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ORDER ON I.A.NO.13

The defendant no.7 to 12 have filed I.A No.13 under Order 1 Rule 10 of C.P.C. and Order XXIII Rule 1A R/w Section 151 of C.P.C., praying to transpose defendant no.7 to 12 as plaintiff no.1 to 6 and transpose plaintiffs and defendant no.1 to 6 as defendants.

2. In the affidavit, the defendant no.8 stated that, the plaintiffs have filed memo on 06.08.2025 for withdrawing the suit and the defendant no.7 to 12 filed objections to memo by denying its contents. The defendant no.7 to 12 have equal share in the suit property bearing Block No.157 measuring 13 acres 09 gunthas. Therefore, though the plaintiffs are intending to withdraw the suit but, defendant no.7 to 12 are having interest in proceeding with the case as they are having equal share in the said property. The defendant no.7 to 12 are

not having conflict of interest with the plaintiff rather they are seeking relief of partition and separate possession in the suit property. Therefore, the defendant no.7 to 12 prayed to transpose them as plaintiffs.

3. The counsel for the plaintiffs and defendant no.3 and 6 have submitted no objections to I.A No.13.

4. Heard counsel for defendant no.7 to 12. Perused the records.

5. The plaintiffs have filed this suit for the relief of partition and separate possession and now they have filed memo seeking permission to withdraw the suit. On perusal of written statement of defendant no.7 to 12 at paragraph no.5 of their written statement, they have sought for partition and separate possession of their half share in Block No.157 measuring 13 acres 09 gunthas. Therefore, they have filed this application to transpose them as plaintiffs to contest the suit against the plaintiffs and other defendants regarding their claim.

6. Under these circumstances, it is proper to refer the judgment reported in

Bhagwan Swaroop vs Mool Chand AIR 1983 SC 355, wherein, the Hon'ble Supreme Court held that, a partition suit stands on a peculiar footing. In a partition suit any of the party can claim transposition from the category of the defendant to the category of the plaintiff and vice-versa. As such, parties position is essentially the same regarding the main object of the suit.

7. In ***R. Dhanasundari @ R. Rajeswari vs A. N. Umakanth and others (2019)***, Hon'ble Supreme Court emphasized the object of Order 1 Rule 10 of C.P.C., as to bring all relevant parties before the Court to resolve disputes effectively and that the touch stone for allowing the defendant to be transposed as the plaintiff is the oneness of interest with the original plaintiff against the contesting defendant. It is further held that, the object of Order XXIII Rule 1 is to provide for fees where the defendant may be allowed to transpose as plaintiff, where the suit is withdrawn or abandoned by the plaintiff.

8. Admittedly, the suit is for partition and separate possession, all plaintiffs and

defendants and all defendants are plaintiffs, they are having their legitimate share in the suit properties. Now the plaintiffs are not interested to proceed with the case and defendant no.7 to 12 are interested to proceed with the case to get their legitimate share in the suit properties. Under these circumstances, the defendant no.7 to 12 have to be transposed as plaintiffs to contest the suit. Further, the plaintiffs and defendant no.3 and 6 have submitted no objections to I.A No.13. Under these circumstances, there are no impediments to allow the application. Hence, I proceed to pass the following:

ORDER

I.A.No.13 filed by the defendant no.7 to 12 under Order 1 Rule 10 of C.P.C. and Order XXIII Rule 1A R/w Section 151 of C.P.C., is hereby allowed.

The defendant no.7 to 12 are transposed as plaintiffs and present plaintiffs and defendant no.1 to 6 are transposed as defendants.

The defendant no.7 to 12 are directed to amend plaint and furnish amended plaint.

No order as to costs.

**Civil Judge & JMFC.,
Haliyal**