

ORDER BELOW EXH. 53.

1. This is a suit for declaration and perpetual injunction. By this application, defendant no.05 has prayed to transpose her as plaintiff. According to defendant no.05, other defendants have got executed from her relinquishment deed of her share in the joint family property by playing fraud. She is illiterate woman. The suit filed by plaintiff is correct. Interests of plaintiffs and defendant no.05 are the same. Plaintiff has not claimed any relief against defendant no.05. This defendant has grievance against other defendants. So to facilitate the adjudication of suit, she needs to be transposed as plaintiff no.08. Hence she has prayed to allow the application and prayed to allow to amend the array of the plaint.

2. Plaintiffs have not objected to transpose defendant no.05 as plaintiff no.08. Other defendant have filed their say and strongly opposed the application. According to them, defendant no.05 has filed her written statement. Defendant no.05 has filed this application after laps of five years. There is no reason to transpose defendant no.05 as plaintiff no.08. Only with intent to harass the other defendants, defendant no.05 has filed this false application. For these reasons, they have prayed to reject the application.

3. From the rival contentions of both the parties, following points arise for determination, to which I have recorded my findings for the reasons given below.

Points

Findings

1. Whether defendant no.05 be transposed as plaintiff no.08?

... In the affirmative.

2. What order ?

... As per final order.

REASONS

4. Perused the application and say. Ld. Adv. Gawade on behalf of defendant no.05 submitted that, as the interests of plaintiffs and defendant no.05 are the same, defendant no.05 may be transposed as plaintiff no.08. It will not cause prejudice to other defendants. So he prayed to allow the application. Ld. Adv. P. M. Sabale for plaintiffs showed his no objection to transpose defendant no.05 as plaintiff no.08. Ld. Adv. Potdar for other defendants strongly opposed the application. According to him, there is no reason to transpose defendant no.05 as plaintiff no.08. It will unnecessarily prolong the trial of the suit. So he prayed to reject the application.

AS TO POINTS NO. 1 AND 2 :-

5. This suit is for declaration that the so called relinquishment deed executed by defendant no.02 to 05 in favour of defendant no.01, is not binding on plaintiff. Here, the written statement of defendant no.05 needs to be considered. She has filed her written statement at exh.30 and accepted the claim of plaintiff. According to her she has not executed any relinquishment deed regarding any property. Thus the stand of plaintiff and defendant no.05 is the same. From the plaint it appears that no relief against defendant no.05 is sought for.

6. Though in order 23 rule 1A of Code Of Civil Procedure, it is provided that if plaintiff abandons or withdraws the suit, in that

situation transposition can be permitted. However in order 01 rule 10 it is provided that 'the court may at any stage of the proceeding, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before court may be necessary, in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.'

7. In the case of Radha Soami Satsang Beas Vs. Mr. Netra Prakash K. Bhog and others, decided on 29th August 2017, Writ Petition no. 6711/2015, Hon'ble Bombay High Court has held that, where the plaintiff does not oppose the application of any of the defendants for transposition as plaintiff, Court can allow the application for transposition. Even otherwise to avoid multiplicity of litigations the Court can suo motu allow such transposition. In a case where the defendant can file a similar suit, it is always advisable that the Court should transpose him as a co plaintiff even if no application for transposition is made.

8. In the case in hand plaintiffs have not objected to transpose defendant no.05 as plaintiff no.08. No prejudice would be caused to other defendants by such transposition. On the contrary transposition will help reduce the time for recording of evidence of every contesting party. For these reason application deserves to be

allowed. Hence point No. 1 is answered in the affirmative and in answer to point no. 2, following order is passed.

Order

1. Application at exh.53 is allowed.
2. Defendant no.05 is transposed as plaintiff no.08.
3. Plaintiffs to carry out the amendment within statutory period and transpose defendant no.05 as plaintiff no.08 by amending the array of the plaint.
4. Costs in main cause.

Date : 12-04-2019.

R. R. Patil
Civil Judge Junior Division, Mahad.