

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

+ CIVIL REVISION PETITION No.1039 OF 2015

% 24.03.2015

Manne Jhansilaxmi and another.

....Petitioners

v.

\$ Apasani Atchuta Rama Mohanarao and others

....
Respondents

! Counsel for the Petitioners: M.V.Pratap Kumar

Counsel for Respondents:

<Gist :

>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CIVIL REVISION PETITION No.1039 of 2015

ORDER:

The two petitioners herein are defendant Nos.1 and 2 in Civil Suit O.S.No.689 of 2012. The respondent Nos.2 and 3 herein have originally filed suit O.S.No.689 of 2012. The suit is one for easementary rights coupled with mandatory injunction against the two petitioners herein. The 1st respondent in this revision was originally shown as 3rd defendant in the suit. The 1st respondent, original 3rd defendant was set exparte.

However, the 3rd defendant in the company of two plaintiffs has taken out I.A.No.684 of 2014 seeking transposition of the 3rd defendant as the 3rd plaintiff in the suit and also sought for amendment of the pleadings set up in the plaint by inserting a separate paragraph numbered as 11 (a).

Sri M.V.Pratap Kumar, learned counsel for the petitioners, has raised several contentions importantly amongst them being the petitioners are objecting to 3rd defendant in the suit being allowed to transpose as 3rd plaintiff. Further, a newly transposed 3rd plaintiff cannot seek to amend the plaint originally filed by plaintiffs 1 and 2 only. In other words, the 3rd plaintiff, being not there on original

record of the Civil Suit as a plaintiff cannot seek to amend the pleadings set up by some other person. It is the contention of the learned counsel for the petitioners that a party can only amend "his own pleadings", but he cannot make an attempt to amend the pleadings set up by another party. In the instant case that is what exactly has been attempted to be done by the 1st respondent herein, who is now transposed as 3rd plaintiff. That apart, the amendment now sought for is in the teeth of suit O.S.No.279 of 2012 instituted for identical relief by

the 1st respondent herein, the present 3rd plaintiff against the very same two petitioners herein. Therefore, the present suit could not have been amended for advancing the cause of the 3rd plaintiff now, which is independent and in fact separate suit is already instituted for the said purpose.

I am not at all impressed by the various contentions canvassed by the learned counsel for the petitioners. It is a fundamental principle that a party can amend his own pleadings, but he cannot seek to amend the pleadings set up by the opposite parties lest, all the defendants would desire to amend the pleadings set up by the plaintiffs, which are not suitable or convenient for them. Similarly, all plaintiffs will not hesitate to make an attempt to amend the pleadings contained in the "written statement" filed by the opposite parties which are equally inconvenient or unsuitable for the cause of the plaintiffs. Therefore, each party has to confine the scope of amendment only to the pleadings set up by him/her. When once the original 3rd defendant is permitted to be transposed as 3rd plaintiff because of the unity of the causes of action between the two plaintiffs and 3rd defendant originally

impleaded as such in the suit, the 3rd defendant is liable to be deleted from the array of parties and he cannot be treated as defendant any longer. He transposed himself as a plaintiff. Therefore, the attempt made by him now to amend the plaint averments cannot be objected to on the ground that he was originally shown as opposite side by the plaintiff, as by the transposition now allowed, the position of the parties has undergone a change.

Further so far as the causes of action pointed out is concerned, that would be an objection which the petitioners herein can now take in their additional written statement. The petitioners herein are entitled to raise such an objection and if necessary an appropriate additional issue is liable to be settled for trial to that effect by the Court below. There is no reason for not permitting the amendment of the plaint. It is further appropriate to notice that amendments to pleadings of the parties at the pre-trial stage of a suit shall be allowed very liberally and freely. So long as there is no demonstrable change of cause of action completely and also causing unsurmountable hardship or difficulty for the opposite parties, amendments should be allowed. Hence, I do not find any infirmity, legal or otherwise in exercise of jurisdiction by the Court below in allowing I.A.No.684 of 2014 in O.S.No.689 of 2012.

The petitioners are at perfect liberty to file an additional written statement as early as possible, preferably within a maximum period of two (2) weeks from the date of receipt of a copy of this order. The Court below will entertain the same without any further objections raised. If necessary, the Court below will also frame an additional issue for trial and permit the parties to lead evidence.

Accordingly, this revision stands disposed of in the above terms.

No order as to costs.

The miscellaneous petitions, if any pending in this revision, shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

Date: 24-03-2015

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Note:

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