

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND ACJM,
KARKALA**

Present: Smt.Sharmila C.S., B.A.L., LL.M.,
Senior Civil Judge and ACJM, Karkala.

Dated: This the 5th day of March , 2025.

O.S.No.36/2021

Shakunthala	..Plaintiff
	Versus -
Laxmi V. Shetty	..Defendant

PARTIES TO I.A.NO.12

1. Veena S. Shetty,
Aged about 65 years,
W/o. Subbayya Shetty,
Residing at Bandasale House,
Golidady, Kadandale Post & Village,
Moodabidri Taluk-574 226.
2. Smt. Vani J. Shetty,
Aged about 62 years,
W/o. Late Jayaram Shetty,
Residing at D.No.24-9-960,
Near 1st Railway Bridge,
Marnamikatte Mangalore-575 001.
3. Sri. Shymgopal Shetty,
Aged about 59 yeeears,
S/o. Late Vittal Shetty,
Residing at D.No.24-9-960,
Near 1st Railway Bridge,
Marnamikatte Mangalore-575 001.
4. Smt. Muktha R. Rai,
Aged about 74 years,
W/o. Ranganatha Rai,
Residing at Sri Gurukripa,
1st Main, No.754, Behind Canara Bank,

Near K.E.B. Office, Marathahalli,
Bangalore-560 087.

5. Smt. Shabari Shetty,
Aged about 56 years,
W/o. Venugopal Shetty,
Residing at 8 Marvel Residency,
South Main Road,
Koregaon Park, Pune,
Maharashtra-411 001.

.. Applicants

- Vs. -

Smt. Shakunthala,
Aged about 68 years,
D/o. Late Pushpa,
Residing at Kathyayini Bhavana,
Mundkur Village & Post,
Karkala Taluk, Udupi District.

.. Opponent

i.	Provision under which the application is filed	Section 94 (e), 148, 151 and Order 23 Rule 1-A of CPC
ii.	Relief sought for	To transpose defendant No.4 to 9 as plaintiff No.2 to 6
iii	The date on which the application is filed	21-01-2025
iv	Number of the application	I.A.No.12
v	The date on which the objections are filed by different opponents	30-01-2025
vi	The date on which the orders were passed on the said application.	05-03-2025

ORDER ON I.A.NO.XII

Application is filed under Order 23 Rule 1-A and Section 94(e) ,
148 and 151 of C.P.C., seeking transposing of defendants No.4 to 9

(wrongly noted in I.A., as defendants No.4 to 9 instead of defendants No.6, 8, 9, 4 and 22) as plaintiffs No.2 to 6.

2. The defendant No.6 has deposed that at the stage of leading the evidence, the plaintiff filed memo for not pressing the suit. That the suit is for partition and all of them have equal status. Accordingly prays to transpose defendants No.4 to 9 as plaintiffs No.2 to 6.

3. Per contra, the counsel for the plaintiff objects that there is no valid or legal justifiable ground. Accordingly prays to dismiss the application.

4. Heard from the counsel for defendants and plaintiff.

5. The following point arise for my determination.

“Whether the defendants No.6, 8, 9, 4 and 22 can be permitted to transpose as plaintiffs No.2 to 6?”

6. My answer to the above point is “in affirmative”, for the following

REASONS

7. The present suit is for partition of the properties, where the plaintiff and defendants have sought for equal share. When the case

was posted for plaintiff's evidence, the plaintiff filed a memo that she is not interested in the suit. In view of the same, the present defendants No.6, 8, 9, 4 and 22 are seeking to get transposed as plaintiffs No.2 to 6. Counsel for the plaintiff objects that when the plaintiff herself is not intending to continue with the suit, question of transposing of the defendants does not arise. Further submits that the defendants have to file a fresh suit if they are interested to seek partition. Accordingly prays to dismiss the application.

8. In a suit for partition, the plaintiff and defendants have the same footage. Further the plaintiffs are considered as defendants and the defendants are considered as plaintiffs. Consequently the transposition of the defendants as plaintiffs will only enable the court to consider the case properly. If the defendants are directed to file a separate suit, will obviously lead to multiplicity of proceedings. When the defendants submit that they have right in the property, they need to be permitted to continue in the suit by transposing themselves in the place of plaintiffs, instead of calling them as defendants, which would cause no hardship or inconvenience to the plaintiff or other defendants. Accordingly, holding that the defendants

No.6, 8, 9, 4 and 22 needs to be permitted to be transposed as plaintiffs No.2 to 6, the above point is answered in affirmative.

9. In view of the above reasoning, I proceed to pass the following :

ORDER

I.A.No.XII filed by defendants under Order 23 Rule 1-A and section 94(e), 151 of C.P.C., is herewith allowed.

Defendants No.6, 8, 9, 4 and 22 are permitted to transpose as plaintiffs No.2 to 6.

On transposition, the ranking of the defendants remain unaltered .

(Dictated to the Stenographer, transcribed by her , transcript corrected and then pronounced in Open Court on this the 5th day of March, 2025.)

(SHARMILA C.S.)

Senior Civil Judge & ACJM Karkala.