



**IN THE COURT OF THE ADDL.SENIOR CIVIL
JUDGE, KUNIGAL**

Present

Smt. Gangavva Ayatti

B.A.LL.B. (Hon's)

Addl. Senior Civil
Judge and JMFC,
Kunigal.

DATED THIS THE 0F 31th DAY OF JULY 2025

OS.No.5/2011

Plaintiff : H.R.Venkatesh Dead by Lrs

(By Sri. C.G.C., Advocate)

-V/s-

Defendants : Mariamma and others.

(Lr of D2 by Sri. D.S. Adv, D3 by
Sri. B.G.R. Adv & D6 by Sri B.R.R., Advocate)

::IA.No.XV::

Applicants : Smt.Renukamma,

-V/s-

Opponents : H.R.Venkatesh Dead by Lrs



1.Provisions under which the application is filed:	U/o 23 Rule 1A of CPC R/W section 151 of CPC.
2. Relief Sought for :	For transposing.
3.The date on which the application is filed:	16.06.2025.
4.Number of the application :	I.A.No.XV.
5.The date on which the objections are filed by different Opponents:	30.06.2025.
6.The date on which the orders were passed on the said application :	31.07.2025.

::ORDERS ON IA No.XV::

The counsel for applicants/defendant No.6 has filed IA No.XV U/o 23 Rule 1A R/w section 151 of CPC for transposing her as plaintiff No.2 when the case is posted for steps.

2. In the annexed affidavit, it is contended that, the deceased plaintiff has filed the present suit against the defendants for the relief of partition and other reliefs. The deceased mother of the plaintiff is the sister of defendant No.6. The plaintiff died during the pendency of the suit and after his death legal heirs were brought on record as plaintiff No.1(a) to (c) and also guardian was also appointed as plaintiff No.1(a) was minor. Recently the plaintiff No.1(c) died and he was examined as PW1. After



his death the legal heirs of plaintiff and Lrs of deceased Ramegowda are not proceeding with the case therefore the defendant No.6 being the share holder and prayed to decree of the suit of the plaintiff and allotment of the share, therefore she may be permitted to plaintiff as to conduct the case for proper adjudication of the matter. In the event if the plaintiffs did not appear and take proper steps and suit is dismiss for non prosecution then it will lead to multiplicity of proceedings hence prayed to allow the IA No.XV.

3. The defendant No.3, 7 and 8 have filed objections and contended that, Order 23 Rule 1A deal with where the suit is withdrawn or abandoned by the plaintiff under Rule 1 and defendant applies to be transpose as a plaintiff under order 1 Rule 10 then the court shall consider to the said application having due regard to the question whether the applicant has substantial question to be decided as against any of the other defendants. In view of the above provision the question of transposing the defendants as plaintiff arises only if there are no other plaintiffs. Admittedly in this suit the original plaintiffs have not withdrawn or abandoned the suit as such the question of considering the application does not arise hence prays to dismiss IA No.XV.



4. Heard arguments on both sides.

5. The points that arise for my consideration are:-

1. Whether the defendant No.6 has made out grounds to allow IA No.XV ?

2. What order?

6. My answer to the above points are:-

Point No.1: In the Negative.

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

REASONS

7. **POINT NO.1:-** It is the contention of the defendant No.6 that, during the pendency of the suit the plaintiff died and his legal heirs were brought on record. The plaintiff No.1(c) also died during the pendency of the suit and the plaintiffs have not taken steps and they are not in a position to proceed with the case property therefore the defendant No.6 being the one of the sharer she may be permitted to transpose as plaintiff No.2. On the other hand the defendant No.3, 7 and 8 have contended that, Order 23 Rule 1A applies only in case of withdrawal and abandonment of suit by the plaintiff. In this case there are other legal heirs of the plaintiff and they have not withdrawn or abandoned the suit.



8. On perusal of the record it appears that, the present suit is filed for the relief of partition and such other reliefs. It is an admitted fact that the original plaintiff in the suit died and his legal heirs were brought on record as plaintiff No.1 (a) to (c). As per the order sheet the plaintiff No.1 (c) died and the same was submitted by the counsel for plaintiff and no death certificate is produced till now by the plaintiff. When the case was posted for taking steps the defendant No.6 has filed the present application seeking transposition as plaintiff No.2. Perusal of the order sheet it appears that on 19.04.2025 the death of the plaintiff No.1 (c) was orally reported to the court and case was posted for taking steps and even 90 days have not been lapsed and suit has not been abated against the said plaintiff.

9. Further careful reading of the Order 23 Rule 3A it appears that, if the suit is withdrawn or abandoned by the plaintiff under Order 23 Rule 1 and in that case if the defendant applies for transposition as plaintiff under Rule 10 of Order 1 then the court shall after considering the such application having regard to the question with regard to whether the applicant has substantial question to be decided against the other defendants then only the court allow the application. In this case as already noted the death of the plaintiff No.1 (c) was reported orally to the court on 19.04.2025 and till filing of the application by the



defendants No.6 no steps were taken to bring the Lrs of plaintiff No.1 (c) that does not mean that, the plaintiffs have abandoned the suit and withdrawn the suit as such, the question of considering the present application at this stage does not arise.

10. The counsel for defendant No.3, 7, 8 argued that, the defendant No.6 has invoked wrong provision as such he is not entitle for the relief but the counsel for the defendant No.6 has relied upon two decisions reported in **High Court of Jharkhand at Ranchi W.P. (c) No.1568 of 2018 and Reported in 2009 (9) SCC 173**, wherein it is held that, mere quating of wrong provision is not a ground to dismiss the IA. Therefore the question of considering the said submissions of defendant No.6 does not arise. During the course of arguments the counsel for defendant No.3, 7 and 8 has relied upon the judgment of the Hon'ble Punjab and Hariyana High Court in Jogindar Kour VS Bhag Singh wherein it is held that, if the plaintiff has not withdrawn or abandoned the suit the application for transposition can not be entertained. The said decision is applicable to the case in hand. In this case also the plaintiff has not withdrawn or abandoned the suit hence no grounds made out to allow IA No.XV. Hence, **I answered Point No.1 in the Negative.**



11. **POINT NO.2** :- In view of my findings on Point No.1, I proceed to pass the following:-

ORDER

I.A.No.XV filed by the defendant
No.6 U/o 23 Rule 1A R/w section 151
of CPC is hereby rejected.

(Dictated to the stenographer transcribed corrected and then pronounced by me in the open court on this **the 31st day of July 2025**)

sd/-

Addl. Senior Civil Judge
and JMFC, Kunigal.