

(2011) 06 AP CK 0028
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 427 of 2011

Smt. K. Andalamma Rao

APPELLANT

Vs

G. Lkshma Rao and Others

RESPONDENT

Date of Decision : 22-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2011) 5 ALD 769 : (2011) 6 ALT 235

Hon'ble Judges : Nisar Ahmad Kakru, C.J.; Vilas V. Afzulpurkar, J

Bench : Division Bench

Advocate : Ravindra Bharati, for the Appellant; Ramesh Babu and G.P. for Revenue for Respondent Nos. 2, 3 and 7, for the Respondent

Final Decision : Dismissed

Judgement

Nisar Ahmad Kakru, C.J. and Vilas V. Afzulpurkar, J.—Impleadment of the Respondents 5 and 7 to the writ petition, besides permission accorded to the writ Petitioner by the writ Court to amend the relief clause in the writ petition is questioned by the Respondent 3 in the writ petition (Appellant herein) on the ground of denial of opportunity to oppose the amendment. The argument may not be out of the ignorance of the true legal position traceable to Order I Rule 10 of CPC (Code of Civil Procedure), but it is certainly in contravention of mandate of the said rule which manifestly empowers the Court to exercise the power of impleadment even without a motion, apparently because unless the lis is barred by limitation or defeats an accrued right of a party, such party cannot claim to be an aggrieved person and there is No. justification for such person to challenge the amendment of the relief and addition of a party. For another reason also, i.e., neither the impleadment nor the amendment of the pleadings divests a party of its right to assert and establish that the amended plea is unfounded. Likewise nothing prevents it to raise an issue of misjoinder on account of impleadment sought and granted. Viewed thus, an order granting amendment of the pleadings, and addition of a particular relief, do not fall within the expression of

judgment" employed in Clause 15 of the Letters Patent as laid down by the Supreme Court in *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, and paragraphs 115 and 117 being relevant to the issue may be noticed;

115. Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment.

117. Let us take another instance of a similar order which may not amount to a judgment. Suppose, the trial Judge allows the Plaintiff to amend the plaint by adding a particular relief or taking an additional ground which may be inconsistent with the pleas taken by him but is not barred by limitation and does not work serious injustice to the Defendant who would have ample opportunity to disprove the amended plea taken by Plaintiff at the trial. In such cases, the order of the trial Judge would only be a simple interlocutory order without containing any quality of finality and would therefore not be a judgment within the meaning Clause 15 of the Letters Patent.

2. Even otherwise, the impleadment sought for and allowed is of the transferees from Respondent No. 3, The said impleadment is sought to be justified by the writ Petitioner as a sequel to the order of the Division Bench dated 19-6-2009 in W.A.M.P. No. 1940 of 2009 in W.A. No. 157 of 2008. Further, the said order of impleadment and consequential amendment is not questioned by the parties impleaded but by the Respondent No. 3, the vendor of the impleaded parties. We therefore do not find any reason even on facts to interfere with the order impugned.

3. In the case on hand No. legal bar as indicated above is pleaded against the impleadment and addition of a party. Viewed thus, writ/appeal has to fail. Dismissed.