

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**C.R.P.Nos.225 & 236 of 2017****COMMON ORDER:**

These two Civil Revision Petitions arise out of the same suit between the same parties. Therefore they are being disposed of by a common order.

2. The petitioner in both the Revision Petitions is 2nd defendant in the suit.

3. The 1st respondent/plaintiff filed the suit against the petitioner and the 2nd respondent for recovery of money on the basis of a promissory note. It is not in dispute that the 1st respondent described herself as “Bhimili Nagamani” in the plaint cause title and that is the name which is also found in the promissory note dt.15-12-2007 on the basis of which she filed the suit.

4. After the trial commenced, 1st respondent filed on 08-03-2016 I.A.No.382 of 2016 to amend the plaint by adding ‘@Bhimala Ngamani’ after her name “Bhimilli Nagamani” in the short cause title and long cause title of the plaint and also I.A.No.383 of 2016 for a similar amendment in I.A.No.918 of 2010, which was an application filed for attachment of property of the petitioner.

5. In both these applications, she contended that her actual name is “Bhimala Nagamani”, that “Bhimili Nagamani” is her pet

name and this correction is necessary to avoid conflict and for adjudication of the suit.

6. Counter affidavit is filed by the petitioner in both these applications opposing this amendment and denying the contentions of 1st respondent therein. He also disputed that 1st respondent's pet name was 'Bhimili Nagamani'. He pointed out that even though specific plea was taken in Written Statement on 08-09-2010 mentioning that he was not aware of 'Bhimili Nagamani' but he only knew 'Bhimala Nagamani', nothing was done by 1st respondent till 2016, after the trial was commenced, and after she was cross examined at length disputing her sur name and challenging her identity. It was also contended that there was no diligence on the part of the petitioner at the earliest stage of the proceedings and therefore such relief cannot be granted.

7. By order dt.03-12-2016, the Court below allowed the said applications holding that the actual pet name of 1st respondent will be decided in the final judgment in the suit after appreciating entire evidence in the record and at this time, this cannot be decided. It also opined that the petitioner would get opportunity to file additional Written Statement.

8. Challenging the same, these two Revision Petitions are filed.

9. Learned counsel for the petitioner contended that no amendment to the plaint can be permitted after the trial commenced normally and that since 1st respondent had not exhibited due diligence in raising the matter after the Written Statement was filed by the petitioner before commencement of trial, the Court below ought not to have allowed the amendment of said applications.

10. Though the learned counsel for the petitioner took out personal notice to 1st respondent, notice to her could not be served. Thereafter notice was ordered to the learned counsel for 1st respondent in court below. Learned counsel for the petitioner stated that the learned counsel for 1st respondent was one Gali Uday Bhaskar and that such notice was served on 10-03-2017. In view of the said submission, since learned counsel for the 1st respondent is served, the 1st respondent deemed to be served.

11. It is undisputed that in the Written Statement itself, the petitioner had raised the pleading that he knew only 'Bhimala Nagamani' and not 'Bhimili Nagamani' and in spite of that, no steps were taken by 1st respondent to seek amendment of the cause title in the plaint and in the application for attachment, and such application was filed 5 ½ years after the Written Statement was filed. This exhibits total lack of diligence on the part of the 1st respondent. In view of the fact that the trial of the suit had commenced, keeping in view the proviso to Order 6 Rule 17 CPC, the Court below ought not to have allowed the applications for amendment.

12. Accordingly, both the Civil Revision Petitions are allowed, the orders dt.03-12-2016 in I.A.No.382 of 2016 in O.S.No.235 of 2010 and I.A.No.383 of 2016 in I.A.No.918 of 2010 in O.S.No.235 of 2010 of the III Additional District Judge, Bhimavaram are set aside. No costs.

13. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-04-2017

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