

17.01.2026

Plt: M.P.G.

D1, 4: Exp

D2, 3, 5: K.N.

D6: U.S.S.

for orders

I.A filed by the	Defendant No.5
Date of filing of I.A	17.12.2024
Date of filing of Objection	17.06.2025
Date of Order	17.01.2026

ORDERS ON I.A.NO.6
UNDER ORDER 1 RULE 10(2) OF CPC.,

This application is filed by the Defendant No.5 Smt. Savithamma seeking transposition of Defendant No.2, 3 and 5 as Plaintiffs No.2 to 4 in this case.

2. In the affidavit filed accompanying filed accompanying this application, the Defendant No.5 Smt. Savithamma states that Plaintiff, who is her brother has filed this suit for partition and separate possession, prior to the institution of the suit if the Plaintiff has approached this Defendant, they would have willingly joined him as co-plaintiff to seek an equitable division of the joint family properties. While these Defendants admit the averments made in the plaint but they have denied the contention of the Plaintiff that he has approached this Defendants for partition and they have refused for the same. So, in the light of forgoing in the interest of justice, application is to be allowed. If this application is allowed, no injustice would be caused to the Plaintiff. Hence it is prayed to allow this application.

3. On the other hand the Defendant No.6 filed detailed objections to this application contending that application is not maintainable either in law or on facts. Since from the date of filing written statement these Defendants are watching the proceedings and present application is filed, when the case is set down for cross-examination that there is no any lapse on the part of the Plaintiff in prosecuting the proceedings. Admittedly the suit is for partition and separate possession and except this Defendant all the parties to this proceeding are same family members. Hence, application is not at all necessary. Therefore, he prayed for dismissal of application. On the other hand the Plaintiff counsel submitted no objections to this application.

4. Heard the learned counsel for the Defendant No.5 and perused the materials on record.

5. The following points arise for my consideration:-

(1) Whether I.A.No.6 filed by the Defendant No.5 seeking transposition of Defendant No.2, 3 and 5 and as Plaintiffs No.2 to 4 is deserves to be allowed?

(2) What order?

6. My answers to the above points are as under:-

Point No.1 : In the Affirmative;

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

REASONS

7. Point No.1:- Admittedly, the present suit is filed by the plaintiff against defendants for the relief of partition and separate possession contending that the suit properties are the ancestral properties of the plaintiffs and defendants. When the case was at the stage of cross examination of PW.1, the defendant No.5 seeking transposition of defendant No.2, 3 and 5 as Plaintiffs No.2 to 4. As per the averments of the affidavit of Defendant No.5 filed accompanying this application before filing of the suit, Plaintiff never approached these Defendants demanding partition. These Defendant are always been desire of obtaining their rightful share.

A necessary party is a party in whose absence an effective decree cannot be passed. Proper party is a party whose presence would assist the court for effective adjudication of the dispute between the parties to the suit. It is settled principle of law that in a partition suit, all the Plaintiffs may be considered as Defendants and all the Defendants may be considered Plaintiffs. It is not the case of the Plaintiffs that, the Defendants No.2, 3 and 5 have no right of share in suit properties and they are co-parceners. Under such circumstances, if the Defendants No.2, 3 and 5 are transposed as Plaintiffs No.2 to 4 it would not cause any injustice to the other side. In order to decide the dispute between the parties to the suit effectively and conclusively, transposition of defendants No.2, 3 and 5 as Plaintiffs No.2 to 4 is very much necessary. For the foregoing reason, **I answer Point No.1 in the “Affirmative”.**

8. Point No.2:- In view of my answer to Point No.1, I proceed to pass the following :-

ORDER

I.A.No.6 filed by the Defendant No.5 under order 1 to 10(2) r/w Sec.151 of CPC is hereby allowed.

The defendants No.2, 3 and 5 are ordered to be transposed as Plaintiffs No.2 to 4 respectively.

The Plaintiffs counsel is directed to carry out the amendment in cause title of the plaint by transposing the Defendants No.2, 3 and 5 as Plaintiffs No.2 to 4 and to file amended plaint.
R/ by:

Prl. Senior Civil Judge & CJM,
Ramanagara.