugned order of transposition. They are no way prejudiced with that order, particularly, having regard to the nature of relief sought by the respondents/plaintiffs in the suit, i.e., the same being one for partition and separate possession of the suit schedule properties.

10. The said decision aptly applies to the present set of facts. For whatever reasons may be, the 3rd plaintiff has drifted away from the other plaintiffs, it would be improper to hold them united having scant regard to the conflicting interest that prevails between them. Two persons having conflicting interest cannot continue together as plaintiffs. Therefore, transposing such a plaintiff as defendant is not only just, but also expedient in the interest of justice.

11. Even if it is just to transpose the 3rd plaintiff as 6th defendant in this suit, the repercussions that may follow cannot be left untouched in this order. The consequences of such transpositions so far as the pleadings that were already made by the 3rd plaintiff are concerned must be stated in this very order.

12. In the decision reported in *AIR 2003 Kar 348* (*Veerabhadrappe v. Gangamma*), it is observed as follows :-

15. At this stage, it is also necessary, to mention that when a defendant gets transposed as one of the plaintiffs, the written statement filed by such defendant gets transposed and would form part of the plaint. The necessity of amendment of a plaint at that stage is only for convenience-sake. In other words, the original plaint and the written statement of the defendant No. 2 who had got transposed as a plaintiff will have to be read together. In other words, such a written statement would partake the nature of plaint and the Courts of law administering justice in an adversary system of administration of justice cannot afford to take any other view and should read the said written statement as a plaint. At this stage, it is necessary to refer to a decision of the apex Court, relied upon by the learned counsel for plaintiffs, reported in AIR 1987, 1242, wherein the Supreme Court has held that the object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial, it is imperative that the party should state the essential material facts so that

other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. The Supreme Court has further held that it is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about Lack of pleadings is raised the enquiry should not be so much about the form of pleadings, instead the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal.

13. In the light of the above law, it is clear that even after transposition of a party, his original pleadings would not get disowned or detached from him. Therefore, when the plaintiff no.3 gets herself transposed as defendant no.6, it is necessary to order that the original plaint filed by her shall be considered as her written statement. To avoid conflict with the other plaintiffs, it can be ordered that the second copy of the plaint originally filed by the plaintiffs shall be considered as the written statement of the transposed 6th defendant (who is originally 3rd plaintiff). This would avoid the doubts and unnecessary

complications regarding the effect of transposition. Hence, point for consideration is answered in the Affirmative. Hence, the following :-

ORDER

The I.A. dated 04.12.2017 filed by the 3rd plaintiff Under Order 23 Rule 1A R/w Order I Rule 10 & Sec. 151 of CPC is hereby allowed.

The 3rd plaintiff is ordered to be transposed as 6th defendant in the suit, however the condition that the second copy of the original plaint (excluding its contents such as signatures etc., of the plaintiff No.1 and 2) shall be considered as the written statement of the transposed 6th defendant and hence, no fresh written statement of the 6th defendant would be permissible to be filed.

(Dictated to the Stenographer, typed by her, corrected, initialed and then pronounced by me in open Court on this the 20th day of June 2019).

(Ganapathi Prashanth.M)
Senior Civil Judge, Nanjangud.

**Order pronounced in the open court
vide separate order**

ORDER

The I.A. dated 04.12.2017 filed by the 3rd plaintiff Under Order 23 Rule 1A R/w Order I Rule 10 & Sec. 151 of CPC is hereby allowed.

The 3rd plaintiff is ordered to be transposed as 6th defendant in the suit, however the condition that the second copy of the original plaint (excluding its contents such as signatures etc., of the plaintiff No.1 and 2) shall be considered as the written statement of the transposed 6th defendant and hence, no fresh written statement of the 6th defendant would be permissible to be filed.

Senior Civil Judge, Nanjangud.