

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.408 of 2010

ORDER:

Heard Sri V.Venugopala Rao, learned counsel for the petitioner.
None appears for the respondent.

2. This Revision Petition is filed challenging the Order dt.25-11-2009 in I.A.No.72 of 2008 in O.S.No.1404 of 2007 of the IV Additional Senior Civil Judge (F.T.C.), Vijayawada.
3. The petitioners herein had filed the said suit against the respondent-Corporation for a declaration that the demand of the property tax for the period 1993-94/2 to 2005-06/1 was illegal, void; since the amounts were already paid and adjusted by the defendant Corporation in their accounts, the defendant-Corporation is not entitled to collect tax amounts highhandedly and repeatedly by any illegal methods; and for a consequential permanent injunction restraining the defendant-Corporation from attaching the property of petitioners for collection or in collecting the same or from issuing 'K' notices. In the plaint, it was mentioned that the plaintiff is a limited company registered under the Companies Act, 1956.
4. The suit was filed through the Zonal officer of the petitioner.
5. Subsequently, the plaintiff filed I.A.No.72 of 2008 under Order 6 Rule 17 CPC, to amend plaint to indicate that the plaintiff is a firm and not a limited company and seeking to represent the plaintiff/petitioner by its partner one R.D.Shah instead of the 'Zonal Officer'.

6. This application was opposed by the respondent.
 7. By Order dt.25-11-2009, the Court below rejected the said I.A. on the ground that bye-laws of the firm or bye-laws of the plaintiff were not filed and that there was nothing to show that the deponent-R.D.Shah was authorized to file affidavit to initiate proceedings by filing petition under Order 6 Rule 17 CPC.
 8. It is settled law that when deciding whether or not to allow the amendment, the correctness of the case pleaded in the amendment cannot be gone into, which the trial Court has done in the present case.
 9. So I am of the opinion that this Order cannot be sustained for the reason that while deciding whether or not to allow the amendment, the questions whether the plaintiff is a firm or a limited company and whether R.D.Shah, the deponent of the affidavit filed along with I.A., is competent to file it or not cannot be decided. These questions have to be decided after completion of evidence in the suit.
 10. In this view of the matter, I am of the opinion that the impugned order cannot be sustained and the Civil Revision Petition is allowed and the order dt.25-11-2009 in I.A.No.72 of 2008 in O.S.No.1404 of 2007 of the IV Additional Senior Civil Judge (F.T.C.), Vijayawada is set aside and the said I.A. is allowed. It is made clear that the Court below can go into the above questions at the time of deciding the suit. No costs.
 11. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.
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JUSTICE M.S.RAMACHANDRA RAO

Date: 09-06-2015

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