

MHKO100006132013



Order passed below Exh.68 in R.C.S.No.190/2013

This is an application filed by plaintiff no. 3 under Order 1 Rule 10 (2) read with Section 151 of Civil Procedure Code to transpose her as defendant.

2. It is contended by her that suit is filed for partition, separate possession of share 9/22 of each plaintiff, declaration and permanent injunction. Defendant no. 1 to 3 filed written statement at Exh.39 and defendant no. 4 to 8 filed written statement at Exh.34 and defendant no. 10 to 11 filed written statement at Exh.59.

3. Defendant no. 4 to 8 took objection that all the family properties are not included in the suit. Further defendant no. 4 to 8 and 10 to 12 took objection that plaintiff not mentioned tree diagram of genealogy of family. Further they took objection that plaintiffs pleaded that her husband is disappeared so he cannot be declared as dead. Further defendant no.4's daughter Chhaya and defendant no.9's daughter-in-law of her predeceased son and his children and also defendant no.9's daughters are not included as parties to the suit. So plaintiffs' suit is barred by non-joinder of necessary parties. Further they took objection that suit property 1B is entered in City Survey record, so Maharashtra Government is also necessary to add a party. Further defendants took objection that plaintiffs not added number of property at Mahagaon, so plaintiff's suit is not tenable.

4. Her husband Jotiba is disappeared since last many years. Then also no suit is filed and get declaration about his death. But plaintiffs advocate not given legal advise to the plaintiff no. 3 about it and included her as plaintiff. So there is possibility that due to said technicality she will lost share which will get to her branch.

5. It is necessary to amend suit for objections taken by defendants in their written statement. She prayed for amendment to other plaintiffs but they avoiding it. She is not much educated and she has no knowledge of law. So other plaintiffs are avoiding to protect her rights in suit property by making proper amendment. In this situation the interest of plaintiff no. 1, 2 and plaintiff no. 3 in suit properties and other properties is contradictory to each other. So to keep her as plaintiff no. 3 with plaintiff nos. 1 and 2 is contrary to her rights and interest. So she prayed for transpose her as defendant no.13.

6. Plaintiffs no. 1 and 2 filed say at Exh.69 and denied all the contents of the application. They submitted that defendant no. 4 to 8 mentioned in their written statement about alleged bogus will for which plaintiff prayed for declaration of will as false. Plaintiff's suit is also not barred by principle of non-joinder of necessary parties. Defendants mentioned some properties are not added in this suit, but those properties are already partitioned and execution of it is also done.

7. They further stated that plaintiff no.3's husband Jotiba is disappeared since many years, so he is dead as per law. Instead of him, her wife plaintiff no. 3 is added to the suit. So no declaration in that regard is necessary. Plaintiffs are supposed to prove their suit on their pleadings and defendants prove their defence according to their pleadings. Plaintiff no. 3 not mentioned any reason for transposition her

as defendant. If she remains as plaintiff no. 3 no loss will be caused to her rights. Now plaintiff no. 3 cannot take contrary plea or defence to the pleadings of the suit, as it is barred by principle of estoppel by pleading. Plaintiff no. 3 filed said application to help defendants and no purpose will be served by transposing her as defendant. So prayed for dismissal of application with costs.

8. Heard learned advocate for plaintiff no. 1 and 2 and plaintiff no.3. To support the contents of application learned advocate for plaintiff no. 3 filed following citations-

1. *Bijoyo Kumar Pattanaik Vs. Basanta Kumar Patnalk, LAWS(SC) 2000 4 95*, it is held that this would be a zig zag procedure which will be purely technical without serving substantial course of justice for all contesting parties. Under the circumstances a better course as indicated herein deserves to be adopted. In order to short-circuit the procedure which has already delayed the decision of suit No.67 of 197-I and to serve the ends of justice we deem it fit under Article 142 of the Constitution of Indian to pass the following order. While sustaining the order of the trial court as confirmed by the High Court, the appellant is permitted to transpose the original plaintiffs nos. 2 to 5 as defendants nos. 4 to 7. The plaint in O.S.No. 67 of 1975-I shall stand amended accordingly.

2. *Jandas Vs. Vedanayagam, LAWS(KER) 2004 7 39*, it is held that the general rule is that where co-plaintiffs disagree, the name of one is struck out as plaintiff and added as defendant. In AIR Commentaries of CPC page 725 at Note 36 it is state as follows : “Under O.1 R.10 one of the plaintiffs can be transposed as a defendant, if his original joinder was improper – see AIR 1925 Cal. 328, 1905(2) Ch. 460. The Court has also,

apart from O.1 R.10, inherent power to transpose one of the plaintiffs as a defendant.

3. *S.Sudhakar and another Vs. Syed Kareem and others, LAWS(APH) 2016 9 27*, it is held that the object of transposition of parties is to facilitate determination of lis between the parties and such power is exercised to further the cause of administration of justice, avoid multiplicity of proceeding and dismissing the suits on technical grounds. The refusal of prayer for transposition on technical grounds in the considered view of this Court defeats the object and scheme of Section 2(11), Order 1 Rule 10 and Order 22 Rules 1 and 10 of CPC.

4. *Anami Sharan Sinha Vs. Anup Kumar Sinha, LAWS(PAT) 2004 6 27*, it is held that in case the plaintiff does not take interest in a suit for partition there was no difficulty in allowing the defendant to be transposed as plaintiff and the plaintiff as defendant. However, the difficulty which arises in this case is that the case made out by the intervenor/defendant is different from the case set up in the plaint and as such the defendant, if can be allowed to be transposed as co-plaintiff, then the difficulty would arise as two conflicting claims cannot proceed together. However, as the main object of transposition is to do justice between the parties and to avoid multiplicity of the suit every effort should be made to see that the parties are not dragged to file another partition suit.

9. From perusal of proceeding it is seen that this is suit for declaration, partition and permanent injunction. Plaintiff no. 3 is wife of Jotiba who is brother of plaintiff no.1 and 2. She stated that her husband is disappeared since many years and without taking her suggestion and without giving her legal advise she is added as plaintiff to the suit. She felt that as declaration about death of her husband is not

done it will affect her rights and share in suit property. She also felt that as contended by defendants plaintiffs not amended suit, so it will affect her rights in suit property.

10. As per ratio of above citations plaintiff can be transposed as defendant in partition suit. As she felt that her interest is contrary to the interest of plaintiff nos. 1 and 2 and it is her prayer to transpose as defendant, then it is proper to transpose her as defendant for better implementation of her rights in suit property. So, I pass following order.

ORDER

1. Application is allowed.
2. Plaintiff to do necessary amendment within statutory period.

Date : 17/04/2025
Place : Gadhinglaj

D. M. Pawar
2nd Jt. Civil Judge Jr. Dn.,
Gadhinglaj