

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
CIVIL REVISION PETITION No.3801 of 2016

ORDER:

This revision petition is filed against the order dated 06.07.2016 passed in I.A.No.39 of 2016 in O.S.No11 of 2015 on the file of II Additional Senior Civil Judge (FTC), Guntur.

2. The petitioner herein is defendant in the suit in O.S.No.11 of 2015. The said suit was filed for recovery of an amount of Rs.80,000/- from the petitioner under suit promissory note dated 29.07.2013. The respondent herein filed I.A.No.39 of 2016 on the file of II Additional Senior Civil Judge (FTC), Guntur (for short "trial Court") for correction of his father's name in the plaint and legal notice issued by the respondent, which was noted as 'Kotaiah'. Moreover, in the chief affidavit filed by the respondent as PW.1, the name of his father was noted as 'Kotaiah'. However, nowhere it is mentioned his father's name as 'Papaiah'.

3. Learned counsel appearing on behalf of the petitioner relied upon a proviso to Order VI Rule 17 of CPC, which reads as under:

"Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

4. He submits that once the trial has commenced, until and unless the Court satisfied, the amendment cannot be allowed. He further submits that the amendment can be allowed only inspite of due diligence, the party could not have raised the matter before commencement of trial.

5. It is not in dispute that in the present case, the trial had begun. The petitioner had filed written statement and respondent filed the chief affidavit as PW.1. The contention of respondent before the trial Court was that only after filing chief affidavit, the said mistake was noted in his father's name as 'Kotaiah' instead of 'Papaiah'.

6. Now it is well settled law that if after commencement of trial, and inspite of due diligence, the party could not have raised the matter before commencement of trial, the amendment cannot be allowed. But in the present case, by allowing the application of the respondent, it would not change the very nature of the suit nor it will any way cause prejudice to the petitioner herein, as the respondent has only sought to amend the name of his father in the description para of the plaint.

7. If at all the contention of the petitioner was true that the plaint filed by the respondent is frivolous and the respondent's father's name is not Papaiah, then the petitioner has every opportunity to elicit the same from the cross examination of the respondent and by producing rebuttal evidence to prove his defence.

8. In view of the above discussion, I am of the view that there is no discrepancy in the order passed by the trial court.

9. Finding no merit in the instant Civil Revision Petition, the same is accordingly dismissed *in limine*. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

JUSTICE SURESH KUMAR KAIT.

Date :22-08-2016
Gvl