



**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 30th DAY OF OCTOBER 2025

O.S.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.XVI::

Applicants : Smt.Renukamma,

-V/s-

Opponents : H.R.Venkatesh Dead by Lrs

1.Provisions under which the	U/o 1 rule 10 R/W section
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application is filed:	151 of CPC.
2. Relief Sought for :	For transposing.
3.The date on which the application is filed:	01.09.2025.
4.Number of the application :	I.A.No.XVI.
5.The date on which the objections are filed by different Opponents:	19.09.2025.
6.The date on which the orders were passed on the said application :	30.10.2025.

::ORDERS ON IA No.XVI::

The counsel for applicants/defendant No.6 has filed IA No.XVI U/o 1 rule 10 R/w section 151 of CPC for transposing defendant No.6 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, there are other plaintiffs in the case and they may proceed with the case as such the question of transposing does not arise. As per order 1 rule 10 **(1)** Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted thought a bonafide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just. **(2) Court may strike out or add parties-** The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or



defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. **(3)** No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent. In view of the above provision the question of transposing the defendant No.6 as plaintiff No.2 does not arise. The defendant No.6 has filed similar application as such res-judicata applies hence, prays to dismiss IA No.XVI.

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.XVI ?
2. What order?

6. My answer to the above points are:-

Point No.1: In the Affirmative.

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 properly 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, the order 1 rule 10 is not applicable and there are other plaintiffs in the suit and they may proceed with the case. It is also contended that, already similar application was filed and the same was dismissed.

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 IA No.XV for transposition which came to be dismissed. 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 no steps has been taken by the other legal heirs to come on record which itself implies that there is abandonment of suit by the plaintiffs.

9. It remains trite that the object of Rule 10 of Order I CPC is essentially to bring on record all the persons who are parties to the dispute relating to the subject matter of the suit so that the dispute may be determined in their presence and the multiplicity of proceedings could be avoided. The Hon'ble Apex Court explained the principles, albeit in a different context, in the case of *Anil Kumar Singh v. Shivnath Mishra* : (1995) 3 SCC 147 in the following:—

“7. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.”

11. As per Rule 1-A of order 23 in the eventuality of plaintiff withdrawing the suit or abandoning his claim, a *pro forma* defendant, who has a substantial question to be decided against the co-defendant, is entitled to seek his transposition as plaintiff for determination of such a question against the said co-defendant in the given suit



itself. The very nature of the provisions contained in Rule 1-A leaves nothing to doubt that the powers of the Court to grant such a prayer for transposition are very wide and could be exercised for effectual and comprehensive adjudication of all the matters in controversy in the suit. The basic requirement for exercise of powers under Rule 1-A would be to examine if the plaintiff is seeking to withdraw or to abandon his claim under Rule 1 of Order XXIII and the defendant seeking transposition is having an interest in the subject-matter of the suit and thereby, a substantial question to be adjudicated against the other defendant. In such a situation, the *pro forma* defendant is to be allowed to continue with the same suit as plaintiff, thereby averting the likelihood of his right being defeated and also obviating the unnecessary multiplicity of proceedings.

10. The counsel for defendant No.3, 7, 8 has relied upon the order passed by the Hon'ble High Court in W.P No.6268/2018 dated 14.07.2022 between Lakshmaiah Vs Gopala Reddy and argued that, the question of transposition arises only in case of plaintiffs abandoning the suit or withdrawing the suit. But, perusal of the record it appears that, no steps were taken by the legal heirs of plaintiffs to come on record as such the suit being registered in the year and defendant No.6 has prayed to



decree the suit and also admitted as to plaintiffs are having share in the suit properties in order to avoid multiplicity of proceedings it is necessary to allow the IA. In the event of rejecting the IA it will lead to multiplicity of proceedings. Hence, grounds made out to allow IA No.XVI. Hence, **I answered Point No.1 in the Affirmative.**

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

ORDER

I.A.No.XVI filed by the defendant
No.6 U/o 1 rule 10 R/w section 151
of CPC is hereby allowed.

The defendant No.6 is permitted
to transpose herself as plaintiff No.2
in the case to proceed with the case.

For amendment

(Dictated to the stenographer transcribed corrected and then pronounced by me in the open court on this **the 30th day of October 2025**)

sd/-

Addl. Senior Civil Judge
and JMFC, Kunigal.