



A.No.83 of 20
in C.S.No.385 of 2017

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N.SESHASAYEE, J.

This application is filed to transpose the plaintiff viz. Clement Martyn, as the 4th defendant in the above suit.

2.The suit is laid for partition. It is the estate of certain Edward Martyn, he left behind three heirs viz. 1.Clement Martyn, (1st plaintiff) 2.Christopher Martyn and 3.Premila Martyn. The entire branch of Pramila Martyn have died without any further LRs. This lays only the branches of Clement Martyn and Christopher Martyn in the frame.

3.As stated earlier, Clement Martyn is the 1st plaintiff, Christopher Martyn and his wife have died and they have two children viz. Julian Rajiv Martyn who is the 1st defendant and Deepak Ranjit Martyn, the 2nd plaintiff. The 2nd defendant is the wife of the 1st defendant.

4.The 2nd plaintiff along with his paternal uncle (1st plaintiff) has laid the present Suit for partition. Be that as it may, the defendants have stated to have served with typed set of papers on the plaintiffs, wherein, they disclosed that Edward Martyn had executed a Will in their favour and that their paternal uncle viz. Clement Martyn (1st plaintiff) had filed an affidavit lending his consent to the same. In view of the same, the 2nd plaintiff contends that in the context of the cause of action, both the plaintiffs cannot sail together for pursuing their remedy for partition, hence, he seeks transposition of the 1st plaintiff as the 4th defendant.



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5.Learned counsel for the defendants 1 and 2 seeks time for filing their objections.

6.This Court is not inclined to grant time as they did not have their role here. After all their right of defence to the cause of action is intact.

7.This Court has nothing on record to disbelieve the statement of the learned counsel for the plaintiff. Apparently, there will be a conflict of interest if not contradictory interest vis-a-vis cause of action of the Suit, both the plaintiffs were to sail together. Hence, this application is allowed and the 1st plaintiff is transposed as the 4th defendant.

8.Though the plaintiff has to carry out amendments, in view of the ongoing restrictions in holding the physical Court but at the same time to ensure that unnecessary time is not lost for carrying out amendment, this Court now requires the Registry to carry out necessary amendment in the plaint.

9.Post the matter on 15.02.2022.

19.01.2022

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