

MHLA110011112022



ORDER BELOW EXH.79 IN
REGULAR CIVIL SUIT NO.456/2017
POOJA VS. SHRIPATI & ORS.

1. This is an application filed under Order XXIII Rule 1-A of the Code of Civil Procedure, 1908.
2. Read the application and say filed thereon. Heard the Learned Counsel for both sides.
3. This application is filed by defendant No.4 contending that, plaintiff has filed this suit for partition and separate possession and impleaded the applicant as defendant No.4 in the present suit. It has come to the knowledge of defendant No.4 that, plaintiff No.1, 2 and defendant No.1 to 3 are trying to compromise the matter outside the court and to start the Wind Will scheme in the property which is in the name of defendant No.3 by executing the contract with concern private companies. Thereby plaintiffs are intending to withdraw the suit by obtaining the compensation from the private companies. If it happens then defendant No.4 will suffer irreparable loss and will not get his share in the suit property. Hence, it is prayed to transpose defendant No.4 as plaintiff No.3 in the suit.
4. Order XXIII Rule 1-A of the Code of Civil Procedure, 1908 provides for transposition of defendant as a plaintiff when a suit withdrawn or abandoned by the plaintiff and defendant applies to be transposed under Order I Rule 10 of C.P.C., in such circumstances, Court may order transposition of plaintiff as defendant. However, in **Janadas Vs. Vedenayagam**, it has been held that, Court has inherent powers under Order XXIII Rule 1-A as well as under Order I Rule 10 of C.P.C., to transpose a plaintiff as a defendant, when it appears that, plaintiff is not co-operating with the other plaintiffs. It is further held that power of transposition of plaintiff as defendant even in the absence of provisions like Order XXIII Rule 1-A of C.P.C. is available to the Court.

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5. It is true that, plaintiff has filed this suit for partition and separate possession. However, plaintiff neither has applied withdrawal of the suit nor has abandoned the suit. Moreover, evidence of plaintiff is also closed by order below Exh.1 dated 08/09/2025 and the matter is pending for evidence of defendant Nos.1 to 3. If defendant Nos.1 to 3 failed to lead their evidence, their evidence also be closed by order below Exh.1. Therefore, at this stage, considering the above discussion, application does not fall within the ambit of provisions of Order XXIII Rule 1-A of the Code of Civil Procedure, 1908.

6. In view of the above said discussion, application liable to be rejected. Hence, I pass the following order.

ORDER

Application at Exhibit No.79 is rejected.

Nilanga
Date:- 28/10/2025

(Smt. V. D. Bhosale)
Jt. Civil Judge, Sr. Dn., Nilanga.