

**:ORDER BELOW EXH. 22 IN REG. CIVIL SUIT NO. 722/2013 :**

The plaintiff No. 7 has filed this application for her transposition as a defendant. Her contention is that the plaintiff No. 1 Vasudev Bhoir has filed the present suit for himself and as a Power of Attorney of her and other plaintiffs. This suit is for cancellation of Agreement for Sale dated 05/02/1994. But she has filed Spl.C.S. No. 72/2014 for specific performance of and Agreement to Sale dated 05/02/1994. In these circumstances, she does not want to proceed in this suit as a plaintiff. Accordingly, she has prayed for her transposition as a defendant.

2] The plaintiffs have filed their say vide Exh. 27 submitting that, there is no provisions for transposition of plaintiff as a defendant. The present suit is filed by the plaintiff No. 1 on behalf of plaintiff No. 7 as her Power of Attorney. The plaintiff No. 7 has already filed Spl.C.S. No. 72/2014. Therefore, there is no need of her transposition as a defendant.

3] Heard Advocate for both the parties.

4] Advocate for plaintiff No. 7 argued that the

plaintiff No. 1 has filed the present suit for plaintiff No. 7 as her Power of Attorney. But the suit claim is not admitted to her. She has already filed Spl.C.S. No. 72/2014. The reliefs sought in the present suit and Spl.C.S. No. 72/2014 are totally different and contrary to each other. The reliefs sought in the present suit is not admitted to the plaintiff No. 7, therefore, application be allowed. He has further submitted that this application is filed under Order 1 Rule 10 of The Code of Civil Procedure.

5] Advocate Biwalkar for the plaintiffs argued that Order 1 Rule 10 of The Code of Civil Procedure is not applicable to this application. There is provision under Rule 1(a) of Order 23 of The Code of Civil Procedure for transposition of defendant as a plaintiff. There is no provision for transposition of plaintiff as a defendant, therefore, this application is not maintainable. The plaintiff No. 7 has already filed separate suit and hence this application be rejected.

6] It is true that Order 1 Rule 10 of C.P.C. is applicable when the suit is in the name of wrong plaintiff. It is settled law that it is open to the Court to add any such

person as a necessary party in the suit to enable the Court to effectively adjudicate the question involved in the suit. In Re Mathews reported in (1905) 2 Ch 460, it is observed that, in the case of a difference between co-plaintiff, the proper course is to make an order that the name of one of them be struck out as plaintiff and added as a defendant.

7] In Saila Bala V/s Nimala Simdari, reported in AIR 1958 SC 994 and in Vanjappa Goundar V/s Annamalai Chettiar, reported in AIR 1940 Mad 69, it has been held by the Hon'ble Supreme Court that the appellant can under Order 1 Rule 10 be transferred as respondent.

8] In view of the above observations and provisions of Order 1 Rule 10 of C.P.C., I am of the opinion that the plaintiff can be transposed as a defendant. In the present matter the plaintiff No. 1 has filed this suit for himself and as a Power of Attorney of other plaintiffs, including the plaintiff No. 7. The present suit is for the relief of cancellation of agreement for sale dated 05/02/1994. The plaintiff No. 7 is not agreed with the reliefs sought in the present suit. She has filed Spl.C.S. No. 72/2014, seeking relief of specific performance of an Agreement for Sale

dated 05/02/1994. The reliefs sought in the present suit and Spl.C.S. No. 72/2014 are contrary to each other. In these circumstances, when the plaintiff No. 7 does not want to proceed this suit in capacity of the plaintiff, it will be just and proper to grant permission for her transposition as a defendant. If the plaintiff No. 7 will not allowed for her transposition, the present suit and Spl.C.S. No. 72/2014 cannot be adjudicated effectively. Therefore, it is necessary to grant permission to plaintiff No. 7 for her transposition as a defendant to effectively adjudicate the question involved in the suit. Accordingly, I pass the following order :

: **ORDER** :

- 1] Application ( Exh.22) is allowed.
- 2] Permission is granted to plaintiff No. 7 for her transposition as a defendant.
- 3] The plaintiff shall carry out amendment within stipulated period to that effect.
- 4] Cost in cause.

Kalyan.  
Dated: 11/06/2015.

(Sau.S.S.Saste)  
3<sup>rd</sup> Jt. Civil Judge, S. D., Kalyan.