

Brig. Chatrapati Singh Dev Vs. Amulya Kumar Padhi and ors.

Brig. Chatrapati Singh Dev Vs. Amulya Kumar Padhi and ors.

SooperKanoon Citation : sooperkanoon.com/437712

Court : Andhra Pradesh

Decided On : Jul-13-2005

Reported in : 2005(5)ALD315; 2005(5)ALT418

Judge : C.Y. Somayajulu, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 1, Rule 10 - Order 6, Rule 17 - Order 22; Practice Civil Rules - Rule 28; [Limitation Act, 1963](#) - Sections 21

Appeal No. : CRP No. 1059 of 2005

Appellant : Brig. Chatrapati Singh Dev

Respondent : Amulya Kumar Padhi and ors.

Advocate for Def. : M.V. Suresh, Adv. for the Respondent Nos. 2 and 3

Advocate for Pet/Ap. : R.N. Hemendranath Reddy, Adv.

Disposition : Revision allowed

Judgement :

ORDER

C.Y. Somayajulu, J.

1. In a suit for declaration that the decree in O.S. No. 96 of 1998 obtained by respondents 2 and 3 is a fraudulent collusive decree and for a consequential relief

of injunction restraining execution of that decree, filed by the first respondent in his capacity as the Manager of Raja Chatrapati Singh Dev, Mandasa Palace, petitioner filed a petition under Order 1 Rule 10 CPC to implead him as second plaintiff, in the suit, on the ground that he is the actual beneficiary of the suit filed by the first respondent.

2. First respondent did not oppose the petition but respondents 2 and 3 opposed the application on various grounds, including the ground that since petitioner already filed O.S. No. 2 of 1999 he need not come on record in this suit. They also contended that since the petition contains two prayers i.e., seeking impleadment and consequential relief of amendment of the plaint, the same is liable to be dismissed.

3. The learned Junior Civil Judge found favour with the contention that two prayers cannot be claimed in one petition, and on the ground that petitioner suppressed the factum of his filing another suit, dismissed the petition of the revision petitioner.

4. The learned Junior Civil Judge was in error in holding that a petition to impleadment of a party cannot contain the consequential relief of the amendments to be made and that such prayer amounts to claiming two reliefs in one petition. In view of Rule 28 of Civil Rules of Practice, which lays down that all petitions filed under Order 1 Rule 10 CPC, Order 6 Rule 17 CPC and Order 22 CPC shall also contain a prayer for all consequential amendments, and that a petition without such relief should be rejected.

5. In view of Rule 28 of the Civil Rules of Practice petitioner claiming consequential relief of amendment to plaint also cannot be said to be irregular and does not amount to making two prayers in one petition. In fact as per the mandate of that Rule if the application does not contain the consequential reliefs to be made, it will have to be rejected.

6. The second ground on which the learned Junior Civil Judge dismissed the petition is the petitioner not disclosing his filing a suit earlier. Petitioner filing another suit has no relevance for considering his petition to come on record in this suit, because this suit, in any event, has to be decided on its merits whether

petitioner comes on record or not.

7. Since, the allegations in the plaint disclose that the suit is filed for the benefit of the petitioner, there can be no objection for the respondents 2 and 3 for the petitioner coming on record, which would naturally be subject to the law of limitation and Section 21 of the [Limitation Act, 1963](#) and so the learned Junior Civil Judge is erred in dismissing the petition.

8. Therefore, the revision and consequently I.A. No. 240 of 2004 in O.S. No. 154 of 1999 on the file of Junior Civil Judge, Sompeta stand allowed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com