

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1908 of 2016

ORDER :

This Revision is filed challenging the order dt.15.12.2015 in I.A.No.1744 of 2015 in O.S.No.425 of 2014 on the file of Additional Senior Civil Judge, Eluru.

2. The petitioners herein are defendants in the suit.
3. The respondents filed the said suit for eviction of petitioners, and for arrears of rent.
4. Thereafter, the respondents filed I.A.No.1744 of 2015 seeking amendment of the plaint. One such amendment was to add M/s.Vinayaka Traders, represented by its partner, Lakkakula Narasimha Rao, resident of Eluru, West Godavari District as 1st defendant in the suit, showing the petitioners herein as defendant nos.2 to 5.
5. The petitioners opposed the said amendment contending that respondents were aware about the registration of the Firm, viz., M/s.Vinayaka Traders; that respondents leased out the property to the Firm of which the petitioners are partners; that filing of suit without impleading the Firm as a party should result in the suit itself being dismissed as not maintainable; and that this defect cannot be cured by impleading the Firm at this

stage.

6. By order dt.15.12.2015, the said application was allowed over-ruling the objections raised by petitioners. The Court below held that the trial of suit has not yet commenced; and since it was brought to the notice of the Court that the suit schedule property, which belongs to respondents was taken on lease under an registered sale deed by all the petitioners for their business purpose, it had become necessary to add the name of the Firm in the cause-title and at the relevant places in the plaint and no prejudice would be caused to petitioners if such amendment is taken up. It observed that while deciding an amendment application, merits of amendment sought cannot be gone into.

7. Challenging the same, the present Revision is filed.

8. Heard the counsel for petitioners.

9. The counsel for petitioners reiterated the stand taken by petitioners in the Court below.

10. In **Purushottam Umedbhai and Co., v. M/s. Manilal and Sons**^[1], the Supreme Court considered Order XXX C.P.C. and observed that where a suit is filed in the name of Firm, it is still a suit by all partners of the Firm. It observed that if Order XXX had not been

introduced into the Code, and a suit had been filed in the name of a Firm, it would not be a case of a suit filed by a non-existent person. Even if the Firm may not be a legal entity, it would still be a suit by partners of a Firm - the defect being that they were described as a Firm. It also observed that the provisions of Order XXX C.P.C. are enabling provisions and they do not prevent the partners of a Firm from being sued in their individual names.

11. In view of the settled legal position, the mere fact that petitioners were added as partners originally without mentioning the name of the Firm does not render the suit as not maintainable; and in view of Order XXX C.P.C. it is in fact a suit by the Firm only, even if the Firm is not shown as a party in the cause-title.

12. This being only a mis-description, even if Order VI Rule 17 C.P.C or Order I Rule 10 C.P.C do not apply, Section 153 C.P.C would squarely apply and it is not a case of either adding parties or substituting parties.

13. I therefore do not find any merit in the Revision, and it is accordingly dismissed. No order as to costs.

14. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-06-2016

Ndr/*

[\[1\]](#) AIR 1961 SC 325