

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

CIVIL REVISION PETITION No.408 of 2013

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ORDER:

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This Civil Revision Petition is filed challenging the order

dt.30-11-2012 in I.A.No.2101 of 2011 in O.S.No.222 of 2009 of the

Principal Junior Civil Judge, Sattenapalli.

2. The petitioners herein are defendants in the suit.

3. The 1st respondent filed the suit for a mandatory injunction and for declaration that he is the son of late Shaik Mastan, that he is entitled to the death of benefits of late Shaik Mastan and to direct respondent Nos.3 to 6 to pay the death benefits of late Shaik Mastan to him.

4. Written statement was filed opposing the suit claim.

5. Thereafter I.A.No.2101 of 2011 was filed by 1st respondent seeking amendment of plaint by changing the cause title from "Shaik Gouse" as "Shaik Gouse @ Shaik Mahaboob Subhani".

6. In the affidavit filed in support of the said application, he contended that although his name is Shaik Mahaboob

Subhani, which name was given to him by his parents, villagers and neighbours started calling him as "Gouse" and although he instructed his advocate to describe him as "Shaik Gouse @ Shaik Mahaboob Subhani", the advocate failed to do so. He therefore sought substitution of the words "Shaik Gouse" with the words "Shaik Gouse @ Shaik Mahaboob Subhani".

7. The petitioners opposed the amendment contending that

1st respondent is not the son of late Shaik Mastan and the deceased has no such son by name Shaik Gouse. They admitted that the deceased had a son by name Shaik Mahaboob Subhani through his first wife by name Shaik Mastan Bi and contended that after reading the same in the written statement, the petitioner had sought for amendment also by adding "alias Shaik Mahaboob Subhani" in the cause title. They contended that in order to make wrongful claim from petitioners, the 1st respondent had filed this application.

8. By order dt.30-11-2012, the Court below allowed the said application. It held that if Shaik Gouse is not Shaik Mahaboob Subhani, the same would be established at the time of trial in the suit and it is not possible at the stage of considering the amendment application to decide

whether the petitioner is the son of late Shaik Mastan by name Shaik Gouse @ Shaik Mahaboob Subhani or not.

9. Challenging the same, this Revision is filed.

10. Learned counsel for petitioners Sri G.V.S.Mehar Kumar contended that 1st respondent is not the son of late Shaik Mastan and only to take advantage of the averment in the written statement of petitioners that late Shaik Mastan had a son by name Shaik Mahaboob Subhani through his first wife Shaik Mastan Bi, this application had been filed to knock away the death benefits of late Shaik Mastan.

11. Learned counsel for 1st respondent Sri Shaik Karimulla refuted the above contentions and supported the order passed by the Court below. He contended that whether 1st respondent is the son of late Shaik Mastan or not, is a matter to be adjudicated in the trial and that at the stage of considering the application for amendment, the merits of the case set up in the amendment cannot be gone into.

12. I find considerable force in the submission of the learned counsel for 1st respondent. Merely because 1st respondent had sought amendment of cause title in the plaint by substituting "Shaik Gouse @ Shaik Mahaboob

Subhani”, that does not confer any right on him unless it is established during trial that he is the son of late Shaik Mastan. While deciding whether or not to allow application for amendment, it is settled law that merits of the case set up by way of amendment, cannot be gone into.

13. Therefore I do not find any merit in the Revision and it is accordingly dismissed. No costs.

14. It is however made clear that the petitioners’ contention that

1st respondent is not the son of late Shaik Mastan by name Shaik Mahaboob Subhani shall be gone into in the trial and dismissal of this Revision shall not be taken into account in that regard.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 02-09-2015

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