

MHSO130012962015

**ORDER BELOW EXHIBIT- 26**

This is an application for transposition of plaintiff No. 4 as defendant No. 6. The applicants submitted that they have measured block no. 92 and 93 as per measurement No. 4505/2019. In the said measurement, the measurer found 25 R land encroachment on the hands of defendants. When the applicants told to plaintiff No. 4 for signing on amendment application, he refused for signature. He is talking by giving favour to defendants. So now his interest is no more in the suit in favour of the plaintiffs. Thus he required to be transposed as defendant No. 6 in the present suit. Hence prayed accordingly.

2. This court issued notice to plaintiff No. 4. The said notice served upon him vide exhibit 28. He didn't turn up. So this application proceeded without say of plaintiff No. 4. The defendants have strongly opposed the application. They submitted that present application is not tenable. Hence prayed for rejection of the application.

3. Heard both parties. In the Code of Civil Procedure, 1908, there is no provision for transposition of the plaintiff as defendant. Only provision under Order 23 Rule 1 A of C.P.C. is given for transposition of defendant as plaintiff. The said provision provides that where a suit is withdrawn or abandoned by a plaintiff under Rule 1, and a defendant applies to be transposed as a plaintiff under Rule 10 of C.P.C., the court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.

4. This provision permitted to transpose the defendant as plaintiff where the plaintiff withdrew the suit or abandon the claim. However there is no such provision about transposing the plaintiff as defendant. In this case it is the contention of the applicants that in the measurement map, the measurer found the encroachment at the hands of defendants, when they told to plaintiff No. 4 to sign on amendment application then he refused for signature. No doubt, from the record it appears that the measurer has measured block No 92 and 93 and found encroachment at

the hand of defendants in block No. 93. Now the applicants want to amend the plaint. If they want to amend the plaint, they have to adopt the procedure given under Order 6 Rule 17 of C.P.C. If they intend to adopt the procedure then plaintiff No. 4 to agree for it. However he is not intended to agree for it. This means the interest of plaintiff No. 4 is adverse against the applicants.

5. The ground of the applicants for transposition of plaintiff No. 4 as defendant No. 6 is affinity of interest between plaintiff No. 4 and the defendants. So when there is affinity of interest between plaintiff No. 4 and the defendants then similar analogy required to be adopted as per provision laid down under Order 23 Rule 1 A of C.P.C. In a case where interest of plaintiff is found sailing along with one or more defendants, one or more plaintiff support the claim of the defendant, such a plaintiff is then required to be transposed as a defendant. Considering this principle, plaintiff No. 4 required to be transposed as defendant No. 6 in this case. Hence application exhibit 26 deserve to be allowed. Thus, I proceed to pass following order.

Order

1. The application exhibit 26 is allowed with costs.
2. The applicants to carry out necessary amendment in exhibit 1 and transpose plaintiff No. 4 as defendant No. 6 in the plaint.
3. After carrying necessary amendment in exhibit 1, the plaintiffs to furnish copy of amended plaint on record.
4. Issue suit summons to defendant No. 6 for settlement of issues and for filling written statement after furnishing copy of amended plaint.
5. The costs in cause.

Barshi.
Dt. 05-04-2024.

(S.B.Vijaykar)
Jt. Civil Judge Jr.Dn. Barshi.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order

(a)	Name of the Stenographer	:	Shri. S.R. Barangule
(b)	Court	:	Shri. S.B. Vijaykar, Jt.C.J.J.D.&J.M.F.C. Barshi.
(c)	Judgment /Order signed by P.O. on	:	05/04/2024
(d)	Judgment /Order uploaded on	:	06/04/2024