

Order below Exh.56 in RCS 25/2013
Mahadevappa Sankh and Ors Vs Sunil Sankh and Ors
(CNR-HSN08-000065-2013)

The application is for transposition of plaintiffs 1, 2, 4 to 7 as the defendants.

2 Perused the application, and the record. The application has been proceeded without say and arguments of the other side.

3 The suit is for partition by the plaintiffs in respect of the suit property more particularly mentioned in para 1 of the plaint. Plaintiff 3 passed away and is represented by her L.Rs. The newly added defendant 4 Mahadev Kondiba Garude, has been arrayed as added defendant vide order below Exh.30 by the Ld. Predecessor, who is/was the PoA of the plaintiffs, and to whom plaintiffs 1, 2, 4 to 7 have sold out some of the properties. In the cause title defendant 4 has been mentioned as the PoA of the plaintiffs 1, 2, and 4 to 7. The plaintiffs other than plaintiff 3 is L.Rs are not prosecuting the suit. Hence, the plaintiffs 1, 2, 4 to 7 be arrayed/transposed as added defendants 5 to 10.

4 The suit is for partition. From the above limited admitted facts, their appears some transaction between plaintiffs 1, 2, and 4 to 7 in favor of Mahadev Garude, who also acted as the PoA of the said plaintiffs and now arrayed as the added defendant. The case that the other plaintiffs than the plaintiff 3 are not prosecuting the suit, may be considered at a later stage. The application is by the L.Rs of the deceased plaintiff 3 whose PoA in favor of Mahadev Garude/added seized to exist. If the other plaintiffs intends to continue with the PoA of the added defendant 4, the right cannot be curtailed. Defendant 4 may contest the proceedings in his individual capacity and the witness of the said plaintiffs, also. Even otherwise, the application is totally vague, as to why, the transposition has to be allowed.

5 It is settled law that the transposition of the parties, has to be allowed, if there is a conflict of interest. In a suit for partition, even if the other plaintiffs continues the suit with the PoA or added defendant 4, if ultimately the suit is decreed, the shares of the parties, may be determined. Therefore, no prejudice would be caused, if the application is rejected. The other plaintiffs may or may not lead evidence but the L.Rs of the plaintiffs can certainly lead evidence. Costs in the cause. Hence, the following

Order

The application stands rejected with costs.

Jath

Date:-25/02/2025

(Sanjay P. Bunde)

Jt C.J.J.D, Jath