

A.No.2263 of 2021
in C.S.No.374 of 2017

DR.G.JAYACHANDRAN, J.

This application is filed to transpose some of the plaintiffs as defendants.

2. The case has a chequered history, wherein, when the Chinthadripet Fish and Perishable Products Traders Society filed the Writ Petition, the 5th defendant raised an objection saying that an individual cannot file the suit on behalf of the Society, without its members. Hence, 19 members of Chinthadripet Fish and Perishable Products Traders Society were impleaded in A.Nos.4630 & 4631 of 2019.

3. Aggrieved by that, the 5th defendant has preferred O.S.A and the same was dismissed. Pending suit, some change of event had occurred, the plaintiffs 2, 6, 8, 9, 14, 15, 17, 18 and 20 have entered into a fresh lease deed with 5th defendant. This has now forced the remaining plaintiffs to take out this Application to transpose those plaintiffs, who entered into lease deed with the 5th defendant *pendente lite*.

4. The Learned Counsel appearing for the 5th defendant would submit that, the parties who are not interested to agitate cannot be retained as parties in the suit and therefore, this application has to be dismissed and the names of the plaintiffs who are not inclined to contest the suit shall be struck off.

5. The plaintiff Nos.2, 6, 8, 9, 14, 15, 17, 18 and 20, have filed memo, wherein,

it is stated that, they have no objection for the Court to proceed and decide the matter on merits. However, there is no reason to retain as defendants. The relevant paragraph Nos.5, 6 and 7 of the affidavit are extracted below:-

“5. I submit that since I and 8 other Plaintiffs who are sought to be transposed as Defendants were initially part of the fish merchants association, which was non-operational for a long period of time and since the common interest was projected to us, we were also made plaintiffs and some of us were also impleaded by way of specific order from this Hon'ble Court upon impleading applications.

6. I submit that I have no objection in this Hon'ble Court proceeding to decide the matter on merits and coming to just conclusion based on evidence and law. There is no relief claimed against me as the suit was never framed against me. Therefore, there is no reason to retain me as a Defendant along with other Defendants against whom the Plaintiffs have sought for specific reliefs. Under these circumstances, I do not want to be compelled to be a party to the suit just because the Plaintiff wants to retain us as Defendants.

7. I request this Hon'ble Court to pass an order to remove my name from the array of parties of plaintiffs as my co-plaintiffs do not want me to be a Plaintiff anymore in view of the application seeking to transpose me and 8 other Plaintiffs as Defendants in the suit and also for the reason that I will not challenge or question the proposed Decree or Judgment to be

passed by this Hon'ble Court in the above suit."

6. This Court is of the view that having found that they are necessary parties and being impleaded, and the same has been confirmed in O.S.A, these plaintiffs cannot be struck off due to some change of event. Hence, transpose as defendants as sought by the remaining plaintiffs. If these transpose parties are interested in the *lis*, let them participate or they can take their own course of action according to legal advice.

7. As a result, the ***Application No.2263 of 2021 is allowed.*** No costs. The Learned Counsel for the plaintiffs are directed to file amended plaint copy on or before 04.10.2021.

bsm

13.09.2021

WEB COPY



A.No.2263 of 2021
in C.S.No.374 of 2017

WEB COPY

13.09.2021