

## Ganesh Patwari Vs Talla Venkata Ramana Reddy and another

**Court:** Andhra Pradesh High Court

**Date of Decision:** Dec. 3, 1999

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 6 Rule 17  
Negotiable Instruments Act, 1881 (NI) â€” Section 78, 8

**Citation:** (2000) 4 ALD 333 : (2000) 2 ALT 225 : (2000) 3 CivCC 675

**Hon'ble Judges:** A. Gopal Reddy, J

**Bench:** Single Bench

**Advocate:** Mr. D.V. Reddy, for the Appellant; Mr. P.S. Narayana, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

1. This revision is directed against the order dated 28-3-1994 passed by the Subordinate Judge, Mandanapalle in IANo.734 of 1993 in OS

No.120 of 1979.

2. The defendant No. 1 is the Revision Petitioner. The first respondent-plaintiff filed the suit OS No.120 of 1979 for recovery of a sum of

Rs.48,000/- from the first defendant stating that he purchased car from the second defendant for Rs.35,000/- and brought it from Madras to

Madanapalle and effected repairs after repairs he sold the said car to the first defendant who agreed to purchase the same for Rs.45,000/- and

paid Rs.1,000/- in cash and Rs.14,000 was adjusted for the value of Singer five thread over lock machine given by first defendant to plaintiffs

factory and he issued a cheque for balance of Rs.30,000/- on 27-11-1976 and took delivery of the vehicle. As the defendant failed to pay the

amount he instituted the present suit.

3. The defendant filed written statement denying the transaction but he stated that he issued cheque in favour of Andhra Garments, Industrial

Estate, Madanapalle. He purchased the car from second defendant for a consideration of Rs.30,000/- duly executed a receipt on 15-1-1977 and

delivered the car to the defendant.

4. While so the first respondent-plaintiff filed IA No.734 of 1993 in OS No.120 of 1979 under Order 6 Rule 17 CPC for amendment of the plaint

in the cause title stating that instead of firm's name the individual name is mentioned in the cause title. The same was opposed by the respondent

stating that in the year 1979 itself he has taken plea that he has not issued any cheque in favour of the plaintiff and the cheque was issued, in the

name of Andhra Garments. If instead of plaintiff, Andhra Garments is substituted the entire character of the suit will be changed. Firm itself cannot

file a suit at the belated stage basing on the promissory note and the claim of the firm is barred and the same cannot be allowed.

5. The lower Court by the impugned judgment without going into the merits of the case allowed the application stating that the plaintiff-petitioner in

IA No.734 of 1993 is a Managing partner of the firm called Andhra Garments and the burden of proof of the firm and as well as the plaintiff lies on

the plaintiff himself. The body of the plaint, the reliefs prayed for, the names of the parties remain as it is and amendment sought is only to answer a

technical objection to decide the issue between the parties effectively and efficiently in the interest of justice and to avoid multiplicity of proceedings

amendment is liable to be allowed.

6. The learned Counsel for the petitioner strenuously contended that admittedly the cheque was not issued in favour of the plaintiff T.

Venkatramana Reddy and it was only issued in the name of Andhra Garments, Madanapalle.

7. u/s 78 of the Negotiable Instruments Act it is only holder of the instrument alone entitled for payment and the holder is also defined u/s 8 of the

Negotiable Instruments Act. It is as follows:

The holder of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or

recover the amount due thereon from the parties thereto.

8. In view of the same the suit filed by the plaintiff is liable to be dismissed. Even assuming that if the plaintiff is the Managing Partner of Andhra

Garments, the Andhra Garments cannot institute a suit against the petitioner-defendant at this belated stage. When the amendment is allowed it

amounts to taking away the accrued right of the defendants under the law of limitation. Under such circumstances the lower Court is not justified in

allowing the application. He further contended that there is no averment in the plaint that the transaction was between the Andhra Garments and the

defendant No.1 for sale and purchase of the car and in the absence of any material on record the lower Court with only one paragraph order

allowed the IA without giving any reasons and the same is liable to be set aside. In support of his contention he cited the judgments in V. Bapu

Kalingarayar Vs. Rajam and Another, , Maddula Kasi Viswanadham Vs. Chalasani Radhakrishnarao, , D. Jayarami Reddy v. Revathi Mica

Company 1972 An.WR 7, Kisan Co-operative Sugar Factory Ltd. Vs. Rajendra Paper Mills and Others, , Bhawani Dass Vs. Kaushalya Rani,

and The Ongole Byragi Mutt, Ongole and Others Vs. Inala Kannayya and Others, .

9. On the other hand the Counsel for the respondent contended that in the plaint no doubt T. Venkatarama Reddy is shown as plaintiff but in the

description he was described as Managing Partner of Andhra Garments. Hence the same can be amended at any time irrespective of the law of

limitation. The lower Court has got jurisdiction for ordering the amendment and there is no failure of justice in allowing the amendment application.

In support of his contention he relied upon the judgment in Kurapati Venkata Mallayya and Another Vs. Thondepu Ramaswami and Co. and

Another, , Madhavacharyufu v. Mat-am Venkata Rao 1984 (1) ALT 27 and Dharmalinga v. Krtisfmaswami AIR 1949Mad. 467.

10. In view of the above rival contentions the point which arises for considerations whether the lower Court committed any jurisdictional error in

allowing the amendment and whether the lower Court committed illegality in allowing the IA and ordering the amendment of the plaint.

11. The suit is originally based upon the cheque issued in favour of Andhra Garments and as per Section 78 of the Negotiable Instruments Act the

holder of the instrument is entitled for payment of the amount due under the instrument. Admittedly, the first respondent plaintiff has not filed the

suit as a holder in due course and the defendant filed the written statement in the year 1979 denying the issue of any cheque in favour of the plaintiff

and the said cheque was issued in favour of Andhra Garments towards business transaction and contending the suit as framed itself is not

maintainable. No steps were taken by the plaintiff for filing application for amending the plaint till 1993. In view of the above facts it has to be seen

whether the effect of amendment will amount to taking away of accrued right of the defendant.

12. In Kalingarayar's case (supra) Madras High Court held that the persons who are not payees and had not filed the suit as the endorsees

thereof, are not entitled to maintain the suit on the promissory note, though the consideration for the same proceeded from them and the

promissory note had been executed in favour of a person who appears to have been the power of attorney agent of such persons.

13. In Byragi 's case (supra) Full Bench of this Court held as follows :

If necessary parties are not impleaded, the suit is bad for non-joinder and the addition of those parties after the period of limitation will necessitate

the dismissal of the suit. It, however at the inception the necessary parties are impleaded, the non-joinder of other persons who are not necessary

or indispensable but whose joinder is only desirable to safeguard their rights and the rights of others and to prevent further litigation and does not

render the suit as improperly constituted and the joinder of those parties the period of limitation will not necessitate the dismissal of the suit.

14. In Jayarami Reddy's case (supra) this Court held as follows.

Instrument should alone be looked into to determine promisor or promisee-surrounding circumstances cannot be taken into account to determine

who is promisor or promisee.

15. In Bhawani Dass case (supra) Punjab and Haryana High Court held that application to amend the plaint by addition of co-vendee as new

defendant on date of application suit becoming time barred. Amendment cannot be allowed.

16. It was further held as follows :

The golden streak which permeates the case law on the subject is to the effect that that amendment sought to be allowed by a party must be on

account of bona fide mistake and as a result of inadvertence.

17. In Kisan Co-operative Sugar Factory's case (supra), the Allahabad High Court held that amendment to add new party against whom limitation

had already run out-should not be allowed unless there are special considerations.

18. In Kurapati Venkata Mallayya and Thondepu Ramaswamy (supra), the Supreme Court held as follows :

The suit as originally instituted, was thus perfectly competent. The High Court has observed that even assuming that it would have been more

appropriate for the Receiver to show in the cause title that it was the firm which was the real plaintiff and that the firm was suing through him it was

merely a case of misdescription and that the plaint could be amended at any time to show the correct description of the plaintiff. If it is only

misdescription it is open to the Court to allow the amendment of the plaint at any time and the same would not arise in such case.

19. In Parachuri's case (supra) this Court held it cannot interfere in revision against the order of lower appellate Court granting injunction in a suit.

20. In Dharmalinga Chetti's case (supra) Madras High Court held Truth or falsity of case put in amendment need not be considered while

considering whether amendment should be allowed or not. If it is false, petitioner will fail in suit with costs.

21. In Umakandhan Vs. P.M.A.N. Beema Raja Nadar, , it was held where suit for recovery of money laid on promissory note-Identity of person

who is to be sued not at all in doubt-misdescription of defendant in short cause title and long cause title of plaint can be corrected by allowing

amendment in respect.

22. In Radhika Devi Vs. Bajrangi Singh and others, , it was held that an accrued right in favour of the respondents would be defeated by permitting

amendment of the plaint. The Court therefore was right in refusing to grant permission to amend the plaint.

23. In view of the above in the present case the suit itself was filed by T. Venkatarama Reddy basing upon the cheque issued in favour of Andhra

Garments and he has no right to institute the suit in his individual capacity and he is not entitled to sue. Now by virtue of the amendment the plaintiff

wants to introduce a fresh case. Admittedly, the holder of the cheque cannot institute a suit on the date when the amendment sought which is

clearly barred by limitation. As per the law laid down by the Supreme Court an accrued right in favour of the respondents would be defeated by

permitting amendment of the plaint. The plaintiff by seeking an amendment in the cause title by substituting the plaintiff firm in the place of individual

plaintiff after the period of limitation amounts to setting up of a new case. If the amendment is allowed, the same will give rise to a new cause of

action which is not pleaded in the plaint and therefore cannot be allowed at a belated stage when the plaintiff had not made any attempt to amend

to plaint within the period of limitation inspite of specific pleadings raised in the written statement. A suit which is otherwise barred by limitation and

cannot be instituted by the firm against the defendants, by virtue of amendment he is allowed to make a claim even after the period of limitation. In

view of the same the lower Court has not properly exercised its jurisdiction in allowing the amendment stating that the burden of proof of the firm

and as well as plaintiff lies on the plaintiff himself. The same cannot be a ground for allowing the amendment of the plaint. The lower Court

committed illegality in exercises of its jurisdiction by ordering the amendment which will amount to taking away the accrued right of the defendant.

In view of the same this is a fit case where this Court in exercise of revisional jurisdiction has to intervene and accordingly the revision is allowed

and the order passed y the Court below is set aside.

24. The revision is accordingly allowed.