



IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL JUDGE, GOKAK

Present: Sri. K.M. SHANKAR, B.A.L., LL.B.
I Addl. Senior Civil Judge, Gokak
C/C II Addl. Senior Civil Judge, Gokak

Dated, this the 19th day of March, 2024

O.S.No.110/2018

Plaintiff: Parappa @ Prabu Shrikant Itnal,
Age: 45 years, Occ: Agriculture,
R/o: Bilakundi village, Gokak taluk.

(By Sri.MNC., Advocate)

V/s

Defendants: 1. Siddappa Rayappa Doni,
Age: 40 years, Occ: Agriculture,
R/o: Koujalagi village, Gokak taluk.

2. Renuka Siddappa Doni,
Age: 35 years, Occ: Agriculture,
R/o: Koujalagi village, Gokak taluk.

3. Sarswati Siddappa Lagali,
Age: 40 years, Occ: Household,
R/o: Yaragatti, Gokak taluk.

4. Kamalavva Rayappa Doni,
Age: 67 years, Occ: Household,
R/o: Koujalagi village, Gokak taluk.

5. Kavya D/o. Siddappa Doni,
Age: 19 years, Occ: Student,
R/o: Koujalagi village, Gokak taluk.

6. Anjali D/o. Siddappa Doni,
Age: 10 years, Occ: Student,
R/o: Koujalagi village, Gokak taluk.

7. Savita D/o. Siddappa Doni,
Age: 08 years, Occ: Student,
R/o: Koujalagi village, Gokak taluk.
8. Sanvakka D/o. Siddappa Doni,
Age: 06 years, Occ: Student,
R/o: Koujalagi village, Gokak taluk.
9. Raju S/o. Siddappa Doni,
Age: 03 years, Occ: Student,
R/o: Koujalagi village, Gokak taluk.

(D-6 to 9 are minors R/by their father
1st defendant)

(D1, 2, 4 & 5 to 9 R/by Sri.BKJ., Adv.,)
(D3 by Sri.DMM., Adv.,)

I.A. No.16

Applicant : Parappa @ Prabu
V/s
Opponents : Siddappa and others

ORDERS ON IA No.16 DATED 17.01.2024 FILED UNDER ORDER 6
RULE 17 READ WITH SECTION 151 OF CPC

Plaintiff has made the instant application seeking permission to amend the plaint as mentioned in the application on the grounds that he has filed the suit for the relief of specific performance of contract. At the time of the institute of the suit, by oversight plaintiff has not sought for refund of earnest money with interest. The proposed amendment will not change the

nature of the suit or will not brings a new cause of action and it is not barred by time. If the application is allowed, no loss or hardship would be caused to the other side. If it is not allowed, plaintiff will be put to heavy and irreparable loss.

2. In the objections dated 01.02.2024, the application is resisted by the defendants 1 and 2 contending that the averments made therein are false. The evidence of the plaintiff was closed and thereafter the 1st defendant was examined and now the matter is posted for cross-examination of the DW1. In the meantime, the application is filed for amendment of the plaint by inserting an alternative relief of refund of the earnest money. It is totally inconsistent with the relief that already pleaded in the plaint. The application is time barred. The amendment sought by the plaintiff was within his knowledge as on the date of filing of the suit. In spite of due diligence, he did not come forward to file such application. Hence, the belated amendment application cannot be considered. In view of the amended provision of Order 6 Rule 17 of CPC, the trial is already commenced, so it cannot be entertained. The amendment sought by the plaintiff is totally introduction of a new relief. Hence, the defendants will be put to heavy and untold hardship.

Accordingly, it is prayed for dismissal of the application with cost.

3. I have heard the arguments of the learned counsels appearing for the parties and perused the material on record.

4. Points that arise for consideration of the court are;

1. Whether application deserves to be allowed?

2. What Order?

5. Findings of the court on the above points are as under:

Point No.1: in the affirmative and

Point No.2: as per the final order for the following:

R E A S O N S

6. Point No.1; as rightly contended by the defendants 1 and 2, the proposed amendment is sought at the belated stage i.e., after commencement of trial and when the matter was set down for cross-examination of the PW3 and that apart absolutely no due diligence inspite of which the proposed amendment could not have been brought at the earlier stage of the proceedings is forthcoming in the case.

7. However, it is well settled that in a suit for specific performance of contract, the amendment of plaint seeking insertion of an alternative relief can be allowed at any stage of proceedings to which provisions of the Limitation Act, are not applicable. In this regard, reliance can be made on the decision reported in, 2013 (3) Civil Court Cases 417 (AP), in the case of Padam Sathya Narayana Vs. Ravul Varalaxmi and others. In the circumstances, even in absence of sufficient reason for not having brought up the proposed amendment at the earlier stage of proceedings, it can be allowed. Even, it neither changes the nature of the suit nor brings a new cause of action and no hardship or injury would be caused to the defendants 1 and 2 and therefore it can be allowed by imposing cost and accordingly the point No.1 is answered in the affirmative.

8. Point No.2: in view of the findings arrived on the point No.1, I proceed to pass the following:

O R D E R

The IA.No.16 filed Under Order 6 Rule
17 R/W/S 151 of CPC, is hereby allowed on
cost of Rs.300/-.



Plaintiff is permitted to carryout
amendment as sought in the IA.

(Dictated to the stenographer on computer, typed by
him, revised, corrected and then pronounced by me in the open
Court on this the 19th day of March, 2024)

Sd/-
(K.M.SHANKAR)
I Addl. Senior Civil Judge, Gokak
C/C II Addl. Senior Civil Judge, Gokak