



This application is moved by the plaintiffs under Order 1 Rule 10(2) r/w. Order 6 Rule 17 of the Civil Procedure Code (In short C.P.C.) for transposing the plaintiff No.2 as the defendant. It is stated that the plaintiff No.2 is not co-operating to plaintiffs. It is further stated that the present suit was dismissed for default which was subsequently restored. At the time of the restoration of this suit, the plaintiff No.2 was not ready to sign the application. Therefore, he was impleaded as the opponent to decide the application. It is further stated that even after restoration of the suit the plaintiff No.2 did not co-operate with plaintiffs and is acting against their interest so it is necessary to transpose him as the defendant. Hence, prayed to allow the application. Ld.Advocate for the plaintiff placed reliance upon ***SV. P. Muthu Koya V/s. S. V. Pookaya Thangal in SA No.698/1999 dtd.17/12/2009 of Hon'ble High Court of Kerala at Ernakulam.***

2. Defendants filed their say overleaf this application and raised strong objection on the ground that there is no provision to transpose the plaintiff No.2 as the defendant. It is further stated that if the plaintiff No.2 is transposed as the defendant it will change the nature of the suit. Hence, prayed to reject the application. Ld.Advocate for defendants placed reliance upon ***Siddharth Patel V/s. Smt. Jyotsna Devi and Ors. dtd.05/07/2022 of Hon'ble High Court of Madhya Pradesh at Jabalpur.***

3. Heard Ld. Advocates for both the sides. Perused material on record. The suit is filed for declaration and perpetual injunction. It is settled principle of law that under Order I Rule 10(2) of the Civil

Procedure Code, the Court has empowered to transpose a party at any stage of the proceeding if such transposition is necessary for effective and complete adjudication of the issues involved. It is objection of defendants that the transposition of the plaintiff No.2 will change the nature of the suit. As the transposition of the party does not alter the cause of action or introduce new pleading and does not change the relief sought in the suit therefore, it cannot be said that the transposition changes the nature of the suit. It is worthy to note here that as per the contention of plaintiffs, the plaintiff No.2 earlier refused to sign the restoration application hence, he was added as the opponent to the restoration application. On perusal of the copy of Civil M.A.No.44/2012 filed by the plaintiff along with list at Exh.108 shows that as the plaintiff No.2 did not support plaintiffs he was added as the opponent No.15 in said application. This shows that the plaintiff No.2 is not interested in supporting the case of plaintiffs. In such circumstances if the transposition is refused it will prejudice the case of plaintiffs as the plaintiff No.2 is not co-operating them. But, if the plaintiff no.2 is transposed in the array of defendant it will not cause prejudice to defendants. Hence, this application deserves to be allowed. With due respect to the ratio laid down by Hon'ble Apex Court in the cited case laws but as the facts in the present case and that in the cited case laws are different same are not applicable to the case in hand. Resultantly, I pass following order:

ORDER

1. Application **Exh.104** is allowed.
2. The plaintiff no.2 Ananda Dhondiram Patil is transposed as the defendant in the suit.
3. Plaintiffs are directed to amend the title clause of the plaint accordingly within 14

days from today.

4. No order as to costs.

Date – 27/01/2026.

(R.D.Kharate)
Jt.Civil Judge Jr. Division,
Ichalkaranji.