

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

CIVIL REVISION PETITION No.1247 of 2015

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ORDER:
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This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.31-10-2014 in I.A.No.69 of 2014 in O.S.No.6 of 2013 of the Principal Junior Civil Judge at Chodavaram.

2. The petitioner herein is plaintiff in the suit. He filed the suit for recovery of money on the basis of a promissory note describing the respondent as Gali Petheru, S/o.Demudu and mentioning specifically that respondent is working as the V.R.O. of China Mushidivada Village, Pendurthy Mandal, Visakhapatnam District.

3. In the plaint it was specifically alleged that an amount of Rs.50,000/- was borrowed by defendant on 23-05-2010 promising to repay it with interest @ 24% p.a. The suit promissory note also describes the promisor under the promissory note as Gali Petheru, S/o.Demudu.

4. The suit notice sent to the promisor under the promissory note also described him as Gali Petheru, S/o.Demudu and his address was shown as V.R.O. of

China Mushidivada Village, Pendurthy Mandal, Visakhapatnam District. However, the said notice was returned without any endorsement.

5. Be that as it may, in the written statement filed by respondent a plea was raised that he was no doubt working as V.A.O. of China Mushidivada Village, Pendurthy Mandal, Visakhapatnam District, but his original name is 'Gali Peturu' and not 'Gali Petheru' and his father's name is 'Gali Simhachalam' but not 'Demudu'. He stated that at the time of filing vakalat, he filed a memo also mentioning his correct name and his father's name. He denied borrowing of amount as alleged by petitioner in plaint.

6. In view of this stand taken by respondent, the petitioner herein filed I.A.No.69 of 2014 to amend the short cause title and long cause title of the plaint and wherever necessary in the plaint by describing the respondent as 'Gali Peturu' instead of 'Gali Petheru' and also indicating the respondent's father as 'Simhachalam' instead of 'Demudu'.

7. In the affidavit filed in support of this application, it was contended by petitioner that at the time of lending of the sum of Rs.50,000/-, the respondent had stated before the Document Writer that his name is 'Gali Petheru' and

his father's name is 'Demudu'; therefore, the suit is filed on that basis, but in order to deceive him and to evade avoid payment of money, wrong information about his name and father's name is now being given by respondent. In any event, in view of the said stand taken by respondent, the plaint be permitted to be amended as sought for by petitioner.

8. Counter affidavit was filed by respondent opposing this plea and reiterating the stand taken in the written statement. It is also contended that the suit is filed against wrong person and as such, it is not maintainable.

9. By order dt.31-10-2014, the Court below dismissed I.A.No.69 of 2014. It held that whether the suit promissory note had been executed by respondent or not is an important point to be considered at the time of trial and the amendment sought, in no way helps the Court below to decide the real questions in controversy. It further held that the amendment may defeat the defence of respondent.

10. Questioning the same, this Revision is filed.

11. Heard Sri K.Rajanna, learned counsel for petitioner. None appears for respondent in spite of service of notice.

12. It is pertinent to note that in the suit promissory note,

the respondent is described as 'Gali Petheru, S/o.Demudu'. In the legal notice dt.16-11-2012 issued to respondent also he is described as 'Gali Petheru, S/o.Demudu'. It was specifically mentioned therein that he was working as V.R.O. of Chinamushidivada Village, Pendurthi Mandal, Visakhapatnam District. The respondent does not dispute that he is working as V.A.O. of China Mushidivada Village, Pendurthi Mandal, Visakhapatnam District.

13. According to the petitioner, the name and father's name were mentioned in the promissory note on the basis of information furnished by respondent and that in order to deceive the petitioner and to evade payment of money, wrong information appears to have been furnished to him by respondent about his name and father's name. The respondent has also taken a plea in para-5 in the written statement that the signature on the promissory note dt.23-05-2010 does not belong to him and that the petitioner has forged his signature and fabricated the suit promissory note. Having regard to this plea of respondent, it has to be implied that it is the respondent against whom the claim is being made by petitioner. Undoubtedly the question whether it was the respondent who executed the promissory note in favour of petitioner

would have to be decided at the time of trial of suit, but it does not mean that identity of respondent is in any way doubtful particularly having regard to the plea taken in para-5 of the written statement of respondent.

14. Therefore, I am of the opinion that the Court below was not correct in dismissing the application seeking amendment of the short cause title and long cause title in the plaint sought by petitioner. It is not correct in stating that the amendment in no way helps the Court below to decide the real question in controversy and may defeat the defence of respondent. Ultimately if the suit is decreed, at the execution stage, the petitioner would have difficulty in executing the decree if the cause title as sought for by petitioner is not permitted to be amended.

15. Therefore, the Civil Revision Petition is allowed, and the impugned order of the Court below in I.A.No.69 of 2014 in O.S.No.6 of 2013 is set aside and I.A.No.69 of 2014 is allowed. No costs.

16. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 15-06-2015

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