

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION PETITION No.1401 OF 2017

ORDER:

The 3rd defendant of O.S.No.17 of 2009, on the file of Senior Civil Judge, Bhongir, is the revision petitioner. The 6th defendant filed, in the pending suit, I.A.No.430 of 2016 to transpose him as 2nd plaintiff, saying the 1st plaintiff/revision 2nd respondent, choosing to withdraw the suit against some of the defendants in toto. The contention of the proposed 2nd plaintiff/6th defendant is that, in the suit for partition, he is also entitled to the relief thereby he is to be transposed instead of permitting withdrawal of the total claim and driving for fresh suit by invoking Order 23 (1A) of the C.P.C., the lower court allowed the application, aggrieved by it, the 3rd defendant maintained the revision.

2. Heard both sides.

3. It is the submission of the counsel for the revision petitioner/3rd defendant that the proposed 2nd plaintiff, who was the 6th defendant, filed memo adopting written statement of 1st defendant in opposing the suit claim, on the ground that plaintiff has no cause of action and once plaintiff has no cause of action, as per that contest of 1st first defendant, adopted by him, leave about by others, the question of transposing him does not arise. He drawn the attention of

the court as to what is meant by cause of action with reference to settled expressions and also drawn attention of the Court to the expression of the Patna High court in ***Mahindra Singh and Others Vs. Chander Singh and Others***¹, it is in relation to the personal action claim in relation to office of the sole plaintiff died, when L.Rs want to continue, discussed of personal action dies with person nothing to continue to represent and that the discussion in Para 26 of what to continue is the existing original cause of action. When there is survival of cause of action from death of sole plaintiff, the question of transposing does not arise. Another judgment of Jaipur Bench of Rajasthan High Court in ***Abdul Wasi Vs. Abdul Kadir***², which is in relation to the rejection of plaint for want of cause of action. These two judgments have no application at all.

4. It is not a case either of continuation of claim by L.Rs and consideration of survival of cause of action to the L.Rs or not and not even a case of plaint pleadings lacks cause of action, thereby liable to be rejected. Even coming to the core of the issue, merely because 1st defendant contested of plaintiff has no cause of action to maintain the suit, that was adopted by the 6th defendant, who is now proposing to transpose as co-plaintiff from the sole plaintiff choosing to withdraw the suit, that is not a bar but for to consider, that

¹ AIR 1957 Pat 79

² 2015 (2) CDR688 (Raj)

too in a suit for partition, that to from the enabling provision referred supra, whether the 6th defendant to come as co-plaintiff can get any relief or not by such transposition. Leave about any additional court fees, if at all to pay, the court always got power till pronouncement of judgment to direct to pay deficit court fee.

5. Accordingly and subject to the above observations, this criminal petition is dismissed for no grounds to interfere. Miscellaneous petitions pending, if any, in this case shall stand closed.

10.04.2017
SS

DR.B.SIVA SANKARA RAO,J

