

A R. DHANASUNDARI @ R. RAJESWARI

v.

A.N. UMAKANTH & ORS.

(Civil Appeal No. 7292 of 2009)

B MARCH 06, 2019

[UDAY UMESH LALIT AND DINESH MAHESHWARI, JJ.]

- Code of Civil Procedure, 1908 – Or. XXIII, r.1-A r/w Or. I, r.10 – Property in question purchased in the name of partnership firm of the plaintiff and defendant no.1 – Firm dissolved– Property vested with the plaintiff– Suit filed by the plaintiff for cancellation of the sale deed, executed by defendant no.1, in favour of defendant no.2-appellant, allegedly despite having relinquished rights in the suit property – Plaintiff died, his 3 sons and 4 daughters impleaded as plaintiff nos.2 to 8 – Plaintiff no.5- respondent no.1 given power of attorney by his siblings – Suit decreed ex-parte – Decree set aside, suit restored – In the interregnum, plaintiff no.5 sold the suit property to respondent nos.2 to 4, who moved application for being impleaded as plaintiffs – Allowed, joined the suit as plaintiff nos.9 to 11– Plaintiff nos.2 to 4 & 6 to 8 revoked plaintiff no.5's power of attorney and moved application for transposition of plaintiff no.5 and plaintiff nos.9-11 as defendants – Allowed, plaintiff nos.5 and 9-11 transposed as defendant nos.3 to 6 – Plaintiffs sought withdrawal of suit – Objected by defendant nos.3-6 who also filed application u/Or. XXIII, r.1-A r/w Or. I, r.10 for transposition as plaintiffs – Allowed – On appeal, held: Or. I, r.10 provides for addition, deletion and substitution of parties and the proposition for transposition of a party from one status to another, by its very nature, inheres in sub-rule(2) of r.10 of Or. I – u/Or. XXIII, r.1, plaintiff may seek permission for withdrawal of suit or abandonment of part of claim– Rule 1-A thereof deals with an eventuality where the plaintiff withdraws his suit or abandons his claim but a proforma defendant has a substantial question to be decided against the co-defendant – Powers of the Court to grant prayer for transposition are very wide – Principal cause in the suit is challenge to the sale deed executed by defendant no.1, with the*

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original plaintiff asserting his ownership over the property— In the given status of parties, even if plaintiff nos.5 and 9 to 11 were transposed as defendant nos.3 to 6, their claim against defendant nos.1 & 2 did not come to an end and the suit remained essentially against the defendant nos.1 & 2— Interest of the existing plaintiffs as also the defendant nos.3 to 6 had been one and the same as against the defendant nos.1 & 2 — When the plaintiffs entered into an arrangement with defendant nos.1&2 and sought permission to withdraw the suit, the right of defendant nos.3-6 to continue with the litigation on their claim against defendant nos.1 & 2 immediately sprang up and they were entitled to seek transposition as plaintiffs u/Or.XXIII, r.1-A.

Code of Civil Procedure, 1908 – Or. I, r.10 – Object of – Discussed.

Dismissing the appeal, the Court

HELD: 1.1 On the facts and in the circumstances of this case, upon the existing plaintiffs seeking permission to withdraw under Order XXIII Rule 1 CPC, the defendant Nos. 3 to 6 have rightly been allowed to be transposed as plaintiffs under Order XXIII Rule 1-A read with Order I Rule 10 CPC and to continue with the suit, as originally filed against the defendant Nos. 1 and 2. The law of procedure relating to the parties to a civil suit is essentially contained in Order I of the Code of Civil Procedure, dealing with various aspects concerning joinder, non-joinder and mis-joinder of parties. Rule 10 of Order I specifically provides for addition, deletion and substitution of parties; and the proposition for transposition of a party from one status to another, by its very nature, inheres in sub-rule (2) of Rule 10 of Order I CPC. On the other hand, the law of procedure in relation to withdrawal and adjustment of suits is contained in Order XXIII of Code of Civil Procedure. As per Rule 1 thereof, a plaintiff may seek permission for withdrawal of suit or abandonment of a part of claim. Rule 1-A thereof deals with an eventuality where the plaintiff withdraws his suit or abandons his claim but a *pro forma* defendant has a substantial question to be decided against the co-defendant. The object of Rule 10 of Order I CPC is essentially to bring on record all the persons who are parties to the dispute

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- A relating to the subject matter of the suit so that the dispute may be determined in their presence and the multiplicity of proceedings could be avoided. [Paras 7-9] [656-F-H; 657-A, D, G, E]
- 1.3 As per Rule 1-A *ibid.*, in the eventuality of plaintiff
- B withdrawing the suit or abandoning his claim, a *pro forma* defendant, who has a substantial question to be decided against the co-defendant, is entitled to seek his transposition as plaintiff for determination of such a question against the said co-defendant in the given suit itself. The very nature of the provisions contained in Rule 1-A *ibid.* leaves nothing to doubt
- C that the powers of the Court to grant such a prayer for transposition are very wide and could be exercised for effectual and comprehensive adjudication of all the matters in controversy in the suit. The basic requirement for exercise of powers under Rule 1-A *ibid.* would be to examine if the plaintiff is seeking to
- D withdraw or to abandon his claim under Rule 1 of Order XXIII and the defendant seeking transposition is having an interest in the subject-matter of the suit and thereby, a substantial question to be adjudicated against the other defendant. In such a situation, the *pro forma* defendant is to be allowed to continue
- E with the same suit as plaintiff, thereby averting the likelihood of his right being defeated and also obviating the unnecessary multiplicity of proceedings. The present one is clearly a case answering to all the basics for applicability of Rule 1-A of Order XXIII read with Rule 10 of Order I CPC. The principal cause in the suit is challenge to the sale deed executed by defendant No.
- F 1 in favour of defendant No. 2, with the original plaintiff asserting his ownership over the property in question. In the given status of parties, even if the plaintiff Nos. 5 and 9 to 11 were later on transposed as defendant Nos. 3 to 6, the suit remained essentially against the defendant Nos. 1 and 2, that is, in challenge to the sale deed dated 23.03.1985, as executed by the defendant No. 1 in favour of the defendant No. 2. In regard to this cause, even if plaintiff Nos. 5 and 9 to 11 came to be transposed as defendant Nos. 3 to 6, their claim against defendant Nos. 1 and 2 did not come to an end; rather, the interest of the existing plaintiffs as also the defendant Nos. 3 to 6
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had been one and the same as against the defendant Nos. 1 and 2. In the given status of parties and the subject matter of the suit, when the plaintiffs entered into an arrangement with defendant Nos. 1 and 2 and sought permission to withdraw under Order XXIII Rule 1 CPC, the right of defendant Nos. 3 to 6 to continue with the litigation on their claim against defendant Nos. 1 and 2 immediately sprang up and they were, obviously, entitled to seek transposition as plaintiffs under Order XXIII Rule 1-A CPC. It is also noteworthy that even if some question is sought to be raised as regards the rights of the subsequent purchasers (defendant Nos. 4 to 6), the right of the defendant No. 3 (earlier the plaintiff No. 5) to prosecute the suit as a plaintiff remains rather indisputable in view of his status as one of the legal representatives of the original plaintiff. The right of the said defendant No. 3 (earlier the plaintiff No. 5) to challenge the sale deed between defendant No. 1 and defendant No. 2 did not get annulled only by his earlier transposition as the defendant; and he cannot be considered bound by the arrangement between the existing plaintiffs and the defendant Nos. 1 and 2. The Trial Court was justified in allowing the prayer for transposition. The High Court rightly declined to interfere.[Paras 10-13] [658-B-H; 659-A-E]

Anil Kumar Singh v. Shivnath Mishra (1995) 3 SCC 147 : [1994] 5 Suppl. SCR 135 - referred to.

Case Law Reference

[1994] 5 Suppl. SCR 135 referred to Para 9

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7292 F of 2009.

From the Judgment and Order dated 12.10.2006 of the High Court of Judicature at Madras in C.R.P. (PD) No. 10 of 2006.

A. N. Venugopala Gowda, Sr. Adv., M. A. Chinnasamy, G Ms. C. Rubavathi, V. Senthil Kumar, P. Raja Ram, Advs. for the Appellant.

Sunil Fernandes, Darpan Sachdeva, P. V. Yogeswaran, A. K. Upadhyay, Y. Lokesh, Babul Kumar, Mrs. D. Bharathi Reddy, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

- DINESH MAHESHWARI, J.** 1. This appeal by special leave is directed against the judgment and order dated 12.10.2006, as passed in C.R.P. (PD) No. 10 of 2006, whereby the High Court of Judicature at Madras has upheld the order dated 07.07.2005, as passed in O.S. No. B 219 of 2004 by the District Munsif, Chengalpattu allowing the application filed by defendant Nos. 3 to 6 for transposing them as plaintiffs, after the existing plaintiffs sought permission to withdraw the suit.

2. The prayer of defendant Nos. 3 to 6 to be transposed as plaintiffs under Order XXIII Rule 1-A read with Order I Rule 10 of the C Code of Civil Procedure, 1908 ('CPC'), came to be made and allowed in somewhat peculiar set of facts and circumstances, which could be noticed, in brief, as follows:-

- (a) The civil suit in question was originally instituted in the Court of the Principal Subordinate Judge, Chengalpattu by A.C. Nataraja D Mudaliar (original plaintiff) against A.V. Manoharan (defendant No.1 - respondent No. 1 herein) and R. Dhanasundari @ R. Rajeshwari (defendant No. 2 - appellant herein) for cancellation of the sale deed dated 23.03.1985, which was executed by defendant No. 1 in favour of defendant No.2. This suit was initially registered as O.S. No. 122 of 1989.
- E (b) The assertions in the plaint had been that the suit schedule property was purchased in the name of a partnership firm M/s South India Engineering Works of which, the plaintiff and the defendant No. 1 were the partners; and that the said firm was dissolved by a deed of dissolution dated 22.05.1971 whereby, the defendant No. 1 A.V. F Manoharan was relieved of the assets and liabilities of the firm and the suit schedule property vested with the plaintiff A.C. Nataraja Mudaliar. It was alleged that the defendant No. 1 A.V. Manoharan, despite having relinquished the rights in the suit property, sold the same to the defendant No. 2 under the impugned sale deed dated 23.03.1985.
- G (c) During pendency of this suit, the original plaintiff A.C. Nataraja Mudaliar expired on 19.05.1988 leaving behind 3 sons and 4 daughters as his legal representatives, who were impleaded as plaintiff Nos. 2 to 8 in the suit. One of the sons of the original plaintiff namely, A. N. Umakanth (plaintiff No. 5- respondent No. 1 herein) was extended power of attorney by his siblings.
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(d) The suit was decreed *ex parte* in the year 1995 but later on, the *ex parte* decree was set aside and the suit was restored to the original number. However, in the interregnum, the respondent No. 1 A. N. Umakanth, the power of attorney holder of all the legal representatives of the original plaintiff, sold the suit property to three persons, namely Ramasamy, Dhanam Ramasamy and Venkatasubramanian (respondent Nos. 2 to 4 herein) through a registered sale deed dated 04.07.1995. In view of this transaction, upon restoration of the suit, the said purchasers moved an application (IA No. 135 of 2002) for being impleaded as plaintiffs. This application was allowed on 21.06.2002 and thereby, the said purchasers were allowed to join the suit as plaintiffs Nos. 9 to 11.

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(e) However, the other plaintiffs (Nos. 2 to 4 and 6 to 8) took exception to the aforesaid transaction of sale by the plaintiff No. 5; they revoked his power of attorney and moved an application (IA No. 468 of 2003) for transposition of the plaintiff No. 5 and his purchasers (plaintiff Nos. 9 to 11) as defendants. This application was allowed on 25.06.2003 and, accordingly, the plaintiff No. 5 and plaintiff Nos. 9 to 11 were transposed as defendants 3 to 6 in this suit.

(f) Thus, at and until the given juncture, the proceedings and developments had been that in the civil suit for cancellation of sale deed executed by the defendant No. 1 in favour of the defendant No. 2, the original sole plaintiff had expired; his legal representatives came on record as plaintiff Nos. 2 to 8 with plaintiff No. 5 being the power of attorney holder of the other plaintiffs; the suit was decreed *ex parte* and the said attorney sold the suit property to three persons; when the *ex parte* decree was set aside and the suit was restored to its number, the said purchasers came on record as plaintiff Nos. 9 to 11; and later on, the said seller and purchasers (plaintiff Nos. 5 and 9 to 11) were transposed as defendant Nos. 3 to 6. At this juncture and with such change of complexion, the suit was transferred to the file of District Munsif Court, Chengalpattu and was renumbered as O.S. No. 219 of 2004.

(g) After having, thus, been transferred and renumbered with addition and transposition in the array of parties, the suit in question proceeded in trial but, when the matter reached the stage of cross-examination of the defendants' witness DW-3, the plaintiffs filed a memo seeking permission to withdraw the suit, for the matter having been settled with the defendant Nos. 1 and 2. Though the defendant Nos. 1 and 2 did not oppose the prayer so made by the plaintiffs but

- A then, the defendants 3 to 6 (who were transposed as defendants from their earlier position as plaintiffs) filed objections to the memo for withdrawal and also filed the application (IA No. 153 of 2005) under Order XXIII Rule 1-A read with Order I Rule 10 CPC with the prayer that they be transposed as plaintiff Nos. 2 to 5 in this suit.
- B 3. The said application for transposition (IA No. 153 of 2005) came to be allowed by the Trial Court by its impugned order dated 07.07.2005 with the following observations:-

"Upon perusing the petition, counter it reveals that the original suit was filed in the year 1989. Originally the petitioner has filed the above suit as a Power of Attorney agent of plaintiffs. When the power was in force, the power given to the petitioner was cancelled. When the power was inforce, the petitioner sold most of the suit item. The purchasers moved an application to implead themselves as plaintiffs in the above suit and the same was allowed. Later the plaintiffs have filed application to transpose the plaintiffs 5, 9 to 11 as defendants and the same was allowed. Later the trial commenced and the plaintiff witness had been examined. On the side of defendants 3 witnesses were examined. The cross-examination of 2nd defendant's husband has been deferred. At this stage the plaintiff and the 2nd defendant entered into compromise and filed a memo stating that the suit is not pressed as settled out of court. The petitioner sold the property while the power of attorney was in force. Therefore the petitioner has interest in the out come of the suit. When the case is at the tail end and the suit is of the year 1989 and if the suit is allowed to be withdrawn this petitioner has no remedy and is not in a position to get any remedy in this suit. More over the petitioners if file fresh suit, the said suit will be barred by limitation. When all the parties to the suit entered into compromise, the court will permit the parties to withdraw the suit. But in this case only the plaintiff and 2nd defendant alone entered into compromise. The remaining defendants are not parties to the compromise. Since there is no compromise with other defendants, this court will not accept as the matter is fully settled."

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For the aforesaid reasons and in the interest of justice and to settle the matter once for all and determine the rights of the parties, this petition is allowed." A

4. Aggrieved by the order aforesaid, the defendant No. 2 (appellant herein) preferred the revision petition that has been considered and dismissed by the High Court in its impugned order dated 12.10.2006 while observing as under:- B

"15.....it is seen in this case that the defendants 3 to 6 who seek to transpose themselves as plaintiffs, were originally arrayed as plaintiffs 5 and 9 to 11. On the ground that the 5th plaintiff (now the 3rd defendant) acted against the interest of the other plaintiffs (his own brothers and sisters) in selling the suit property to the defendants 4 to 6, the plaintiffs got them originally transposed as defendants 3 to 6 in I.A. No. 468 of 2003. In other words, the present defendants 3 to 6 are subsequent purchasers, pendente lite, they had a substantial issue to be adjudicated as against the defendants 1 and 2, when they were plaintiffs 5 and 9 to 11. By virtue of their transposition as defendants 3 to 6, in the year 2003, they cannot be said to have lost their rights to have the same question adjudicated as against the defendants 1 and 2. As a matter of fact, the 3rd defendant's right to prosecute the suit as a plaintiff, flowed out of his status as one of the legal heirs of the original sale relief prayed for in the suit filed, by his father did not get annulled by his transposition as the third defendant in the year 2003. C

16. *If the plaintiffs contest the suit and succeed, such success would have automatically enured to the benefit of the defendants 3 to 6. Therefore, the defendants 3 to 6 can be said to have an identity of interest with the plaintiffs.* F

17. *Under such circumstances, I am of the view that the Trial Court was right in ordering the transposition of the defendants 3 to 6 as plaintiffs. Therefore, I find no merits in the Civil Revision and the Civil Revision Petition is dismissed. No costs. The connected CMP & VCMP are closed."* G

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- A 5. Assailing the order aforesaid, learned counsel for the appellant (defendant No. 2) has strenuously argued that the transaction concerning defendant Nos. 3 to 6 having taken place much after the institution of the suit, these defendants have no cause of action against defendant Nos. 1 and 2 and hence, they cannot be transposed as plaintiffs; that the right of the *dominus litus* plaintiffs to withdraw the suit under Order XXIII Rule 1 CPC cannot be curtailed, especially when they do not seek any liberty to file a fresh suit; and that the subsequent purchasers have no legal right to seek cancellation of the sale deed which was executed in favour of the appellant way back in the year 1985. These submissions are supported on behalf of the respondent
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- C Nos. 6 & 8 to 11 (the plaintiffs) with the contentions that the subsequent purchasers have a separate and distinct cause of action, who ought to institute a separate suit and have no right to be transposed as plaintiffs in the present suit.

- 6. *Per contra*, learned counsel for the respondent No. 1 has duly
- D supported the order impugned with reference to the subject matter of the suit as also the developments that have taken place after filing of the suit and with the submissions that defendant Nos. 3 to 6 have identical interest to seek cancellation of the sale deed executed by the defendant No. 1 in favour of the defendant No. 2. Hence, according to the learned
- E counsel, when the existing plaintiffs seek to withdraw, the defendant Nos. 3 to 6 have a right to be transposed as plaintiffs so as to seek adjudication of their claim against the defendant Nos. 1 and 2 in relation to the suit property.

- F 7. Having bestowed anxious consideration to the rival submissions and having examined the record with reference to the law applicable, we are clearly of the view that on the facts and in the circumstances of this case, upon the existing plaintiffs seeking permission to withdraw under Order XXIII Rule 1 CPC, the defendant Nos. 3 to 6 have rightly been allowed to be transposed as plaintiffs under Order XXIII Rule 1-A read with Order I Rule 10 CPC and to
- G continue with the suit, as originally filed against the defendant Nos. 1 and 2.

- H 8. The law of procedure relating to the parties to a civil suit is essentially contained in Order I of the Code of Civil Procedure, dealing with various aspects concerning joinder, non-joinder and mis-joinder of

parties. Rule 10 of Order I specifically provides for addition, deletion and substitution of parties; and the proposition for transposition of a party from one status to another, by its very nature, inheres in sub-rule (2) of Rule 10 of Order I CPC that reads as under:-

"(2) Court may strike out or add parties. - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who or to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added."

8.1 On the other hand, the law of procedure in relation to withdrawal and adjustment of suits is contained in Order XXIII of Code of Civil Procedure. As per Rule 1 thereof, a plaintiff may seek permission for withdrawal of suit or abandonment of a part of claim. Rule 1-A thereof¹ deals with an eventuality where the plaintiff withdraws his suit or abandons his claim but a *pro forma* defendant has a substantial question to be decided against the co-defendant. This Rule 1-A of Order XXIII CPC reads as under:-

"R.1-A. When transposition of defendants as plaintiff may be permitted.- Where a suit is withdrawn or abandoned by a plaintiff under Rule 1, and a defendant applies to be transposed as a plaintiff under Rule 10 of Order I, the Court, shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants."

9. It remains trite that the object of Rule 10 of Order I CPC is essentially to bring on record all the persons who are parties to the dispute relating to the subject matter of the suit so that the dispute may be determined in their presence and the multiplicity of proceedings could be avoided. This Court explained the principles, albeit in a different context, in the case of *Anil Kumar Singh v. Shivnath Mishra: (1995) 3 SCC 147* in the following:-

¹Inserted by the Amendment Act No. 104 of 1976

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- A "7. *The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.*"
- B 10. As per Rule 1-A *ibid.*, in the eventuality of plaintiff withdrawing the suit or abandoning his claim, a *pro forma* defendant, who has a substantial question to be decided against the co-defendant, is entitled to seek his transposition as plaintiff for determination of such a question against the said co-defendant in the given suit itself. The very nature of the provisions contained in Rule 1-A *ibid.* leaves nothing to doubt that the powers of the Court to grant such a prayer for transposition are very wide and could be exercised for effectual and comprehensive adjudication of all the matters in controversy in the suit. The basic requirement for exercise of powers under Rule 1-A *ibid.* would be to examine if the plaintiff is seeking to withdraw or to abandon his claim under Rule 1 of Order XXIII and the defendant seeking transposition is having an interest in the subject-matter of the suit and thereby, a substantial question to be adjudicated against the other defendant. In such a situation, the *pro forma* defendant is to be allowed to continue with the same suit as plaintiff, thereby averting the likelihood of his right being defeated and also obviating the unnecessary multiplicity of proceedings.
- C 11. The present one is clearly a case answering to all the basics for applicability of Rule 1-A of Order XXIII read with Rule 10 of Order I CPC. As noticed, the principal cause in the suit is challenge to the sale deed executed by defendant No. 1 in favour of defendant No. 2, with the original plaintiff asserting his ownership over the property in question. After the demise of original plaintiff, his sons and daughters came to be joined as plaintiff Nos. 2 to 8 with plaintiff No. 5 being the power of attorney holder of all the plaintiffs. After the suit was decreed *ex parte*, the plaintiff No. 5 transferred the property in question to the aforesaid three purchasers, who were joined as plaintiff Nos. 9 to 11 when the *ex parte* decree was set aside and suit was restored for *bi parte* hearing. In the given status of parties, even if the plaintiff Nos. 5 and 9 to 11 were later on transposed as defendant Nos. 3 to 6, the suit remained essentially against the defendant Nos. 1 and 2, that is, in challenge to the sale deed dated 23.03.1985, as executed by the defendant No. 1 in favour of the
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defendant No. 2. In regard to this cause, even if plaintiff Nos. 5 and 9 to 11 came to be transposed as defendant Nos. 3 to 6, their claim against defendant Nos. 1 and 2 did not come to an end; rather, the interest of the existing plaintiffs as also the defendant Nos. 3 to 6 had been one and the same as against the defendant Nos. 1 and 2.

12. In the given status of parties and the subject matter of the suit, when the plaintiffs entered into an arrangement with defendant Nos. 1 and 2 and sought permission to withdraw under Order XXIII Rule 1 CPC, the right of defendant Nos. 3 to 6 to continue with the litigation on their claim against defendant Nos. 1 and 2 immediately sprang up and they were, obviously, entitled to seek transposition as plaintiffs under Order XXIII Rule 1-A CPC.

13. It is also noteworthy that even if some question is sought to be raised as regards the rights of the subsequent purchasers (defendant Nos. 4 to 6), the right of the defendant No. 3 (earlier the plaintiff No. 5) to prosecute the suit as a plaintiff remains rather indisputable in view of his status as one of the legal representatives of the original plaintiff. The right of the said defendant No. 3 (earlier the plaintiff No. 5) to challenge the sale deed between defendant No. 1 and defendant No. 2 did not get annulled only by his earlier transposition as the defendant; and he cannot be considered bound by the arrangement between the existing plaintiffs and the defendant Nos. 1 and 2. In the given set of circumstances, the Trial Court had been justified in allowing the prayer for transposition and the High Court has rightly declined to interfere.

14. For what has been discussed hereinabove, this appeal fails and is, therefore, dismissed.

Divya Pandey

Appeal dismissed.