

KABC0A0025192009



**IN THE COURT OF THE 74th ADDL. CITY CIVIL AND
SESSIONS JUDGE, MAYOHALL UNIT, BENGALURU.**
(CCH-75)

Dated: This the 9th day of June, 2025.

PRESENT:

Sri.PRAKASH CHANNAPPA KURABETT, B.Sc., LL.B.,(Spl.),
74th Addl. City Civil and Sessions Judge, Bengaluru.

O.S. No.25740/2009

Plaintiff:	Smt.Y.P.Hemamalini Reddy.
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(Rep.by Sri.GRLR, Advocate)

V/S

Defendants:	Late.Sri.A.N.Subhaschandra, died on 14.01.2023, Rep.by his legal heirs, 1(a). Smt.Jyothi and others.
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(Rep.by Sri.SDNP, Advocate for defts.No.1 (a) & (b))
(Rep.by Sri.AMR, Advocate for deft.No.2)
(Rep.by Sri.KUN, Advocate for deft.No.4)
(Rep.by Sri.BKS, Advocate for deft.No.5)
(Rep.by Sri.AK, Advocate for defts.No.6 & 7)

PARTIES IN IA No.IX:

Applicants:	Miss.A.S.Anusha & another - Defendants No.6 & 7.
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V/S

Opponent:	Smt.Y.P.Hemamalini Reddy - Plaintiff.
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ORDERS ON IA No.IX

This is an application filed by defendants No.6 & 7 under Order XXIII Rule 1 (5) read with Sec.151 of CPC seeking dismissal of memo dated 27.9.2024 filed by the plaintiff and allow the plaintiff to withdraw all her claims and allow this suit to continue to be contested on merits until final disposal and permission to lead their evidence and treating the written statement of the applicants as plaint.

2. *In the affidavit annexed to the application applicants' power of attorney holder has sworn to the facts that this is a suit for partition as held by the court under Order dated 13.6.2023 on the application filed u/O 22 Rule 4 by the plaintiff to implead the defendants No.1 (a) and 1 (b)*

and the same was allowed with the observation that this is a comprehensive suit. The plaintiff, the mother of the defendants No.6 & 7 has deviated from her original stand of representing these applicants when they were minors, in recent times. The plaintiff has colluded with the defendants No.1 (a), 1 (b) and 2 to defeat the case of these applicants. However any steps that they may seek to take cannot bring down the indefeasible rights of these applicants in the suit schedule property. The plaintiff has been adverse to the applicants from 8.7.2016 when she abandoned these objectors and fled away and she is liable to pay these applicants the rents due to these applicants. The plaintiff is estopped by law if she attempts to take contrary stands with respect to the right of her children, none other than these objectors, with respect to their position as Coparceners in the Hindu Undivided Family property-schedule property.

3. *Further it has been averred that a suit for partition is peculiar in that all plaintiffs and defendants are of equal*

status; i.e., all defendants are plaintiffs and all plaintiffs are defendants. The plaintiff's and the other defendants' actions are 'Suppressio veri expressio falsi'. The plaintiff and the other defendants have filed a P & SC No.25003/2024 without disclosing the material facts, about the rights of these or at least their existence and dispute. The plaintiff is barred by Order XXIII Rule 1 (5) of CPC from withdrawing this suit without the consent of the other plaintiffs and defendants. The plaintiff has not sought the permission as mandated u/O XXIII Rule 1 (5). The plaintiff has sought to withdraw this suit after close to 15 years, at such a belated stage, after her evidence, cross-examination, and after contesting this case on her and her adopted children's behalf. On 11.1.2024 the court dismissed the IA u/O VI Rule 17 of CPC to amend the plaint and thereby transposed the applicants as defendants No.6 & 7 and they have filed written statement and the court has framed the additional issues on 6.6.2024.

4. Further it has been averred that the defendants No.1 (a) & 1 (b) are complete strangers to this Hindu Undivided Property, and only seek to misappropriate shares of the same on the basis of fraudulent claims on concocted documents. The plaintiff is the enabler to this fraud being played on the court. The applicants have paid the requisite court fee u/S 35 (2) of KCF and SV Act and laid there continued claim after being transposed plaintiff No.2 & 3 as defendants No.6 & 7. Even if the plaintiff were to abandon all her claims this suit must still continue on merits between the remaining parties, for the reason that there remain substantial questions to be decided among the remaining defendants. The has suo-motu powers to transpose these applicants to the position of plaintiffs in this suit as u/O XXIII Rule 1A and may also treat the written statement of these applicants as the plaint in this suit. This suit cannot be withdrawn in these circumstances.

5. Further the applicants have averred that no prejudice will be caused, if application is allowed and on contrary if the application is not allowed they will be put to hardship. Accordingly has prayed for allowing the application.

6. The plaintiff filed objection to this application on the ground that the application is not maintainable either in law or on facts and further the applicants have not approached the court with clean hands. They have suppressed material facts. When the plaintiff wants to withdraw this suit unconditionally, the defendants have no right to deny the plaintiff to withdraw the case. The question of alleged adoption is to be decided in different forum not in this suit. Nothing prevents the defendants to take necessary proceedings separately in accordance with law. It is denied that the plaintiff sought to withdraw this suit after has close to 15 years at such a belated stage, after her evidence, cross-examination, and after contesting this case on her and her

adopted children's behalf and it is discretion of the plaintiff to withdraw the suit under required circumstances. Further it is denied that the plaintiff's and the other defendant's actions are 'Suppressio very expression falsi' and the court was impleaded the defendants No.1 (a) and 1 (b) with the observation that this is a comprehensive suit. Thereby she has prayed for dismissal of the application.

7. The defendant Nos.1 (a) & (b) has also filed objection stating that the application is not at all maintainable and further she has opposed on the ground that this application has been filed only to harass these defendants. The defendants No.6 & 7 have not filed any written statement or statement after transposed as defendants No.6 & 7. Even they did not challenge the order of transpose. There is no claim by the defendants No.6 & 7 and they have not paid any court fee also. Hence, they have no locus standi or right to object for withdrawal of the suit. Prima facie they have no manner or right, title and interest

over the suit property. If the defendants No.6 & 7 have any claim over the plaintiff they have to file separate suit. There is no claim from defendants No.6 & 7 till today. Accordingly have prayed for dismissal of the application.

8. Heard and perused the materials on record.

9. The learned counsel for the defendants No.6 & 7 has filed memo with a citation reported in (2002) AIR KAR 76 between Smt.Gowramma v/s Nanjappa and others.

10. The point that would arise for my consideration is:

“Whether the applicants are entitle for the relief as claimed in IA?”

11. My answer is **in the Affirmative**, for the following:-

REASONS

12. This is a suit filed by plaintiff seeking partition of her 1/4th share in the suit schedule property, on the ground that plaintiff is the wife of one Dr.A.N.Raja Venkata Reddy,

he died on 19.12.2003 intestate leaving behind him, his wife, that is, plaintiff and his mother Gowramma as his legal heirs. He had married plaintiff No.1 in the year 1986. Plaintiff had no children, after the death of A.N.Raja Venkata Reddy, the plaintiff adopted one male and female child on 04.11.2005, that is, defendants No.6 & 7. Wherein the defendants No.1 & 2 are the brothers of Late.A.N.Raja Venkata Reddy and third defendant is the sister of Dr.A.N.Raja Venkata Reddy. The suit schedule properties are the ancestral properties of plaintiff's husband. Thereby the plaintiff has claimed share in the suit schedule properties. The defendant No.2 who is one of the brother of deceased Raja Venkata Reddy has filed written statement, wherein he has denied the alleged adoption and contested the suit.

13. The records would show that during the pendency of these proceedings the first defendant who is brother of deceased Raja Venkata Reddy died and plaintiff No.1 filed

an application under Order XXII Rule 4 of CPC to bring the LR's of deceased first defendant. Wherein the plaintiff No. 2 filed the objection to the said application. But, this court allowed the application by passing an order on 13.06.2023. After the order has been passed and after defendant No.1 (a) and (b) have been impleaded as LR's of defendant No.1.

14. Order XXIII Rule 1 & 3 of CPC is reproduced hereunder for convenience:

“(1) Under this provision the plaintiff at any time after the institution of a suit, against all or any of the defendants may abandon his suit or abandon a part of his claim.

(2)

(3) Under Sub-clause (3) if the court is satisfied that a suit must fail by reasons of some formal defect or that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of the suit or part of the claim. On satisfaction the court may on such terms as it thinks fit can grant plaintiff to

withdraw the suit with liberty to institute a fresh suit in respect of the subject matter.”

15. Now the court has to consider whether there is any formal defect in the suit or whether there are any sufficient grounds for allowing the application.

16. In the affidavit applicants' power of attorney holder has sworn that this is a suit for partition as held by the court under Order dated 13.6.2023 on the application filed u/O 22 Rule 4 by the plaintiff to implead the defendants No.1 (a) and 1 (b) and the same was allowed with the observation that this is a comprehensive suit. The plaintiff, the mother of the defendants No.6 & 7 has deviated from her original stand of representing these applicants when they were minors, in recent times. The plaintiff has colluded with the defendants No.1 (a), 1 (b) and 2 to defeat the case of these applicants. However any steps that they may seek to take cannot bring down the indefeasible rights of these applicants in the suit schedule property. The

plaintiff has been adverse to the applicants from 8.7.2016 when she abandoned these objectors and fled away and she is liable to pay these applicants the rents due to these applicants. The plaintiff is estopped by law if she attempts to take contrary stands with respect to the right of her children, none other than these objectors, with respect to their position as Coparceners in the Hindu Undivided Family property-schedule property.

17. *Further it has been averred that a suit for partition is peculiar in that all plaintiffs and defendants are of equal status; i.e., all defendants are plaintiffs and all plaintiffs are defendants. The plaintiff's and the other defendants' actions are 'Suppressio veri expressio falsi'. The plaintiff and the other defendants have filed a P & SC No.25003/2024 without disclosing the material facts, about the rights of these or at least their existence and dispute. The plaintiff is barred by Order XXIII Rule 1 (5) of CPC from withdrawing this suit without the consent of the other*

plaintiffs and defendants. The plaintiff has not sought the permission as mandated u/O XXIII Rule 1 (5). The plaintiff has sought to withdraw this suit after close to 15 years, at such a belated stage, after her evidence, cross-examination, and after contesting this case on her and her adopted children's behalf. On 11.1.2024 the court was dismissed the IA u/O VI Rule 17 of CPC to amend the plaint and thereby transposed the applicants as defendants No.6 & 7 and they have filed written statement and the court has framed the additional issues on 6.6.2024.

18. *Further it has been averred that the defendants No.1 (a) & 1 (b) are complete strangers to this Hindu Undivided Property, and only seek to misappropriate shares of the same on the basis of fraudulent claims on concocted documents. The plaintiff is the enabler to this fraud being played on the court. The applicants have paid the requisite court fee u/S 35 (2) of KCF and SV Act and laid there continued claim after being transposed plaintiff No.2 & 3 as*

defendants No.6 & 7. Even if the plaintiff were to abandon all her claims this suit must still continue on merits between the remaining parties, for the reason that there remain substantial questions to be decided among the remaining defendants. The has suo-motu powers to transpose these applicants to the position of plaintiffs in this suit as u/O XXIII Rule 1A and may also treat the written statement of these applicants as the plaint in this suit. This suit cannot be withdrawn in these circumstances.

19. On the other hand the plaintiff has contended that when the plaintiff wants to withdraw this suit unconditionally, the defendants have no right to deny the plaintiff to withdraw the case. The question of alleged adoption is to be decided in different forum not in this suit. Nothing prevents the defendants to take necessary proceedings separately in accordance with law. It is denied that the plaintiff sought to withdraw this suit after has close to 15 years at such a belated stage, after her evidence, cross-

examination, and after contesting this case on her and her adopted children's behalf and it is discretion of the plaintiff to withdraw the suit under required circumstances. Further it is denied that the plaintiff's and the other defendant's actions are 'Suppressio very expression falsi' and the court was impleaded the defendants No.1 (a) and 1 (b) with the observation that this is a comprehensive suit.

20. *The defendant Nos.1 (a) & (b) has also contended that this application has been filed only to harass these defendants. The defendants No.6 & 7 have not filed any written statement or statement after transposed as defendants No.6 & 7. Even they did not challenge the order of transpose. There is no claim by the defendants No.6 & 7 and they have not paid any court fee also. Hence, they have no locus standi or right to object for withdrawal of the suit. Prima facie they have no manner or right, title and interest over the suit property. If the defendants No.6 & 7 have any*

claim over the plaintiff they have to file separate suit. There is no claim from defendants No.6 & 7 till today.

21. *A perusal of record would show that the defendants No.6 & 7 have filed the instant application when the case was posted for defendants evidence. Having regard to the contention put-forth by the parties, the crux of dispute is whether the suit properties are the joint family properties of plaintiffs and defendants or the said properties are the self-acquired properties of father of the plaintiffs and defendants. I have perused the citation relied on by the defendants No.6 & 7. The citation relied on by the defendants No.6 & 7 is aptly applicable to the facts and circumstances of the present case in hand. In view of the above and my findings in foregoing paras that the dismissal of memo dated 27.9.2024 filed by the plaintiff and allow the plaintiff to withdraw all her claims and allow this suit to continue to be contested on merits until final disposal and permission to lead their evidence and treating the written*

statement of the applicants as plaint are the relevant to decide the disputes in controversy between the parties, I answer the Point for consideration in the **Affirmative** and pass the following:-

ORDER

**IA No.IX filed by the
defendants No.6 & 7 U/O XXIII
Rule 1 (5) r/w sec. 151 CPC is
allowed.**

No order as to costs.

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the 9th day of June, 2025).

(PRAKASH CHANNAPPA KURABETT)
LXXIV Addl. City Civil & Sessions Judge,
Mayohall Unit, City Civil Court,
Bengaluru. (CCH – 75)

