

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.3774 of 2014 (O&M)

Date of decision: 02.07.2015

Manjeet Singh

.... Petitioner

versus

Gurdeep Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ajaivir Singh, Advocate,
for the petitioner.

None for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. The petitioner has an untenable contention to make that he has a right to compel the plaintiff to take him on board as a co-plaintiff. It would appear that the petitioner who was brother of the plaintiff had filed suit together but during the course of the suit, his brother filed an application for transposition of the petitioner as a 3rd defendant on a plea that the petitioner was colluding with the other defendants. Transposition had been ordered. The suit was withdrawn and later the plaintiff came with an application for restoration. Restoration has been ordered. After the restoration, the 3rd

defendant wants to be transposed again as a co-plaintiff on a plea that he derives title along with his brother and the brother had done acts during the pendency of the suit to prejudice his rights. This, according to him, will afford a right of consideration in the first place. The suit, after transposition remains the same as it was filed originally and there is no need for again transposing the defendant as a plaintiff (see: **Mukesh Kumar Versus Col. Harbans Waraiah-AIR 2000(SC) 172** for the effect of transposition).

2. The contention is untenable for the reason that no two plaintiffs can speak in two different languages, while the defendants may take as many lines of defence as there are number the defendants. The plaintiff ought to have the common case to propound. In between them if there is a face-off for whatever reason, even if they may derive source of title through the same person and if one of the plaintiffs had been earlier transposed as a defendant, he cannot get back to his status as a co-plaintiff if the other plaintiff does not want to prosecute the case along with him. No prejudice at all can ever arise to the petitioner-3rd defendant, for, if he has a right to the property alongwith the plaintiff, such a right can still be pressed in the suit already filed by him along with his brother but which is being now allowed to be prosecuted only by his brother as a plaintiff. If there is no prejudice, then there is no reason why he should be transposed.

3. Transposition is again not a matter of right. The court will always ensure that there is no embarrassment at the trial. There is bound to be embarrassment if the brothers cannot patch up between themselves as plaintiffs and the suit will go on with the 3rd respondent being permitted to take up whatever pleas that he has taken against a co-defendant. It is possible in law to adjudicate rights even amongst co-defendants but it is not possible in law to adjudicate right between plaintiffs. The claim for transposition of 3rd defendant as co-plaintiff is, therefore, untenable and the revision petition is dismissed.

(K.KANNAN)
JUDGE

02.07.2015
sanjeev