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Presented on : 26-08-2023

Registered on : 26-08-2023

Decided on : 29-11-2025

IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL
AT: HALIYAL, UTTARA KANNADA

Dated this 29th day of November, 2025

PRESENT

Smt. Geeta. B.A.LL.B (Hon's) LL.M.,
Civil Judge and JMFC, Haliyal

ORIGINAL SUIT NO.94/2023

BETWEEN:

1. Sri. Nanda S/o Babuni Savant,
Aged about 54 years, Occ: Agriculture,
R/o. Satnalli, Tq: Haliyal (U.K).

.....Plaintiff

(By Sri. L.S.A, Advocate)

AND:

1. Sri. Tukaram S/o Babuni Savant,
Aged about 65 years, Occ: Agriculture,
R/o. Satnalli, Tq: Haliyal (U.K) and others.

....Defendants

(D-1 to 7 By Sri. M.G.G, Advocate)
(D-8 Exparte)

I.A.No.I

**Applicants/Deft No.1 to 7: Sri. Tukaram S/o Babuni
Savant and others.**

-Vs.-

Opponent/Plff : Sri. Nanda S/o Babuni Savant.

ORDER ON I.A.NO.I

The defendant no.1 to 7 have filed I.A No.I 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.1 to 7 as plaintiff no.1 to 7 and transpose plaintiff as defendant no.1 and transpose defendant no.8 as defendant no.2 in the ends of justice and equity.

2. In the affidavit, the defendant no.1 stated that, the plaintiff has filed memo on 22.03.2025 for withdrawing this suit and defendant no.1 to 7 have filed objections to memo on 13.06.2025 denying the contents of memo as they they are having right and equal shares in the suit property as the suit is one for partition and all the parties are having equal share. Even though the plaintiff is intending to withdraw this suit, the defendant no.1 to 7 are interested to proceed with the case and are having equal shares in the suit properties. Hence, the application filed to transpose them as plaintiff no.1 to 7. The defendant no.1 to 7 are not having conflict with plaintiff, rather they seek relief of partition and separate possession in the suit property. Unless the

defendant no.1 to 7 are transposed as plaintiffs, the applicants/defendant no.1 to 7 will be compelled to file fresh suit on the cause of action, leading multiplicity of litigations. The Court has power under Order 1 Rule 10 of C.P.C., and Order XXIII Rule 1A of C.P.C., to order for transposition for complete justice between the parties. If the application is allowed, no loss will be caused to the others. On the contrary, they will be put to hardship. With these contentions, the defendant no.1 to 7 prayed to allow the application.

3. The counsel for the plaintiff filed objections to the application contending that, the application is not maintainable as the defendants in their written statement have not sought any positive or substantive claim for partition and separate possession in respect of suit property. They only sought for dismissal of the suit, therefore, the hostile stance of defendants at the initial pleading precludes a finding of “oneness of interest” with the plaintiff as it is mandated for transposition under Order XXIII Rule 1A of C.P.C. The transposition under Order XXIII Rule 1A of C.P.C., is not automatic or a matter of right, it is permitted only where a defendant demonstrates “oneness of interest” with the plaintiff and that a substantial question is to be decided against the other parties. The defendants have failed to plead any such positive reliefs or claim throughout their written statement. They sought only for dismissal, therefore, deficiency is fatal and cannot be rectified by affidavit or application, once the plaintiff decides to withdraw the suit. Mere opposition to the claims or the general statement of “equal share” without any prayer for partition or

substantive relief does not justified transposition. The right to be transposed as plaintiff accrues only if the defendants pleading from the inception supports a relief identical to one claim by the plaintiff. Therefore, the present application is an afterthought and a clear attempt to cure legal deficiencies and seeking transposition after filing of not pressed memo by the plaintiff. The established law and jurisprudence does not allow a party to alter its original stance to gain procedural advantage. If the defendants have genuine cause of action, they may institute appropriate proceedings according to law, allowing this application would defeat the object of Order XXIII Rule 1A of C.P.C., and set a wrong precedent. With these contentions, the counsel for the plaintiff prayed to reject the application.

4. Heard both counsels. Perused the records.

5. Now the points that arise for consideration are as under;

1. Whether defendant no.1 to 7 have made out grounds to transpose them as plaintiff no.1 to 7 and transpose plaintiff as defendant no.1 and transpose defendant no.8 as defendant no.2 ?

2. What order?

6. Answers on 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:-** The plaintiff filed this suit for the relief of partition with respect to suit property and allotment of his half share by metes and bounds. After issuance of suit summons, the defendant no.1 to 7 appeared through their counsel and filed written statement and defendant no.8 placed ex parte. Now the case is at the stage of cross-examination of PW.1 and plaintiff filed memo seeking permission to withdraw the suit. Immediately, the defendant no.1 to 7 have filed this application praying to transpose them as plaintiffs stating that, they have claim over suit properties and their shares have to be allotted. The counsel for the plaintiff strongly objected to the application stating that, the defendants have not sought substantive claim for partition. Therefore, their hostile attitude precludes them from transposing as plaintiffs. The plaintiff also stated that, there is no “oneness of interest” with the plaintiff as mandated for transposition under Order XXIII Rule 1A of C.P.C.

8. In support of their contentions, the defendant no.1 to 7 have relied on the judgment reported in ***Smt. Kashibai Ambekar and Others vs Vasanthrao Hanumanthrao Ambekar ILR 2002 KAR 4442***, the Hon'ble High Court of Karnataka held that, an application could be filed to transpose any party either as plaintiff or as defendant, if the suit is pending consideration before any Court.

9. In ***Veerabhadrapa and another vs Smt. Gangamma and another AIR 2003 KAR 348***, the Hon'ble High Court of

Karnataka held 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 who had got transposed as a plaintiff will have to be read together.

10. In *Deepak vs Shri. Arvind and Others 2020(4) KCCR 2718*, it is held that, when there is no conflict of interest Order 1, Rule 10(6) of C.P.C., provides for transposition of plaintiff as defendant and defendant as plaintiff after notice to the other parties on such terms and conditions as it may impose.

11. From the above referred decisions, it is clear that, Order 1 Rule 10(2) of C.P.C., permits the parties i.e., defendant transpose as plaintiff and the plaintiff transpose as defendant. In the case on hand, initially, the plaintiff filed this suit seeking for partition and separate possession of his share in the suit property. Now he is not interested to proceed with the case, as such, filed a memo withdrawing his suit.

12. The defendant no.1 to 7 in the written statement at para no.9 have taken contention that, all parties to the suit are having equal right and share in the suit property, the plaintiff and defendant no.1 only have not got half share in the suit property. Therefore, now the defendant no.1 to 7 have filed this application to transpose them as plaintiffs to continue the suit and to get their

equal share in the suit property. 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.

13. 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.

14. In the case on hand, admittedly, the suit is for partition and separate possession and the defendant no.1 to 7 have sought their equal share in the suit property and now the plaintiff is not interested to proceed with the suit. Under these circumstances, the defendant no.1 to 7 have to be transposed as plaintiffs to contest the suit against the plaintiff and defendant no.8 who has been placed *exparte* and to get their share declared in the suit property. Further, in a suit for partition, all plaintiffs are

defendants and all defendants are plaintiffs. Now the plaintiff is not interested to proceed with the case, as such, the defendant no.1 to 7 have to be permitted to transpose themselves as plaintiffs. Therefore, the defendant no.1 to 7 have made out grounds to allow the application. Hence, **I answer Point No.1 in the Affirmative.**

15. POINT NO.2 :- In view of discussion on Point No.1 and for the reasons stated therein, I proceed to pass the following;

ORDER

I.A.No.1 filed by the defendant no.1 to 7 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.1 to 7 are permitted to transpose themselves as plaintiffs no.1 to 7 and transpose plaintiff as defendant no.1 and defendant no.8 as defendant no.2

The defendant no.1 to 7 are directed to amend plaint and furnish amended plaint.

No order as to costs.

(Dictated to the Stenographer directly on system, typed by her, then corrected, signed and pronounced by me in the Open Court on this the **29th day of November, 2025**)

Sd/-

**(Geeta)
Civil Judge & JMFC.,
Haliyal**