

C.M.P.Nos.26327 & 26336 of 2019
in A.S.Nos.649 & 651 of 2019

Dr.G.JAYACHANDRAN, J.

Heard the Learned Counsel for the appellant and the Learned Counsel for the respondent.

2. This Application is filed to transpose the respondents 8 & 9 as appellants in view of the demise of the sole appellant.

3. The Learned Counsel for the petitioner submitted that the defendants 9 & 10 were impleaded as respondents 8 & 9, pending suit when the 3rd defendant died. Now, on the demise of the appellant, they are the surviving legal heirs of the deceased appellant. Therefore, they have to be transposed the respondent 8 & 9 as appellants 2 & 3, as per Order 23 Rule 1 of C.P.C.

4. The Learned Counsel for the respondents 3 to 7 would submitted that the transpose petition should not be allowed since the proposed appellants were already party to the proceedings and have not preferred any appeal against the Trial Court judgment. Therefore, they are estopped from challenging the trial Court judgment by getting transposed.

Dr.G.JAYACHANDRAN, J.

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5. This Court is not convinced by the said submission because, the transpose of the respondent Nos.8 & 9 as appellants not in their individual capacity but as legal heirs of the deceased sole appellant. They only enter into the shoes of the sole appellant and they cannot have any contention different than what the appellant has raised before the Trial Court. Since, the point for consideration in the appeal is whether the suit property is the estate of the deceased Victor Cojande Therese Cannou or it is the community property. The application to transpose the respondents 8 & 9 are allowed, without prejudice to the respective plea in the First Appeal.

11.03.2021

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