

**IN THE COURT OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
PUDUKKOTTAI.**

PRESENT : Thiru.K.Poorana Jeya Anand, M.A., M.L.,
Principal District Judge, Pudukkottai.

Tuesday, the 11th day of November, 2025
(Thiruvalluvarandu 2056 Sri Visuvvasu Varudam Ippasi Thingal 25th day)

Interlocutory Application No.1/2024 in
Commercial Original Suit No.02/2024

Sintha Madhar Moideen ... Petitioner/3rd Plaintiff

Versus

1. M.Mohammed Farook

2. M.Jerina Farook ... 1st and 2nd Respondents /
Defendants

3. K.Sultan Moideen (Died)

4. K.S.Abdul Majeed

5. Appas Ajmeer Moideen ... 3rd, 4th and 5th
Respondents/1st, 2nd, 4th
Plaintiffs

This Interlocutory Application has come up for final hearing before me on 01.11.2025 and upon hearing the arguments of Mr.Solai.Muthaiah, Learned Advocate appearing for the Petitioner and of Mr.S.Chockalingam, Learned Advocate appearing for the 1st and 2nd respondents and of Mr.S.Suyam Prakasam, Learned Advocate appearing for the 4th and 5th respondents and R3 died and upon perusing the available records and having stood over for consideration till this day, this court passed the following...

ORDER

1. The petitioner filed this petition under Order 1 Rule 10(3) of CPC praying to transpose the petitioner namely 3rd plaintiff to 3rd defendant.

2. **The short facts of the petition are as follows:-**

The petitioner is the 3rd plaintiff in the original Suit. The original suit filed by the petitioner's father for a recovery of money for a sum of Rs.50,16,703.88/- and for costs. The petitioner's father died while the case is pending. Hence the the plaintiff, 2nd plaintiff and the 4th plaintiff were impleaded as legal heirs. The petitioner does not know the details of the suit. Now the petitioner read the case details and has come to know that the said suit has been filed on the basis of facts which are contrary to the facts. The petitioner contacted the 2nd and 4th plaintiffs they did not accept the view of the petitioner. Therefore, the petitioner do not wish to proceed as the 3rd plaintiff in the said suit which is contrary to the facts. The plaintiff did not want to pursue the case further with the other plaintiffs. Hence this petition.

3. **The short facts of the counter filed by R5 and adopted by R4 are as follows:-**

a) The respondent submits that the suit for recovery of suit amount from 1st defendant, was filed only by the father of the plaintiff's 2 to 4 and 2nd defendant. It cannot be admitted that the averments made in the plaint were not known to the 3rd plaintiff, who is the petitioner in the present application. Only after knowing the averments of the plaint, the 3rd plaintiff has consented to appear in the suit along

with other plaintiff's, only as the legal heir of the original plaintiff Sultan Moideen, since deceased. The plaintiff's 2 to 4 have filed an application to bring them on record as legal heir's deceased plaintiff on 01.10.2019. After having appeared along with other plaintiff's inorder to get the usufruct of the decree that would be passed in the suit. Now, the 3rd plaintiff cannot turn around and say that since, the other plaintiff's didnt agree his ideas and come forward with this application for transposition. The affidavit is silent about, what was the idea given by the 3rd plaintiff to other plaintiff's and in what manner the other plaintiff's have refused to hear his ideas. In the absence of such material averments in the affidavit, law didn't permit to transpose him from plaintiff to defendant.

b) On reading the 2nd portion of Order I Rule 10(2) of CPC, it is made clear that the name of any person who ought to have been joined whether as plaintiff or as defendant, or whose presence before the court may be necessary inorder to enable to the court for effectually and completely adjudication upon and settle all the questions involved in the suit be added. Therefore, the 2nd portion of Order I Rule 10(2) of CPC, only permits a person, who is not a party in the proceedings may be added inthe suit either as plaintiffs or as defendant, inorder to render justice effectively and completely.

c) In the instance case, as submitted supra, the 3rd plaintiff is added only as the legal heir of original plaintiff, after the demise of original plaintiff. The other plaintiff's after knowing the averments made in the plaint, informed about it to the 3rd plaintiff and after getting his consent only, all the plaintiff's 2 to 4 have filed the

vakkalath only as legal heirs of original plaintiff, since they have got right to sue against the 1st defendant.

d) The subject matter of the suit is relating to a transaction of Royal India Motor Company Ltd. In the management of the said company, deceased original plaintiff and 1st defendant were acting as managing partners. While the 1st defendant was acting as managing partner in company affairs, he has manipulated the accounts of the bus company as if the original plaintiff had received monthly salary and other benefits. That was the dispute raised in the plaint and same was contested by the 1st defendant. The 3rd plaintiff has been inducted into the partnership firm only on 20.09.2016 and the matter in dispute in the suit is the earlier periods. In the above dispute, neither the 3rd plaintiff nor the other plaintiff's are not the parties to the affairs of the company. Therefore the 3rd plaintiff/petitioner instead of joining hands with the proceedings of the suit along with the other plaintiff's has filed application in hand in glove with the 1st defendant. Under the said facts this application is factually and legally not sustainable.

e) Under the abovesaid facts and circumstances of the case, it is understood that after understanding the averments of the plaint and consented to appear as the legal heir of deceased original plaintiff, the 3rd plaintiff has been brain washed by 1st defendant and changed his stand in the suit and this application is moved by the 3rd plaintiff/petitioner on the instigation of the 1st defendant. Hence prays to dismiss the petition.

4. The learned counsel for the respondents 1 and 2 made an endorsement that they have no counter and the 3rd respondent died.

5. Whether the petitioner is entitled to get the relief as asked for in the petition?

Point

6. Heard both sides. Perused the records.

7. This application filed by the 3rd plaintiff to transpose himself as 3rd defendant.

8. The petitioner /3rd plaintiff contented that the suit was filed by the 1st plaintiff who is deceased father of the plaintiffs. Hence the present plaintiffs namely 3, 4 and 5 respondents / 1, 2 and 4 plaintiffs and present petitioner are impleaded as legal representatives of 1st deceased plaintiff. Now this petitioner contented that the petitioner does not want to proceed with other plaintiffs since some of the facts are incorrect which pleaded in the plaint and so he conveyed his thoughts to the other plaintiffs. But, other plaintiffs do not want to agree the contention stated by the present petitioner. Hence the petitioner filed this application to transpose himself as 3rd defendant.

9. The learned Senior counsel who is appeared for the 4th and 5th respondent/2nd and 4th plaintiff has submitted that the suit is one for recovery of amount and contended that the affidavit is silent about, what was the idea given by the 3rd plaintiff to other plaintiff's and in what manner the other plaintiffs have refused to hear his ideas. Further he contended that Order I Rule 10(2) of CPC

permit a person who is not a party in the proceedings may be added for effective and complete adjudication.

10. I have carefully considered the arguments advanced by either side and perused the records.

11. Now the petitioner/3rd plaintiff does not want to proceed the case and he wants to transpose himself as 3rd defendant.

12. The learned counsel appearing for the 4th and 5th respondents has submitted that the decision reported in 2024 (6) CTC 3 in Nalini Sekaran and 13 others v. Ilangovan wherein it was held as follows:-

**Code of Civil Procedure, 1908 (5 of 1908), Order
23, Rule 1-A - Transposition as party - Permissibility -
Application by Defendant to transpose as plaintiff -
though Defendant's case is dependent on success of
plaintiff, plaintiff has not abandoned or withdrawn Suit
- If plaintiff abandons or withdraws, Trial Court to
transpose Defendant as plaintiff without insisting on
formal Application - Till such time, Suit to be continued
as such - Application to transpose rejected.**

This facts is not applicable to the present facts of the case.

13. The Court has no power to compel any person to proceed the suit since he does not want to ask any relief against the defendants. The decision reported in **Janadas v. Vedanayagam, 2004 (3) KLT 425 (DB) (ker)** wherein it was held as

follows:-

In Vanjiappa v. Annamalai, AIR 1940 Madras 69, Patanjali Sastri, J. (as he then was) observed as follows:-

"The joinder of the petitioner as plaintiff 2 is not authorized by the terms of 0.1, R.1 Civil P.C., as no right to relief is alleged to exist in the petitioner jointly, severally or in the alternative, and when the petitioner begins to set up a claim to the amount in suit adversely to respondent 1, it will be highly expedient, if not necessary, to strike out his name as plaintiff 2, as desired by him. But as he is clearly a person whose presence before the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, the proper order, in my opinion, would be to direct the petitioner to be transposed as a defendant in the suit - see Mathews In Re; Oates v. Mooney, (1905) 2 Ch. 460, where it was observed:

"The general rule is that where co-plaintiffs disagree, the name of one is struck out as plaintiff and added as defendant"

In AIR Commentaries of C.P.C. page 725 at Note 36 it is stated as follows: "Under 0.1, R.10 one of the plaintiffs can be transposed as a defendant, if his original joinder was improper - see AIR 1925 Cal.328 , (1905) 2 Ch. 460. The Court has also, apart from 0.1, R.10, inherent power to transpose one of the plaintiffs as a defendant"-see AIR 1924 Cal.251 .

In the above view of the matter, we are of the opinion that a plaintiff can be transposed as a defendant. The next question is that so far as this suit is concerned, whether it is possible. The Court below declined to grant the relief on the ground that it was only to overcome the objection with respect to valuation. According to us, this should not have been taken into consideration even if it is made in order to confine the case to the Munsiff Court. There is nothing wrong for the plaintiffs asking for it. Hence, we are of the view that the application ought to have been allowed.

In view of the above, there is no prejudice would be caused either plaintiff or defendant while allowing this application. Further the petitioner does not want to continue further as plaintiff in this suit.

14. Accordingly, this petition is allowed. No costs.

This Order is dictated to Stenographer Grade.III of this Court, directly typed by him in Computer, corrected and pronounced by me in open court, this the 11th day of November, 2025.

**Principal District Judge,
Pudukkottai.**

Both side Witnesses and Exhibits :- Nil.

**Principal District Judge,
Pudukkottai.**