



ORDER BELOW EXH.276

This is an application filed by defendant no.8 under Order 1 Rule 10 (2) of the C.P.C. for transposing him as plaintiff no.10. Perused the application and reply filed by plaintiff nos.1 to 8, 9 and defendant nos. 1 to 7. Heard the learned counsel Shri. A. S. Shaikh for defendant no.8 and the learned counsel Shri. S. A. Jarad for defendant nos.1 to 7 at length.

2. It is the contention of defendant no.8 that plaintiffs have filed the instant suit for permanent injunction. At the time of the institution of the suit, plaintiffs had requested defendant no.8 to join as one of the plaintiff in the suit. But, as the financial status of defendant no.8 was not sound and because of the wrong legal advice, defendant no.8 had refused the request of plaintiffs. In view of family dispute, defendant no.8 had refused to join as one of the plaintiff. Recently, the misunderstanding between plaintiffs and defendant no.8 is removed. Plaintiffs have not sought any relief against defendant no.8. Moreover, the rest of defendant have many of the time has submitted before the court that plaintiffs and defendant no.8 are not having any adverse interest. Hence, defendant no.8 prayed for transposing him as plaintiff no.10 in the instant suit.

3. By filing reply over leaf, plaintiff nos.1 to 8 have given no objection to allow the instant application. Plaintiff no.9 has given separate say and has given no objection to allow the instant

application subject to heavy costs.

4. Vide reply (Exh.279), defendant nos. 1 to 7 have resisted the instant application on the ground that the instant suit is of the year 2009. Defendant no.8 ought to have moved the instant application at the earliest opportunity. Now, the evidence of plaintiffs is closed. No suit can be tried on the whims and fancies of plaintiffs and defendants. Defendant no.8 is not having any right and interest in the suit property. The instant application has been filed in order to delay the proceeding. Hence, these defendants have prayed for rejection of the instant application.

5. I have carefully gone through the record of the case and also gave thoughtful consideration to the submissions made by all the concerned. At the outset, it needs to be noted that the instant suit is of the year 2009. The evidence of plaintiffs is already over. Now, the suit is pending for evidence of defendants.

6. It is pertinent to note that the instant suit is proceeded without written statement of defendant no.8. As such, it becomes clear that he has not taken active participation in the prosecution of the instant suit since all these years despite of ample opportunities.

7. It is imperative to note that it is not the case of defendant no.8 that plaintiffs are not diligently prosecuting the instant suit. On the contrary, defendant no.8 is claiming that he is not having any adverse interest against plaintiffs hence, he may be permitted to transpose as plaintiff no.10. To my mind, that cannot be a ground for transposition.

8. It needs to be noted that defendant no.8 has moved the present application under Order 1 Rule 10 (2) of the C.P.C. Perusal of the said provision reveals that it deals about striking out or addition of parties. Here, defendant no.8 is claiming for transposition as plaintiff no.10. Thus, the reliance of defendant no.8 on the provisions of Order 1 Rule 10 (2) of the C.P.C. appears to be misplaced and misconceived.

9. It is pertinent to note that Order 23 Rule 1-A of the C.P.C. provides when transposition of defendants as plaintiffs may be permitted. However, the said provision is applicable only when the plaintiff wants to withdraw or abandon the suit. In the case in hand, the existing plaintiff does not want to withdraw or abandon the suit. As such, there is absolutely no reason to allow defendant no.8 to transpose as plaintiff no.10. On the contrary, allowing the same will cause serious prejudice to contesting defendant nos.1 to 7 as it will hamper the progress of the instant suit. Thus, I find that the instant application is bereft of any merit. Therefore, I am not inclined to allow the instant application. Consequently, proceed to pass following order.

ORDER

1. The application stands rejected.
2. Costs in cause.

Place : Phaltan
Date : 09/01/2025

(Shri. R. D. Bhuyarkar)
Jt. Civil Judge Junior Division,
Phaltan.