

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).27828/2010

(From the judgement and order dated 02/09/2010 in WP No.
18462/2010 of The HIGH COURT OF KARNATAKA AT BANGALORE)

NIRMALA Petitioner(s)

VERSUS

NAGARATHNAMMA & ORS. Respondent(s)

(With prayer for interim relief)

Date: 19/10/2010 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. S.N. Bhat,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

The petitioner is aggrieved by order dated 2.9.2010 passed by the learned Single Judge of the Karnataka High Court, who allowed the writ petition filed by respondent No.1, set aside the order of IX Additional City Civil and Sessions Judge, Bangalore dismissing the application filed by respondent No.1 under Order 1 Rule 10(2) of the Code of Civil Procedure (CPC) and accepted her prayer for transposition of defendant No.6 in O.S. No.2060 of 2008 as plaintiff No.2.

Respondent No.1 filed suit for declaring gift deed dated 16.3.2006 executed in favour of the petitioner as null and void and

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also for declaring her as absolute owner of the suit property. Respondent No.6 herein, who is said to be the adopted son of respondent No.1, was impleaded as defendant No.6 in the suit with an assertion that she may apply for his transposition as co-plaintiff. In paragraph 5 of the plaint, respondent No.1 averred as under:-

"The defendant No.6, H.N. Venkatachala is the adopted son of the plaintiff is arrayed as defendant, since the family arrangement in the matter of distribution of properties and settlement deeds made amongst plaintiff, defendant No.1, and defendant No.5 and defendant No.6 are within the personal knowledge of family members more particularly well acquainted with the family affairs. In

order to place true and correct facts, the defendant No.6 is made a formal defendant. This plaintiff reserves right to transpose the defendant No.6 as co plaintiff in the course proceedings by making necessary application."

After service of summons and filing of written statement by the petitioner, respondent No.1 filed an application under Order 1 Rule 10(2) read with Section 151 CPC for transposition of defendant No.6 as co-plaintiff. The same was dismissed by the trial Court with the observation that if the plaintiff is unable to take care of the suit, she cannot be permitted to pursue her cause by adding defendant No.6 as co-plaintiff.

The learned Single Judge referred to the judgment of the Privy Council in Bhupendra Narayan Sinha v. Rajeswar Prasad Bakhat AIR 1931 Privy Council 162 and Kiran Tandon v. Allahabad Development Authority and another (2004) 10 SCC 745 and held that respondent No.1 was legally entitled to seek transposition of defendant No.6 as co-plaintiff and the trial Court gravely erred in refusing to accept her request.

We have heard learned counsel for the petitioner and perused the record. In our view, the High Court has correctly interpreted Order 1 Rule 10(2) CPC for entertaining the prayer of respondent No.1 for transposition of defendant No.6 as co-plaintiff because

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their interest in the suit were common and respondent No.1 had already reserved her right to make a prayer for impleading defendant No.6 as co-plaintiff.

With the above observation, the special leave petition is dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master