



A.No.3791 of 2023 in CS No.801 of 2016

A.A.NAKKIRAN, J.

This application has been filed by the applicant/2nd defendant to transpose the 2nd defendant as plaintiff in the suit.

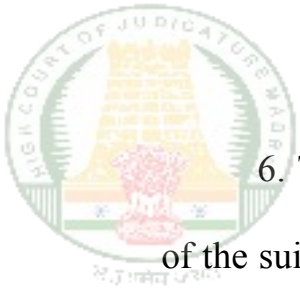
2. The learned counsel for the applicant/2nd defendant submitted that originally, the suit has been filed by the 1st respondent/plaintiff for the relief of partition and after filing the written statement, the suit is ripe for trial. Meanwhile, few mediations took place between both the parties and since there was no consensus arrived, the suit was referred back to this Court, On 25.04.2023, the 1st respondent/plaintiff through his counsel represented that he is going to withdraw the suit and not interested to prosecute the suit. The applicant/2nd defendant has also raised serious objection for withdrawing the suit on the ground that the suit is one for partition, where the plaintiff is the defendant and the defendant is the plaintiff and therefore, the suit cannot be simply allowed to be withdrawn. The applicant/2nd defendant is residing overseas at Australia and he is unable to personally appear before this Court and hence, he has come forward with the present application to transpose the 2nd defendant as plaintiff in the suit.

3. The learned counsel for the 1st respondent/plaintiff submitted that this application is not maintainable and hence, he strongly opposes to allow this application and prays to permit the 1st respondent/plaintiff to withdraw the suit.



4. The learned counsel for the 2nd respondent/1st defendant submitted that the suit is pending adjudication on the file of this Court and the plaintiff has till date not filed any memo of withdrawal before this Court withdrawing his suit nor abandoning his claim. Such being the case, the filing of an application for transposition is not only presumptuous, mistaken and not maintainable. A perusal of Order XXXIII Rule 1A reveals that an application for transposition can be filed in two contingencies; firstly, when the plaintiff withdraws the suit or secondly, when the plaintiff abandons the suit. In other words, there is no question of transposition in a presupposed or presumed eventuality, that the suit would be either withdrawn nor abandoned. He further submitted that the 2nd defendant in para 2 of his written statement stated that "the suit against the 2nd defendant is not maintainable either in law or on facts and is liable to be dismissed in limine...", whereas in para 11 of the written statement it is stated that "this Court may be pleased to pass a preliminary decree for partition as prayed for in the plaint taking into consideration the solemn wishes of L.M.Noronha, both in the Last Will and Testatment dated 28.08.2008 and the Sworn Affidavit dated 01.03.201". To the Contrary, he has come forward with the present application to transpose him as plaintiff is merely a dilatory tactic to delay the proceedings and hence this application is liable to be dismissed.

5. Admittedly, it is a suit for partition and the plaintiff intends to withdraw the suit. Moreover, the 2nd defendant admitted in his written statement that a preliminary decree for partition may be passed. In such circumstances, this Court is inclined to allow this application.



6. The learned counsel for the applicant/2nd defendant submitted that the keys of the suit property are with the plaintiff and prayed to hand over the keys to the 2nd defendant.

7. Accepting the submissions made by the learned counsel for the applicant/2nd defendant, this Court is inclined to direct the 1st respondent/plaintiff to hand over the keys of the suit property to the 2nd defendant.

8. For carrying out necessary amendment and filing amended plaint copy, post on 26.09.2023.

14.09.2023

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