

**Common order below Exh.52,53 and 5 in Misc. Application
No.45/2011.**

1 This proceeding of miscellaneous application required judicial enquiry filed by applicant Nos.1 to 6 for issuance of succession certificate. After publication, respondent Nos.1 and 2 appeared and filed objection and they also claimed succession certificate in their name. Matter was for evidence of parties. However, applicant Nos.1 to 6 filed pursis below Exh.52 stating therein they want to withdraw the application with permission to file separate proceeding on same cause of action. An application below Exh.53 filed by respondent Nos.2 and 3 stating therein applicants want to withdraw the proceedings. Therefore, they be transposed as applicants. An application below Exh.55 is filed by the respondent Nos.2 and 3. A pursis filed by the applicant be rejected and by recording evidence of present respondents, matter be disposed off.

2 Heard both parties at length. Transposition application is filed U/o.23 R.1-a of Civil Procedure Code. Further in view of para 337 and 338 of Civil Manual, present proceedings is a miscellaneous proceedings required judicial enquiry. An investigation should be verified in the same manner as a plaint. So considering the dispute in the present proceedings, it is just and proper to decide the miscellaneous application finally.

3 The Ld.counsel appearing on behalf of respondents relied on a case viz. R.Ramamurthi Iyer V/s. Raja V. Rajeswara Rao, brought from 1972 DGLS(Soft.) 370 decided on 22/8/1972. Herein Hon'ble Apex Court held that;

Order 23, Rule 1 -- Withdrawn of suit--
Considerations for--Suit for partition--By interim order leave granted to a party to buy a share of property created vested right in such property--
Prayer for withdrawal can be refused by the Court. If any vested right comes into existence before the prayer for withdrawal is made, the court is not bound to allow withdrawal; but it is suggested that this can happen only in very limited circumstances i.e. where a preliminary decree had been passed or in those cases where a set off has been claimed or a counter claim has been made. We find it difficult to accede to the contention of the appellant that the suit can be withdrawn by the plaintiff after he has himself requested for a sale under Section 2 of the Partition Act and the defendant has applied to the court for leave to buy at a valuation the share of the plaintiff under Section 3. Before Judgment-Leave may be refused to a plaintiff to discontinue the action if the plaintiff is not wholly dominus litis or if the defendant has by the proceedings obtained an advantage of which it does not seem just to deprive him.

4 I have gone through the principles and observations laid

down in the supra case. It is just and proper to allow to the present respondents and transposed as a applicant Nos.7 and 8. Further more permission to withdraw the application requires to be refused and thereafter matter will proceed further. In these set of circumstances, I proceed to pass the following order.

ORDER

1 Pursis below Exh.52 is hereby refused.

2 The applications below Exh.53 and 55 are hereby allowed. Respondent Nos.2 and 3 are hereby permitted to transpose as applicant Nos.7 and 8. Then matter will be proceed further.

Date:-21/12/2013.

(V.K.Mande)
Civil Judge,S.D., Barshi.