

31.03.2023

ORDERS ON I.A.No.7

The plaintiff has filed the above I.A.No.7 under Order 6 Rule 17 of C.P.C. by seeking amendment of plaint. Briefly stated, *the plaintiff is seeking insertion of new Paragraphs No.7(a) to 7(c) regarding pleadings about defendants No.3 and 4 purchasing the Item No.2 from the defendants No.1 and 2 under Sale Deed dated 07.06.2007 and also for relief against defendants No.3 and 4 to join other defendants in the execution of Sale Deed in favor of the plaintiff.*

2. In support of the I.A.No.7, the plaintiff by name B. Jyotiprasad has filed his affidavit by deposing on oath. His averments in the affidavit in brief are that, after filing of the suit for Specific Performance of Contract, the plaintiff came to know about the sale of Item No.2 by the defendants No.1 and 2 in favor of defendants No.3 and 4 on 07.06.2007. Therefore, he is seeking the proposed amendment. If the application is allowed, it will not cause any hardship to the defendants and if it is rejected, the plaintiff will be deprived of seeking any relief against the Item No.2. Therefore, the plaintiff prays for allowing his I.A.No.7.

3. The defendants No.1 and 2 have filed objections to the I.A.No.7. In brief, the defendants No.1 and 2 have contended that, the suit is 14 years old and now the stage

of the case is posted for cross examination of the PW.1. Therefore, the amendment application filed after lapse of 14 years is not maintainable. Therefore, the defendants No.1 and 2 have prayed for the dismissal of I.A.No.7.

4. I have heard arguments of plaintiff and defendants No.1 and 2 on the IA No.7.

5. On appreciation of the facts leading up to filing of the I.A.No.7, the following Points are arisen for my consideration:

POINTS

1. Whether the plaintiff shows that, in spite of his due diligence, he could not have raised the proposed amendment before commencement of the trial?

2. What Order?

6. My answer to the above points are as follows;

Point No.1 : In the Affirmative

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

REASONS

7. **Point No.1:-** Though, the above suit is filed in the year 2008 particularly on 26.07.2008 by the plaintiff, the defendants No.3 and 4 were impleaded by the plaintiff only by filing I.A.No.5 which was allowed by this Court on 25.10.2021. I have noticed that, at the time of filing of I.A.No.5 for impleading the defendants No.3 and 4 as additional defendants, due to the inadvertence of the counsel for the plaintiff, the plaintiff was not sought the proposed amendment as per his I.A.No.7. The defendants No.3 and 4 have not appeared even after service of summons on them after they were included in the suit by way of amendment of the plaint. It is only the defendants No.1 and 2, who are contending that, the I.A.No.7 is barred by limitation. But, the I.A.No.5 for impleading additional defendants No.3 and 4 was allowed only on 25.10.2021 and the proposed amendment as per I.A.No.7 against pleadings and relief about the defendants No.3 and 4 is well within the period of limitation. Since the suit is for Specific Performance of Contract in respect of Items No.1 and 2, the plaintiff will be permanently deprived from seeking any relief if I have rejected the amendment as per I.A.No.7. I once again reiterate here that, it is for the Advocate for the plaintiff to seek the relief of amendment against defendants No.3 and 4 at the time of filing of I.A.No.5. But, the said

Advocate appears not to have done so. Therefore, due to the mistake of the Advocate, a party should not suffer and hence, I answer the **Point No.1 in the Affirmative.**

8. **Point No.2:-** For the above discussion, I proceed to pass the following:

ORDER

The I.A.No.7 filed by the plaintiff under Order 6 Rule 17 of C.P.C. is hereby allowed.

The plaintiff is directed to amend the plaint by incorporating the proposed amendment in the plaint and furnish amended plaint on the next date of hearing.

Posted for filing additional written statement by 28.06.2023.

(Dictated to the typist directly on computer and corrected and then pronounced by me in the open Court on 31st March 2023).

**(MADHUSUDHANA D.K.)
Prl. Senior Civil Judge & J.M.F.C.
Devanahalli.**