HC-KAR

NC: 2026:KHC:61144
WP No. 24314 of 2026

CNR: KAHC010536622026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT PETITION NO. 24314 OF 2026 (GM-CPC)

BETWEEN:

1. SRI RAJAPPA
   SON OF LATE MUNIVENKATAPPA
   @ MUNIVENKATAIAH,
   AGED ABOUT 52 YEARS,
   RESIDING AT 4, 4TH CROSS,
   1ST MAIN, BYATARAYANPURA,
   BENGALURU 560026.

...PETITIONER

(BY SRI PUNITH C., ADVOCATE)

AND:

Digitally signed by VINUTHA B S
Location: High Court of Karnataka

1. SRI SREEDHARA K. M.,
   SON OF LATE MUNIVENKATAPPA
   @ MUNIVENKATAIAH,
   AGED ABOUT 56 YEARS,
   RESIDING AT 4, 4TH CROSS,
   1ST MAIN, BYATARAYANPURA,
   BENGALURU 560026

2. SRI. PRAKASHA,
   SON OF LATE MUNIVENKATAPPA @
   MUNIVENKATAIAH,
   AGED ABOUT 60 YEARS,
   RESIDING AT 4, 4TH CROSS,

1ST MAIN, BYATARAYANPURA,
BENGALURU 560026.

3. SRI.SOMAIAH,
SON OF LATE MUNIVENKATAPPA @
MUNIVENKATAIAH,
AGED ABOUT 58 YEARS,
RESIDING AT M.A.COLONY,
MARKONAHALLI,
CHANDANAHALLI,
AGRICULTURE DEPARTMENT COLONY,
AMRUTHUR HOBLI,
KUNIGAL TALUK,
TUMAKURU DISTRICT - 572130

…RESPONDENTS

(BY SRI B.S. NATARAJA, ADVOCATE FOR R3;
VIDE ORDER DATED 06.08.2026 NOTICE TO
R1 & R2 IS DISPENSED WITH)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SETTING ASIDE THE IMPUGNED ORDER DATED 10.03.2026 AS PER ANNEXURE-G PASSED IN O.S.NO.42/2023 BY THE LEARNED ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, KUNIGAL ON I.A.NO.11 FILED UNDER ORDER 1 RULE 10(6) CPC AS PER ANNEXURE- E FILED BY THE PETITIONER AND THEREBY ORDER TO ALLOW THE APPLICATION.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL ORDER

The present writ petition assails the order dated 09.03.2026 passed by the Additional Senior Civil Judge and JMFC, Kunigal, in O.S. No. 42/2023, whereby I.A. No. 11 filed under Order I Rule 10(6) of the Code of Civil Procedure, 1908, seeking transposition of defendant No. 3 as plaintiff No. 2, came to be rejected.

2. Respondent No. 1, being the plaintiff, instituted the suit seeking partition of the suit schedule properties. Defendant Nos. 1 and 3 filed their written statements claiming their respective shares in the suit schedule properties. Defendant No. 2 filed a written statement along with a counterclaim seeking declaratory reliefs on the basis of a Will dated 03.12.2011 and a release deed dated 19.11.2022.

2.1 The Trial Court rejected the application on the ground that the plaintiff had neither sought withdrawal of the suit nor expressed any intention to abandon the same.

3. Learned counsel appearing for the petitioner submits that the petitioner was defendant No. 3 in the suit. When defendant

No. 2 filed a counterclaim seeking declaratory reliefs, the plaintiff expressed no objection to the counterclaim being decreed. It is contended that the plaintiff is colluding with defendant No. 2 and is not effectively contesting the reliefs sought in the counterclaim. In order to effectively contest the said reliefs, the petitioner filed an application seeking transposition from defendant No. 3 to plaintiff No. 2.

3.1 Learned counsel further submits that the plaintiff has no objection to the petitioner being transposed as plaintiff No. 2. However, the Trial Court, without considering the necessity of such transposition in the light of the alleged collusion between the plaintiff and defendant No. 2, erroneously rejected the application. It is further contended that the judgment relied upon by the Trial Court is inapplicable to the facts of the present case. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Azgar Barid v. Mazambi*** reported in ***(2022) 5 SCC 334***, to contend that, in a suit for partition, the positions of the plaintiff and the defendants are interchangeable.

4. Per contra, learned counsel appearing for respondent No. 3 submits that the transposition of a defendant as a plaintiff can be permitted only when the plaintiff seeks to withdraw the suit or expresses an intention to abandon the same. Since neither of these circumstances arises in the present case, it is contended that the Trial Court was justified in rejecting the application.

5. Heard the learned counsel for the parties and perused the records.

6. The suit is one for partition. The petitioner, who is defendant No. 3, has filed a written statement claiming a share in the suit schedule properties. Defendant No. 2 has filed a written statement along with a counterclaim seeking declaratory reliefs founded on the Will and the release deed referred to above. The petitioner contends that the plaintiff is colluding with defendant No. 2 and is not effectively contesting the reliefs sought in the counterclaim. In these circumstances, the petitioner seeks transposition as plaintiff No. 2 to effectively contest the said claim.

7. The Hon'ble Supreme Court, in ***Azgar Barid v. Mazambi***, reported in ***(2022) 5 SCC 334***, has recognised that, in a suit for partition, the positions of the plaintiff and the defendants are interchangeable, as each party asserts rights in relation to the other parties. It has been held that, so long as the suit remains pending, a defendant may seek transposition as a plaintiff, and a plaintiff may likewise seek transposition as a defendant, depending on the facts and circumstances of the case.

8. The aforesaid principle is applicable to the facts of the present case. The Trial Court, while rejecting the application, has not assigned cogent reasons as to why the proposed transposition would be impermissible or prejudicial to the rights of the other parties. The view that transposition can be permitted only when the plaintiff seeks to withdraw or abandon the suit fails to take into account the principles governing transposition in a partition suit, as explained by the Hon'ble Supreme Court.

9. In a suit for partition, all parties claiming shares in the suit schedule properties have an interest in the determination

of their respective rights. Having regard to the nature of the suit, the counterclaim filed by defendant No. 2, and the petitioner's contention that the plaintiff is not effectively contesting the same, the petitioner's request for transposition deserves to be allowed. The fact that the plaintiff has no objection to the proposed transposition further supports the petitioner's request.

10. Permitting the petitioner to be transposed as plaintiff No. 2 would enable the petitioner to effectively participate in the adjudication of the dispute and would not, by itself, prejudice the rights of defendant No. 2 or the other parties. Their respective rights and contentions would remain open for adjudication in accordance with law.

11. In that view of the matter, the impugned order cannot be sustained and warrants interference.

12. Accordingly, the following :

O R D E R

I. The writ petition is ***allowed***.

II. The order dated 09.03.2026 passed by the Additional Senior Civil Judge and JMFC, Kunigal, in O.S. No. 42/2023, rejecting I.A. No. 11, is hereby ***set aside***.

III. I.A. No. 11 filed under Order I Rule 10(6) of the Code of Civil Procedure, 1908, is ***allowed***.

IV. The petitioner is permitted to be transposed as plaintiff No. 2 in O.S. No. 42/2023.

V. The Trial Court shall endeavour to dispose of the suit expeditiously, in accordance with law.

VI. All contentions of the parties on the merits of the suit and the counterclaim are left open for consideration by the Trial Court.

Sd/-
(K. V. ARAVIND)
JUDGE

VN
List No.: 1 Sl No.: 6