

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P No.1212-M/2020

(Anwar Ali and others VS Mst. Saeeda Bibi and others)

Present: **Mr. Fayaz Muhammad Qazi, Advocate for petitioners.**
 Mr. Razi Khan, Advocate for respondents.

Date of hearing: **24.06.2024**

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- Through instant petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have questioned the order of the learned Additional District Judge/ *Izafi Zilla Qazi* Dir Lower at Chakdara dated 20.10.2020, whereby, their civil revision against the order of the learned Trial Court dated 14.07.2020 allowing the application of the respondent No.1/ defendant for her transposition from the panel of defendants to that of the plaintiffs, was dismissed.

2. Facts essential for determination of the lis are that Respondent No.2 filed **suit No.1/1 of 2019** whereby she was seeking declaration against their brothers i.e. defendants No.1 and 2, now petitioners, along with Mst. Saeeda Bibi, their sister, to the extent of their due and Shari share and denial on the part of present petitioners along with Mst. Saeeda Bibi, as then she was, as ineffective upon their rights. The suit was resisted by the present petitioners and defendant Mst. Saeeda Bibi, however, during pending adjudication of the suit, she moved an application before the learned Trial Court, seeking her transposition from the panel of defendants to that of the plaintiffs, on the ground that with the alleged connivance of the present petitioners and her brothers, she has put her thumb impression on a document and appointed her son Bilal Ahmad as an attorney. It was also alleged that the present petitioners

have engaged counsel on her behalf, and, as such, the written statement, which was filed on her behalf, was not correct. Her application was resisted by the present petitioners, but it was allowed by the learned Trial Court on 14th July 2020. Being aggrieved, the present petitioners filed civil revision No. 12/12, which was dismissed by the learned Additional District Judge Chakdara, District Dir Lower on 20th October 2020. Hence, the instant petition.

3. Arguments heard, and record perused.

4. It is an admitted fact that Wali Mohammed has left behind Khadim Ali, Anwar Ali, (sons), and Mst. Saeeda Bibi & Mst. Wahida Bibi, (daughters). Learned counsel for petitioners submitted that Inayat ur Rahman (defendant No. 4) is the purchaser of some shares in the property, which is the subject matter of the suit as described in the head note "*Alij*" of the plaint. No doubt, there is a power of attorney in favour of Bilal Ahmad, the son of Saeeda Bibi, who is now before the Court through her husband namely Jehan Bahadar. Not only in the application but as per the stance of Jehan Bahadar and the special attorney of Mst. Saeeda Bibi, that the power of attorney in favour of Bilal Ahmed was not correct. It is indisputable that written statement on behalf of Mst. Saeeda Bibi was filed by Mr. Bilal Ahmed, her son, the alleged attorney. Admittedly, the fact of appointment of Bilal as attorney has been denied by Mst. Saeeda Bibi through her application signed by her husband as an attorney. Irrespective of the fact that the application was categorically resisted by the present petitioners and without going into the controversy and resolution of the fact as to whether Bilal Ahmed was appointed as an attorney and in that capacity, he has filed written statement of Mst. Saeeda Bibi, or otherwise, which fact shall be determined/ resolved by the learned Trial Court but after recording of pro and contra evidence, the application was allowed and now Mst. Saeeda Bibi is represented by her husband.

5. In so-far-as, the contention of the learned counsel for petitioners that after submission of the written statement Mst. Saeeda Bibi could, in no way, resile from her earlier stance is concerned, suffice it to say, that this is a fact, which has been negated by Mst. Saeeda Bibi and was corroborated by her husband Mr. Jehan Bahadar, who is before the Court along with the learned counsel of Mst. Saeeda Bibi (Mr. Razi Khan, advocate). The transposition of a party from the array of plaintiffs or defendants and for that matter, the appellants or respondents is a procedural matter, which is decided in view of the plea, or a fact alleged in the plaint or controverted through reply/ written statement. In the case of **Rukhsana Mashadi versus Qasim** (PLD 2002 Karachi 542) it was held that:

Transposition of parties is general allowed liberally by the Court in order to avoid multiplicity of litigation between the parties to a proceeding and to bring to an end the controversy or lis before the Court. General transposition is allowed in legal proceedings, where parties are accountable to each other out of the same or same series of transactions subject-matter of suit, like for instance suit for accounts between the co-owners / joint owners of the property or where interest of any party in same group becomes hostile inter se and common with the interest of opposing parties or where interest of one party devolves, assumed, assigned or transferred unto another party in the opposite group or otherwise.

The principle of transposition of party has been elaborated by the Supreme Court in the case of **Central Government of Pakistan versus Suleman Khan** (PLD 1992 SC 590), wherein it was observed that:

Order 1 Rule 10 C.P.C. is very wide in its scope. The power to transpose is derived amongst others, from the said provision which always been interpreted liberally so as to achieve the complete adjudication of all the questions which are involved in the lis, one of the purposes being to avoid multiplicity of the proceedings. In other words, the power to transpose is to be exercised liberally and no technical hurdle is considered so strong as to override the considerations of "adjudication" or right to justice. It is in that very context that when a defendant / respondent is transposed as plaintiff / appellant no question of limitation as such is involved.

6. Even otherwise, from transposition of Mst. Saeeda Bibi, respondent No. 1 from the panel of defendants to the panel of the plaintiffs, no prejudice has been caused to the present petitioners, who are the brothers of Mst. Saeeda Bibi and Mst. Wahida Bibi, being the sons of Wali Muhammad and the fact of submission of the written statement of Mst. Saeeda Bibi through Mr. Bilal Ahmed by alleging therein that a portion of the property was transferred to her will be determined when she will be in the witness box either in person or through attorney. Reference may be made to the case of Mian Abdul Waheed versus Mst. Amtul Hamid etc. (PLD 1962 (W.P) Lahore 114), wherein it is held that:

On going through these cases one thing is clear that whenever the ends of justice require, the Court has power to order the transposition and this power can be exercised irrespective of the consent of the party. In fact, it would be wrong to permit a plaintiff to continue as such when he takes up a completely hostile attitude to the other plaintiffs and takes upon himself to support the case of the defendant.

In transposition, a person who is already on record as a plaintiff or a defendant seeks his transposition from one capacity to another capacity i.e., from plaintiff to defendant or vice versa. Since primary object of Rule 10 of CPC, 1908 is to avoid multiplicity of proceedings, there is no reason why the doctrine of addition or striking out parties does not apply to transposition of parties from one side to another reliance may be made to the case of Saila Bala Dassi versus Nirmala Sundari Dassi AIR (1958 SC 394). A court can therefore order the transposition of parties in an appropriate case. No doubt the plaintiff is *dominus litus* and master of his suit. He files his suit against the person against whom he has some sort of claim, and he cannot be urged to add a person as defendant if he does not wish to do so. The court will unceasingly consider the wishes of the plaintiff before adding a third person as a defendant in the suit. However, if the court finds that addition of the new defendant is absolutely essential and cannot be avoided to enable it to adjudicate effectively and

completely the matter in controversy between the parties, will it add a person as a defendant even without the consent of the plaintiff. The principle of *dominus litus* cannot be overstretched in the matter of impleading or transposition of parties, because it is the duty of the court to ensure that for deciding the real matter in dispute if a person is a necessary party, the court can direct the addition, striking or even the transposition of the parties from the plaintiff to defendant or defendant or plaintiff vice versa depending upon the facts of the case. Learned counsel for petitioners has not been able to point out any illegality, irregularity or jurisdictional defect in concurrent findings of both the learned courts below, therefore, for the afore-discussed reasons, this petition, being devoid of merits, is hereby dismissed with no order as to cost.

Announced on 24.06.2024.
Released on 01.07.2024.



JUDGE

Office
4/7/2024