



Shama Jamir Mujawar Vs.
Rajiya Mohammad Shafi Mujawar Other 19

Order below Exhibit No.44 in
Reg.Civil Suit No.46/2015

This is the application filed by the plaintiff under Order I, Rule 10 (2) of the Code of Civil Procedure for transposition of defendant no.10 as plaintiff no.1.

02. It is contended in the application that, the instant suit is filed for partition, separate possession and for mandatory and permanent injunction. The plaintiff and defendant no.10 are siblings. According to plaintiff, defendant no.10 is intellectual disabled. At the time of institution of suit she has not obtained guardianship certificate of defendant no.10 and therefore, in order to avoid technicality she added defendant no.10 in category of defendants. After institution of the suit, she obtained guardianship certificate of defendant no.10. She is claiming her share in suit property. Her interest is not conflicting with interest of defendant no.10. Therefore, according to plaintiff, as she obtained guardianship certificate of defendant no.10, it is necessary to transpose him in category of plaintiff no.2. Hence, plaintiff prayed to allow the application.

03. Defendant no.11 to 13 have given their say and given no objection to transpose defendant no.10 in category of plaintiff no.2. Other Defendants failed to file their say in spite of ample opportunities. Hence, application is ordered to be proceeded without their say.

04. I have heard Ld.Advocate for plaintiff and Ld.Advocate for

Defendant no.11 to 13. Other Defendants failed to advance their argument. Hence, application is posted for order without argument of defendants.

05. The instant suit is filed for partition, separate possession and for mandatory and permanent injunction. By way of this application, the plaintiff prayed to transpose defendant no.10 in category of plaintiff no.2. According to plaintiff, she is appointed as guardian of defendant no.10 who is mentally disabled. In this respect, I have gone through the record, it appears that defendant no.10 is real brother of plaintiff. The plaintiff has also filed on record disability certificate of defendant no.10 to show that he is mentally disabled. Further more important aspect is that, on 22/03/2016 the plaintiff is appointed as guardian of defendant no.10. The averments made in the plaint discloses that, interest of defendant no.10 is not conflicting with plaintiff and it is similar in nature.

06. The Ld.Advocate for plaintiff in order to support his submission relied upon ***Pragati Enterprises Vs. Sahakar Corp & Ors.2019(1)ALL MR 41*** wherein it was held that, it is well established that, the court has power under Order 1, Rule 10 (2) of the C.P.C., to transpose a defendant to the category of plaintiffs. The court can by suo motu or on the application of any of the defendants may transpose a defendant as plaintiff. Transposition can be made to do complete justice between the parties and with a view to avoid multiplicity of proceedings. In this case, as interest of plaintiff is similar with defendant no.10 who is mentally disabled and plaintiff herself is his appointed guardian. Therefore, in order to protect interest of defendant no.10 who is of unsound mind, it would be just to transpose

him to the category of plaintiff no.2. Most important aspect is that, defendants have also not objected for transposition of defendant no.10. Therefore, for complete and effective adjudication upon the question involved in the suit and to avoid multiplicity of proceeding, it is necessary to allow the application for transposition of defendant no.10 in category of plaintiff no.2. Hence, I proceed to pass following order.

ORDER

01	Application (Exhibit No.44) is allowed.
02	The plaintiff is allowed to transpose defendant no.10 in the category of plaintiff no.2.
03	The plaintiff shall carry out the necessary amendment in the plaint within 14 days.
04	The plaintiff shall also file the amended copy of plaint.

(Dictated and pronounced in open court)

Khalapur.

Date:- 04/04/2023.

(P.M.Mane)

Jt. Civil Judge, Junior Division,
Khalapur.