



C.M.P.No.14424 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 23.02.2026

PRESENT:

**THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

C.M.P. No.14424 of 2024

in

S.A. No. 839 of 2013

S.Sadasivam,  
Chairman,  
Swamy Vivekanandha Trust  
Vennandhur Village & Post,  
Rasipuram Taluk, Namakkal District.

... Petitioner

Vs.

1.R.Kandasamy

2.Valliammal

3.P.Saroja

4.The Tahsildar,  
Rasipuram Post & Taluk,  
Namakkal District.

5.The Director of School Education,  
Chennai.

6.The Chief Educational Officer,  
Namakkal Taluk & District.

7.The Regional Director,  
NCTE CSD Buildings,  
Jaishalli, HMT Post,  
Bangalore.

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8. The Director,  
Tamil Nadu Teacher's Training Education Research  
and Training Centre,  
TBI, Chennai – 600 006.

... Respondents

**PRAYER:** : Civil Miscellaneous Petition filed under Order XXIII Rule 1 (A) of the Civil Procedure Code, praying to permit the petitioner herein to be transposed as 3<sup>rd</sup> appellant in the above second appeal and pass such further or other orders as this Court may be deem fit in the facts and circumstances of the case and thus render justice.

For Petitioner : Mr. P. Wilson, Senior Counsel for  
Mr. P. Dinesh Kumar.

For Respondents : Mr. S.L. Sudharsanam for R1 & R2.  
Mr. K. Duraisami, Standing Counsel for  
M/s. Kandan Duraisami for R3.  
Mr. B. Tamilnidhi, Additional Government  
Pleader for R4 to R6 & R8.  
Mr. P.R. Gobinath for R7.

## **ORDER**

Heard.

2. This Civil Miscellaneous Petition is filed by the petitioner, who is arrayed as the second respondent in the Second Appeal, seeking to transpose himself as an appellant by invoking Order XXIII Rule 1-A CPC.

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3. The counter opposes the petitioner's application stating that the petitioner (4th defendant) neither filed a separate written statement nor deposed in the partition suit, did not file any independent appeal against the trial court's preliminary decree dated 04.08.2010, and never paid court fee at any stage; hence, at this late stage, the transposition petition is said to be unjustified, intended only to prolong proceedings, and barred/objectionable under the Limitation Act and Court Fees Act; accordingly, dismissal of C.M.P. No. 14424 of 2024 was prayed.

4. The Second Appeal arises out of a suit for partition and separate possession. The suit was decreed by the Trial Court and the decree was confirmed by the First Appellate Court. The Second Appeal was preferred by the first and second defendants.

5. The petitioner states that he is the Chairman of Swamy Vivekananda Trust and relies upon Ex.A4 sale deed dated 08.10.2007, under which the Trust is stated to have purchased an interest in the suit properties.



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6. The petitioner seeks transposition mainly on the ground that the first appellant has died during the pendency of the Second Appeal and that the surviving appellant may not effectively prosecute the matter.

7. The petitioner does not claim as a legal heir of the deceased first appellant. The pleadings indicate that the deceased left behind two daughters, who are already on record, one as appellant and the other as respondent; thus, the estate of the deceased appellant stands represented. The petition cannot, therefore, be sustained on the footing of representation of the estate.

8. The petitioner claims only as a purchaser through the Trust under Ex.A4. Such derivative interest does not confer a right to be transposed as an appellant to prosecute the Second Appeal as though he had preferred it in his own right, particularly when no independent appeal has been filed against the concurrent decree.

9. The mere apprehension that the surviving appellant may not effectively prosecute the matter is not a legally recognised ground for transposition. Even otherwise, assuming the petitioner's purchase interest requires protection, the appropriate procedural route is not transposition under Order XXIII Rule 1-A CPC.



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10. The reliance placed by the petitioner on the decision of the Hon'ble Supreme Court in **R. Dhanasundari @ R. Rajeswari v. A.N. Umakanth & Ors.**, decided on 06.03.2019, is wholly misconceived and inapplicable to the facts of the present case.

11. In the said decision, the subsequent purchasers from one of the legal heirs of the original plaintiff were initially impleaded as appellants and later transposed as respondents. When the original appellant compromised with the defendant and sought withdrawal of the appeal, the transposed respondents sought re-transposition as appellants in order to protect their independent and subsisting interest in the subject matter, which would otherwise have been defeated. In that peculiar factual background, the Hon'ble Supreme Court, while interpreting Order XXIII Rule 1-A CPC, held that transposition is permissible where: (i) The plaintiff seeks to withdraw or abandon the claim under Order XXIII Rule 1 CPC; (ii) The defendant seeking transposition has a direct and substantial interest in the subject matter of the suit; and (iii) A substantial question remains to be adjudicated, failing which the applicant's rights would stand defeated.



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12. The ratio laid down therein is thus confined to situations where withdrawal of proceedings would prejudice an independent legal right of the party seeking transposition.

13. In the case on hand, the situation stands on an entirely different footing. The existing appellant is actively prosecuting the appeal. There is neither any compromise nor any attempt to withdraw or abandon the proceedings. Consequently, the foundational requirement for invoking Order XXIII Rule 1-A CPC does not arise at all.

14. Further, while it is permissible under the Code of Civil Procedure to implead any number of parties as defendants or respondents to ensure complete adjudication of the dispute, no person can be compelled to join as a co-plaintiff or co-appellant without the consent of the existing plaintiff or appellant. To permit such impleadment would virtually compel the original plaintiff or appellant to litigate in association with a party against whom he does not desire to proceed jointly, which is legally impermissible.



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15. Moreover, even if there exists divergence of interest among defendants or respondents, the Code does not mandate their transposition as plaintiffs or appellants. A defendant can very well and effectively put forth his independent defence or even contest the claim of co-defendants while remaining in the position of a defendant. There is no legal impediment preventing a defendant from asserting his rights or protecting his interest without being transposed as a plaintiff or appellant.

16. In the absence of any withdrawal of proceedings or imminent threat to the applicant's rights, the extraordinary step of transposition is neither warranted nor justified. The factual matrix of the present case does not attract the principles laid down in the decision relied upon by the petitioner.

17. Accordingly, the said judgment does not advance the petitioner's case and is clearly distinguishable on facts and law.

18. The decision of this Court in **Manickam @ Chennappan v. Munuswamy** (2016) 4 LW 56, relied upon by the petitioner, reiterates the same principle that Order XXIII Rule 1-A is not a standalone remedy and becomes applicable only



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when there is a move for withdrawal or abandonment under Order XXIII Rule 1; in the absence of such withdrawal or abandonment, an application seeking transposition is not maintainable. The said decision, therefore, does not assist the petitioner.

19. The decision in **M. Krishnamoorthy v. Sahara Bibi** (2014) 5 CTC 501, relied upon by the petitioner, turned on a situation where the sole appellant had died and the purchaser pendente lite was permitted to be transposed to avoid multiplicity and secure complete adjudication. In the present case, the surviving appellant is on record and the appeal is being prosecuted; the contingency which warranted transposition in that case does not arise.

20. The decision in **M.S. Arputhaswamy v. M. Savarimuthu Udayar** (1996) 2 LW 187 dealt with issues of abatement and transposition to effectively continue proceedings. Here, there is no abatement issue and the estate of the deceased appellant is already represented; the ratio is inapplicable.

21. The decision in **Azgar Barid (dead) v. Mazambi @ Pyaremabi** (2022) 5 SCC 334 contains general observations that, in a partition suit, positions of plaintiff and defendant may be interchangeable depending on the reliefs and shares.



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Such general principle cannot override the specific statutory scheme of Order XXIII Rule 1-A CPC to permit transposition as an appellant in the absence of withdrawal or abandonment; hence, it does not aid the petitioner.

22. For the foregoing reasons, this Court finds that the petition is misconceived and not maintainable. In the result, C.M.P. No.14424 of 2024 is dismissed. No costs.

**23.02.2026**

*ay*

Index : Yes/No

NCC : Yes/No

Speaking Order / Non-Speaking Order

To

1.The Tahsildar,  
Rasipuram Post & Taluk,  
Namakkal District.

2.The Director of School Education,  
Chennai.

3.The Chief Educational Officer,  
Namakkal Taluk & District.

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**DR. A.D. MARIA CLETE, J**

*ay*

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