

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 672 OF 2014

1. Sanjay Ramdas Jape,
Age: 40 years, Occ: Agri.,
2. Sau. Heerabai Subhash Khadke,
Age: 45 years, Occ: Household,

Nos. 1 and 2 R/o. Kokamthan,
Tal. Kopargaon, Dist. Ahmednagar.
3. Dr. Ravindra s/o Ramdas Jape,
Age: 51 years, Occ: Doctor,
R/o. Row House No.9, Narhari Garden,
Gadiya Vihar Road, Shahnoorwadi,
Aurangabad.
Taluka & Dist. Aurangabad. ...Petitioners

versus

1. Parighabai w/o Ramdas Jape,
Age: 60 years, Occ: Household,
R/o. Savali Vihar (Bk), Ta. Rahata,
Dist. Ahmednagar.
2. Chandrakant s/o Ramdas Jape,
Age: 58 years, Occ: Agri.,
3. Ashok Ramdas Jape,
Age: 55 years, Occ: Agri.,

Nos. 2 and 3 R/o. Kokamthan,
Tq. Kopargaon, Dist. Ahmednagar. ...Respondents

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Mr. P.B. Shirsath, Advocate for petitioners.
Mr. P.B. Vikhe Patil, Advocate for respondent Nos.1 & 2.

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CORAM : N.W. SAMBRE, J.

DATED : 19TH JANUARY, 2015

PER COURT :

. With the consent of the parties, heard finally.

2. Defendant No.1 to Regular Civil Suit No. 67 of 1998, a suit for partition moved an application at Exhibit-59 before learned 2nd Joint Civil Judge, Junior Division, Kopargaon for transposing him as plaintiff after death of plaintiff No.2 Ramdas. The said application is granted by learned trial Judge by an order dated 07/08/2013.

2. Present petitioners have questioned the said order on the count that the provisions of Order 22 Rule 2 and 3 of Civil Procedure Code are not complied with, as right to sue survives in plaintiff No.1 and if defendant No.1 has sought transposition in the capacity of legal heir of father i.e. plaintiff No.2, the provisions of Order 22 Rule 3 of Code of Civil Procedure should have been followed.

3. He submits that in view of non compliance of the said provisions, the impugned order is not sustainable. In addition to above, learned Counsel for the petitioners has invited my attention to the written statement filed by the petitioners. According to them, respondent No. 2 herein, who has sought transposition has taken contradictory plea thereby destroying the case of present petitioners and as such, transposition sought for by him ought not to have been permitted.

4. Learned Counsel for respondent Nos. 1 and 2, while opposing the said submissions, urged that transposition in a suit for partition is always permissible having regard to the settled position of law that the parties to a suit for partition are always plaintiffs irrespective of their status described in the plaint. He has placed reliance upon the decision of this Court in the matter of Subhaschandra s/o Badrinarayan Lahoti vs. Nandkishor s/o Badrinarayan Lahoti and others (Civil Revision Application No. 152 of 2010) decided on 06/09/2012. According to him, for the purpose of transposition the provisions of Order 22 of Civil Procedure Code are not applicable, hence present proceedings are not sustainable. As such, he submits that present writ petition is liable to be rejected. He further urged that no objection was raised to the said application seeking transposition before the learned trial Court. The grounds sought to be raised are by way of afterthought.

5. Having considered the rival contentions of the parties, it is required to be noted that position of law qua suit for partition as is cited by learned Counsel for respondent Nos. 1 and 2 is not in dispute. The parties to the partition suit could always be termed as applicants-claimants irrespective of their status described in the cause title of the plaint.

6. It is also required to be noted that objection that is sought to be raised in the present proceedings i.e. non compliance of Order 22 Rule 2 and 3 of Code of Civil Procedure is concerned, said objection was not raised before the trial Court by present petitioners. Apart from that, when it comes transposition under Order 1 Rule 10 of Code of Civil Procedure, said provision has hardly any applicability.

7. In that view of the matter, no case for interference in extraordinary writ jurisdiction of this Court, is made out. The writ petition sans merit, hence it fails and stands dismissed.

[N.W. SAMBRE, J.]