

A. F. R.

Reserved on 24.11.2025

Delivered on 03.02.2026

Writ B No.1119 of 2025

Ranjeet Singh and anotherPetitioners

Versus

Settlement Officer of Consolidation,
District Barabanki and othersOpposite parties**Hon'ble Alok Mathur, J.**

1. Heard Sri Somesh Tripathi, learned counsel for the petitioners as well as Sri Dev Prakash Mishra, learned Additional Chief Standing Counsel for respondent no. 1 and Sri Amar Deep Yadav on behalf of respondent no. 2.
2. The petitioners have approached this Court being aggrieved by the order dated 14/10/2025 passed by the Settlement of Consolidation whereby he has rejected the application of the petitioners, which is formed for being transposed as appellants before the Settlement Officer of Consolidation where the appeal preferred by some of the private respondents is under consideration in accordance with the remand order passed by this Court on 29/02/2024 in Writ Petition B No. 238 of 2024.
3. The facts in brief as submitted by the petitioners are that the dispute pertains to the land situated Gata No. 314 area 0 – 8 – 17, situated at Village Aseni, Paragana Dewa Tehsil, Nawabganj district, Barabanki, which was initially recorded in the name of Ghasite. Ghasite had 4 sons, namely Haripal, Bihari, Kailas and Mangal. Bihari died during the lifetime of Ghasitay. After the

death of Ghasitay, the 3 surviving sons got their names mutated in the revenue records, showing 1/3 share each.

4. During the Consolidation proceedings, Ragghu, the son of Bihari, filed objections under section 9(A)1 of the U.P Consolidation of Holding Act, 1953 claiming 1/4th share in the property, and accordingly, by means of an order dated 11/08/1999 his objection was allowed, and the shares of the co-sharers were decided as one-fourth each.
5. Haripal filed an application before the Consolidation Officer for recalling the order dated 11/08/1999 on 24/04/2001. During the proceedings, Haripal sold 1/3rd share of the property to the petitioners, and on 09/05/2003, the case was restored to its original number, and subsequently dismissed for non-presence of the parties on 04/11/2011.
6. Against the order dated 04/11/2011, only Kailash and Mangal filed an appeal under section 11 (1) of the Act of 1953, which was registered as case No. 524/2015 (Kailash and others vs Ragghu). According to Ragghu, the disputed land was his ancestral land where his father Bihari had a 1/4 share in the property, along with 3 uncles. Before the appellate authority petitioners were impleaded as opposite parties on the basis of a sale deed executed by Harpal pertaining to 1/ 3 share of the property in dispute.
7. The Settlement Officer of Consolidation (Appellate Authority) decided the appeal vide his order dated 30/08/2013 on the basis of a compromise dated 29/08/2013.
8. Ragghu being aggrieved by the order dated 30/08/2013, preferred a revision before the Deputy Director of

Consolidation, challenging the compromise and stating that he was not a party to the same, and one of the parties to the compromise was a minor. The revisional authority, after due consideration of the arguments and on the basis of the material record, upheld the contention of Ragghu and set aside the order of Settlement Officer of Consolidation dated 20/08/2013 and restored the order of the Consolidation Officer dated 11/08/1999 by means of an order dated 03/02/2024.

9. Petitioners had approached this Court assailing the validity of the order dated 3.2.2024 by filing a writ petition, being Writ 'B' No. 238 of 2024. This Court was of the view that the matter ought to have been remanded by the Director of Consolidation rather than affirming the order dated 11/08/1999, and consequently allowed the writ petition remanding the matter back to the appellate authority for deciding the appeal afresh on merits after affording opportunity of hearing to the parties concerned.
10. It is in the remand proceedings that the petitioners have moved an application for their transposition as appellants. In the application dated 24/06/2025 it was contended that the appellants have colluded with opposite party No.2 and therefore, they are not appearing for prosecuting the appeal and for the aforesaid reason, they prayed for being transposed as plaintiffs.
11. The Settlement Officer of Consolidation (Appellate Authority) rejected the prayer stating that there was no evidence adduced by the applicants in support of the contention that the appellants have colluded with the opposite party and it is only on the basis of apprehension that the application for transposition has been moved. It was further submitted that the applicants had an

opportunity to make the said application before the High Court, but no such application was moved by them and at this stage such an application would not be entertained.

12. Lastly, it was contended that the appeal was filed by Kailash and Mangal, and in case the applicants were aggrieved by the order of the Consolidation officer they could have themselves filed the appeal, but no such appeal was filed either by the petitioners by the predecessor in interest Haripal and therefore they cannot be permitted to be transposed as appellants in the present factual circumstances and accordingly rejected the prayer by means of order dated 14/10/2025.

13. The order dated 14/10/2025 has been assailed before this Court in the present writ petition.

14. 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 appeared 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."

15. On the other hand, the law of procedure in relation to withdrawal and adjustment of suits is contained in Order XXIII of the Code of Civil Procedure. As per Rule 1 thereof, a plaintiff may seek permission for the withdrawal of the suit or abandonment of a part of the 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. 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 1, 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."

16. 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:-

"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."

17. As per Rule 1-A *ibid.*, in the eventuality of the plaintiff withdrawing the suit or abandoning his claim, a proforma defendant, who has a substantial question to be decided against the co-defendant, is entitled to seek his transposition as inserted by the Amendment Act No. 104 of 1976. The aforesaid amendment seeks to enable a defendant, who has an identical interest, from being denied his interest if he rested on the success of the plaintiff's suit and the plaintiff wanted to withdraw the suit. Before the defendant could invoke this provision, it must be shown that the plaintiff is seeking to withdraw or abandon the scheme under Rule 1 of Order XXIII, CPC. It is a condition precedent to enable a defendant to get himself transposed.

18. The principle that follows this rule is that there must be identity of interest between the plaintiff and such a defendant who wants to transpose as a plaintiff. It must be a suit where the defendant is entitled to succeed automatically on the success of the plaintiff in the suit. Such a defendant is usually called a proforma defendant. To put it in other words, both parties are projecting the same claim against other defendants, and therefore, the success of one is the success of the other. In such cases, the law comes to the rescue of such a defendant so that the plaintiff, who has a similar right, cannot defeat the right of the defendant by colluding with other contesting

defendants.**plaintiff for the determination of such a question against the said co-defendant in the given suit itself.

- 19.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.
- 20.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.
- 21.Upon consideration of the facts in the present case, it is noticed that the only ground stated in the application dated 24/06/2025 filed by the petitioners before the appellate court was that the appellants for some unknown reasons have colluded with the defendant no.2 due to which they are not diligently prosecuting the said appeal, and therefore it is necessary for the applicants to be transposed as the appellants for protection of the rights.
- 22.Apart from the aforesaid facts, no other fact or evidence was adduced by the petitioners in support of the contention for transposition as appellants.

23. As discussed above, certain necessary and basic facts have to be established before a person can invoke the provisions of Order XXIII Rule 1A CPC, namely, abandonment or withdrawal of the proceedings by the plaintiff/appellants. The only ground taken by them before the appellate court was with regard to collusion between the appellants and defendant no.1; the appeal is not being prosecuted diligently.

24. The question for determination is whether only an assertion of this fact can result in the transposition of the applicants as appellants, or whether these facts must be proved to the satisfaction of the court. Undoubtedly, transposition can have serious consequences and therefore, the courts have to be circumspect before allowing any such application. Once the application for transposition is allowed, then the defendant becomes the plaintiff, and they would have full rights as dominus litis to prosecute the case before the court in the manner they choose.

25. One essential fact that cannot be lost sight of is that the appeal against the order of the Consolidation Officer was not filed by Haripal or even by the petitioners who had purchased 1/3 share of the entire property from him. This defect and lacuna cannot be allowed to be cured by invoking provisions of order XXIII rule 1A.

26. Apart from the above, neither before the Appellate Court nor before this Court could any cogent evidence, material or even the order-sheet of proceedings have been produced, which may indicate that the appeal is not being prosecuted diligently by the appellants therein. The findings returned by the appellate court in this regard does not deserve any interference as a mere assertion of abandonment of appellate proceedings is not

sufficient and it has to be demonstrated to the satisfaction of the court that the plaintiff/appellants have abandoned their claim before invoking the provisions of Order XXIII Rule 1 A.

27. In view of the above, the writ petition lacks merits and is accordingly **dismissed**.

(Alok Mathur, J.)

Order Date: 03.02.2026.

RKM