



C.M.P.No.7857 of 2022 in
A.S.No.130 of 2022

WEB C R.N.MANJULA,J.

This Civil Miscellaneous Petition has been preferred seeking permission of the Court to transpose the petitioner/second respondent in A.S.No.130 of 2022, as a third appellant in the appeal.

2. The learned counsel for the petitioner submitted that the first respondent/plaintiff filed the suit for recovery of money and the suit was decreed in favour of the plaintiff; an appeal has been preferred challenging the decree passed in the suit; at the time when the appeal was filed, the signature of the petitioner/third defendant could not be obtained in time and in view of the same and also taking advantage of Order 41 Rule 4 of C.P.C., the appeal was filed by the first and second defendants by impleading the third defendant as the second respondent in the appeal.

3. The first respondent/plaintiff is an advocate by himself and he opted to appear in person. The first respondent submitted that the third defendant cannot sail along with him and it is wrong to show him as a second respondent. The first respondent/plaintiff further submitted that the appeal



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itself is not maintainable because the cause title shows the third defendant as one of the respondents in the appeal and the Registry has also played fraud and facilitated the filing of the appeal.

4. As per Order 41 Rule 4 of C.P.C., when there are more than one plaintiff or more defendants, any one of the plaintiffs or the defendants can file an appeal. It is not uncommon that some of the defendants are arrayed as respondents in the appeal filed by the other defendants, challenging the decree passed against them. There are many instances in which, if one of the defendants does not choose to file an appeal or feels inconvenient to prefer an appeal along with the other defendants for some reason or other, the rest of the defendants would file an appeal by impleading the left out defendants as respondents. Law does not prohibit transposition of the parties for valid reasons. Even according to the first respondent/plaintiff, the second respondent/third defendant is a Bank party and his interest does not tally with the interest of the plaintiff. Under such circumstances, no prejudice would be caused to the plaintiff to transpose the third /second respondent as a third appellant.



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5. The first respondent/plaintiff invited the attention of this Court to the provisions of Order 1 Rule 10 of C.P.C., and submitted that only when there is a *bonafide* mistake and a wrong person is added as a plaintiff, an order may be passed to substitute the right person. It is further submitted that the power of the Court to strike out or add parties under Order 10 Rule 2, can be done only when the suit is pending and such power cannot be exercised by the Court, once the suit is disposed.

6. Here is the case where no parties have been impleaded wrongly and hence, there is no occasion for the Court also to strike out or add any parties as contemplated under Order 1 Rule 10(2) of C.P.C. For the present situation and the issue in hand, Order 1 Rule 10 has no application. The reasons stated to transpose the third respondent as a third appellant is *bonafide* and the compelling circumstances under which the third defendant was shown as a second respondent at the time of filing the appeal is also understandable. After all, the parties are impleaded for the effective adjudication of the litigation and in order to save the proceedings from the risk of meeting of consequences of non-joinder or misjoinder of parties. Hence, this Court need not hesitate to allow the second respondent/third defendant to get transposed as third appellant and conduct the appeal along with the other appellants.



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7. Hence, this petition is allowed. The Registry is directed to carryout the necessary amendments.

17.06.2022

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NOTE : Issue order copy on 22.06.2022.

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