

IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC AT ANEKAL

Present: Sri. T.Govindaiah, B.Com., LL.B.,
Senior Civil Judge, Anekal

O.S. No.656/2015

Dated this the 15th day of July, 2016

Plaintiff/s : Dr. Lakshman

V/s

Defendant/s : Sri. D.T.Santosh and others

ORDERS ON I.A Nos.5 & 6

The applicant/plaintiff filed the present applications both U/o.6 Rule 17 read with section 151 of CPC., for seeking amendment to plaint. In support of the both applications, the applicant/plaintiff has sworn an affidavit wherein he states that he entered into Memorandum of Understanding (MOU) with defendants No.1 & 2 in respect of land Sy. No.116 & 117. The plaintiff also paid an amount of Rs.9,00,00,000/- to the Memorandum of Understanding (MOU) dated 08.11.2012. The defendants No.1 & 2 agreed to sale the suit item Nos.1 to 4, 19 to 22 and 108 along with Sy. No.116 & 117. Now, the defendants No.1 & 2 fail to perform their part of contract. Further, the defendants No.1 & 2 alienated the land measuring 10 acres in

Sy. No.116 and 117 of Ballur Villlage through the sale deed dated 07.06.2012. Accordingly, the defendants by colluding with each other in order to cheat the plaintiff. Accordingly, the plaintiff lodged a complaint against the defendants and the same is registered in crime No.110/13. Accordingly, the defendant No.3 being the part of conspiracy and full knowledge of Memorandum of Understanding (MOU) with plaintiff. Therefore, the plaintiff has cause of action against the defendant No.3 also. He further states that the defendant No.3 is well aware about the transaction between the plaintiff and defendants No.1 & 2 by knowing all the facts. The defendants by colluding with each other trying to cheat the plaintiff by receiving an amount of Rs.9,00,00,000/-. Further, the defendants No.1 to 3 are jointly and severally liable to perform their obligations and liable to claim of the plaintiff. Therefore, it is necessary to amend the plaint by inserting the cause of action against the defendant No.3. The applicant/plaintiff has made out sufficient grounds to allow the present application. If the applications are allowed, no loss or injury to the other side. On the other hand, if the applications are not allowed, the applicant/plaintiff will be put to inconvenience and injury.

2. On the other hand, the defendants filed the objection to the present applications. Wherein, they contended that the application filed by the applicant/plaintiff is not maintainable either in law or on facts. They further contended that the plaintiff entered into Memorandum of Understanding (MOU) with defendant No.1 only. The defendant No.2 being the Director of Company, they are liable to pay the claim of plaintiff. The defendant No.3 is no way concerned to the transaction between the plaintiff and defendants No.1 & 2. The defendant No.3 has not received any amount from plaintiff and he has not entered into Memorandum of Understanding (MOU) or agreement with plaintiff. Further, the defendant No.3 is not the signatory to the Memorandum of Understanding (MOU) dated 08.11.2012. Further, the claim of the plaintiff is only against the defendants No.1 & 2. Further, the plaintiff filed the present suit for recovery of the above claim against the defendants No.1 & 2. Therefore, the defendant No.3 is no way concerned to the transaction between the plaintiff and defendants No.1 & 2. The plaintiff is trying to create new cause of action against the defendant No.3 by amending the plaint. The proposed amendment will create new cause of action against the defendant No.3. Admittedly, the

defendant No.3 purchased the properties much prior to Memorandum of Understanding (MOU) dated 08.11.2012 between plaintiff and defendants No.1 & 2. The defendant No.3 purchased some properties through the sale deed dated 07.06.2012. The said sale deed dated 07.06.2012 is much prior to Memorandum of Understanding (MOU) between the plaintiff and defendants. Therefore, the plaintiff is trying to amend the plaint by creating new cause of action. The proposed amendment will change the entire nature of the suit and it changes the cause of action of the suit. Therefore, the proposed amendment creates new cause of action against the defendant No.3. Hence, he prays for reject the present applications.

3. Heard arguments on both sides.

4. The following points that would arise for the consideration of this court are;

1. Whether the applicant/plaintiff has made out sufficient grounds to allow the present applications and to amend the plaint?
2. What order?

5. Perused the contention of both the parties and materials placed before the court.

6. My findings on the above points are as follows;

Point No.1 : In the Negative

Point No.2 : As per final order
for the following;

REASONS

7. **Point No.1** :- Admittedly, the plaintiff filed the present suit for recovery a sum of Rs.12,34,50,000/-. Admittedly, the plaintiff entered into Memorandum of Understanding (MOU) dated 08.11.2012 with defendants No.1 & 2 and he paid an amount of Rs.9,00,00,000/- to the defendants No.1 & 2. As per the say of applicant/plaintiff, the defendants No.1 & 2 fails to perform their part of contract. Accordingly, he intends to recover the principal amount along with interest. On perusal of the plaint averments, it is clear that the allegation of the plaintiff only against the defendants No.1 & 2. Because the defendants No.1 & 2 are the signatories to the Memorandum of Understanding (MOU) dated 08.11.2012. Therefore, there is no prayer against the defendant No.3 in the suit. The claim of the plaintiff is only against the defendants No.1 & 2. Now, the plaintiff intends to amend the plaint by creating cause of action against the defendant No.3.

8. It is important to note that admittedly, the defendant No.3 is not the signatory to the Memorandum of Understanding (MOU) dated 08.11.2012 between plaintiff and defendants No.1 & 2. Further, there is no allegation in the plaint against the defendant No.3. Admittedly, the defendant No.3 purchased some properties through the sale deed dated 07.06.2012 much prior to the Memorandum of Understanding (MOU) dated 08.11.2012 between plaintiff and defendants No.1 & 2. On perusal of the proposed amendment, it will create new cause of action and the same is also changing the nature of the suit. Further, the defendant No.1 is no way concerned to the transaction between the plaintiff and defendants No.1 & 2. Therefore, now the applicant/plaintiff filed the present application by amending the plaint by creating new cause of action against the defendant No.3. The proposed amendment will change the nature of the suit and the same is also changing the cause of action. Therefore, when there is no transaction between the plaintiff and defendant No.3 and when the defendant No.3 is not the signatory to the Memorandum of Understanding (MOU) dated 08.11.2012, there is no necessity to amend the plaint by creating cause of action against the defendant No.3. The claim of the plaintiff is only against the defendants No.1 &

2. Under such circumstances, the court is of the opinion that the proposed amendment will change the nature of the suit and the proposed amendment will create new cause of action against the defendant No.3. Therefore, the applicant/plaintiff has not made out any grounds to allow the present applications and to amend the plaint. Accordingly, Point No.1 is answered in the Negative.

9. **Point No.2:** - In view of the above discussions and conclusion to Point No.1, this court proceeds to pass the following;

ORDERS

I.A Nos.5 & 6 both U/o.6 Rule 17 read with section 151 of CPC., filed by the applicant/plaintiff are rejected.

No orders as to cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected by me and pronounced in the open court on this the 15th day of July, 2016).

(T. Govindaiah)
Senior Civil Judge,
Anekal.