



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 22ND DAY OF JUNE, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.492/2021 (GM-CPC)

BETWEEN:

SRI. C. NAGARAJU
S/O KURI CHIKKANNA
AGED ABOUT 41 YEARS
R/AT. YALLAPURA VILLAGE
KASABA HOBLI, TUMAKURU TALUK
TUMAKURU DISTRICT-572101.

...PETITIONER

(BY SRI. M.B. CHANDRA CHOODA, ADV.,)

AND:

1. SRI. KURI CHIKKANNA @ CHIKKANNA
S/O LATE HUCHAIAH
AGED ABOUT 80 YEARS.
2. SRI. Y.C. PUTTARAJU
S/O KURI CHIKKANNA
AGED ABOUT 40 YEARS.
3. SRI. YOGESH KUMAR .C
S/O LATE CHIKKAMALLAIAH
AGED ABOUT 53 YEARS.

R1 TO R3 ARE ALL
R/O YALLAPURA VILLAGE
KASABA HOBLI
TUMKUR TALUK
TUMKUR DISTRICT-572101.

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



4. SMT. THOLASAMMA .C
D/O LATE CHIKKAMALLAIAH
AGED ABOUT 47 YEARS
R/A OPP. FITWELL HAND TOOLS
VEERABHADRASWAMY NILAYA
AREKERE POST
MADHUGIRI MAIN ROAD
ANTHRASANAHALI
TUMKURU-572106.
5. SRI. Y.C. KRISHNAMURTHY
S/O LATE CHIKKAMALLAIAH
AGED ABOUT 42 YEARS
R/O YALLAPURA VILLAGE
KASABA HOBLI
TUMKUR TALUK
TUMKUR DISTRICT-572101.
6. SRI. H. PUTTALINGAIAH
S/O LATE HUCHAIAH
AGED ABOUT 73 YEARS.
7. SRI. P. PURUSHOTHAM
S/O H. PUTTALINGAIAH
AGED ABOUT 43 YEARS.
8. SRI. P. RAMESH
S/O H. PUTTALINGAIAH
AGED ABOUT 40 YEARS.

R-6 TO R-8 ARE
R/AT. NO.455, MOSQUE ROAD
PEENYA IST STAGE
BENGALURU-560058.

...RESPONDENTS

(BY SRI. SOMASHEKARA K.M. ADV., FOR R1 & R2
SRI. ANANDEESWAR D.R. ADV., FOR R4, R6 TO R8
R3 AND R5 ARE SD AND UN-REPRESENTED)



THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DTD.14.12.2020 PASSED ON IA NO.7 FILED U/O 1 RULE 10(2) OF CPC IN O.S.NO.431/2016 ON THE FILE 3RD ADDL SENIOR CIVIL JUDGE TUMAKURU VIDE ANNEXURE-H & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This petition is filed challenging the order dated 14.12.2020 passed on IA.No.7 filed under Order I Rule 10(2) of the Code of Civil Procedure, 1908 (for short 'CPC') in OS.No.431/2016 by the III Additional Senior Civil Judge, Tumakuru (for short 'the trial Court').

2. Sri.M.B.Chandra Chooda, learned counsel appearing for the petitioner submits that the petitioner and respondent Nos.1 and 2 filed a suit for partition and separate possession against the other family members. In the said suit, the petitioner is arrayed as plaintiff No.2 and during the pendency of the suit, some difference of opinion arose between the plaintiffs. Hence, the petitioner/plaintiff



No.2 sought permission from the trial Court to engage a different counsel, which was allowed. Later, plaintiff Nos.1 and 3 filed an application seeking transposition of plaintiff No.2 as defendant No.7 in the suit, which came to be allowed by the trial Court by following incorrect procedure. It is submitted that the difference of opinion among family members is distinct from a conflict of interest between the parties, which has not been properly appreciated by the trial Court. It is further submitted that plaintiff No.2 has never taken any stand contrary to the pleadings set out in the plaint. Therefore, he cannot be compelled to be transposed as defendant No.7. In support of his contentions he placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Sm. Saila Bala Dassi v. Sm. Nirmala Sundari Dassi and Another***¹. Accordingly, he seeks to allow the petition.

3. Per contra, Sri.Somashekara K.M., learned counsel appearing for respondent Nos.1 and 2 and

¹ AIR 1958 SC 394



Sri.Anandeeswar D.R., learned counsel appearing for respondent Nos.4, 6 and 8 support the order of the trial Court and submit that the petitioner/plaintiff No.2 colluding with defendant No.1 has not cooperated in the suit proceedings nor properly instructed the engaged counsel. It is submitted that plaintiff No.2 on his own, engaged a separate counsel and created obstruction of the progress of the proceedings, which compelled the other plaintiffs to file an application seeking his transposition as defendant No.7. Hence, they seek to dismiss the petition.

4. I have heard the arguments of the learned counsel for the petitioner, the learned counsel for the respondents and meticulously perused the material available on record.

5. The petitioner, respondent Nos.1 and 2 filed OS.No.431/2016 against respondent Nos.3 to 8 seeking partition and separate possession of the suit schedule properties. A perusal of the plaint averments, makes it



clear that the petitioner as well as respondent Nos.1 and 2 are seeking partition of the suit schedule properties by making assertion that these are the joint family properties. The defendants in the suit filed their written statement denying the claim that the properties are joint family properties and sought dismissal of the suit. During the course of the proceedings, after examination of PW1 (Plaintiff No.3), the petitioner, who is plaintiff No.2 filed an affidavit seeking permission to engage an independent counsel to represent him in the suit. The trial Court allowed the said request and permitted him to engage separate counsel to represent him in the said suit. Subsequently, plaintiff Nos.1 and 3 filed an application under Order I Rule 10 r/w Section 151 of the CPC seeking transposition of the petitioner/plaintiff No.2 – C. Nagaraju as defendant No.7. The perusal of the affidavit accompanying the said application indicates that plaintiff No.2 was colluding with defendant No.1 and had engaged an independent counsel and sought to transpose him as



defendant No.7 in the suit. The trial Court allowed the said application under the impugned order.

6. It is required to be noticed that the petitioner and respondent Nos.1 and 2 filed a suit for partition and separate possession against the defendants, making assertion that the suit schedule properties are joint family properties. It is to be noticed that plaintiff No.2 – C.Nagaraju sought permission to engage an independent counsel to represent him in the said suit, which was permitted by the trial Court. In my considered view, the mere fact that Plaintiff No.2 chose to engage an independent counsel to represent him in the suit cannot, by itself, be termed or construed as him taking a stand contrary to that of the other plaintiffs. In other words, there is no conflict of opinion or a stand between the plaintiffs in the suit.

7. The contention of plaintiff Nos.1 and 3 is that plaintiff No.2 is not co-operating for smooth conduct of



trial, not instructing the counsel and later, he engaged the independent counsel. This cannot be ground to transpose plaintiff No.2 as defendant No.7. It is further required to be noticed that a third party i.e. other plaintiffs cannot compel one of the plaintiff to be transposed as a defendant unless that plaintiff takes a different stand against the other plaintiffs. In the absence of such a stand by one of the plaintiff, in my considered view, the trial Court has committed a grave error in ordering the transposition of plaintiff No.2 as defendant No.7. Mere change of the counsel or non-co-operation of one of the plaintiff with the earlier counsel cannot be ground to transpose plaintiff No.2 as defendant No.7. It is also required to be noticed that the difference of opinion among plaintiff No.2 and plaintiff Nos.1 and 3 cannot be termed as difference in their stand in the suit or creation of conflict of interest among the parties. In the absence of conflict of interest between the plaintiffs, one of the plaintiff cannot be



transposed as a defendant and be compelled to file a written statement contrary to his own pleading i.e. plaint.

8. The application for transposition can be filed by the party to the suit seeking transposition of a party as a plaintiff from defendant and from defendant to the plaintiff in a circumstances where one of the party does not co-operate in disposal of the suit with a intention to help the other party. Under such circumstances transposition can be sought a party whose interest is in jeopardy due to such act of one of the party. In another instance, if the party to the suit takes a contrary stand to the stand taken by them in the pleading during the course of trial, even under such circumstances such a party can be transposed, as such an act of the party would amount into shifting of the interest. The trial Court for complete adjudication of the *lis* pending before it can order for transposition of the parties from array of the parties by considering their appropriate stand in appropriate cases. In the case on hand, none of the aforementioned circumstances are



satisfied. For the aforementioned reasons, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed***.
- ii. The impugned order dated 14.12.2020 passed on IA.No.7 filed under Order I Rule 10(2) of the CPC in OS.No.431/2016 by the III Additional Senior Civil Judge, Tumakuru is hereby set aside. Consequently, IA.No.7 is rejected.
- iii. The trial Court shall endure to dispose of the suit as early as possible.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

ABK
List No.: 1 Sl No.: 21