

**ORDER ON IA FILED BY THE DEFENDANT NO.2 UNDER
ORDER 6 RULE 17 OF CPC**

The defendant No.2 has filed this application U/o 6 R 17 of CPC seeking permission to amend the written statement, by allowing application.

2. In the affidavit accompanying to the application it is stated that, the plaintiffs have filed the suit for the relief of Permanent Injunction against him and the first defendant. It is submitted that at the time of filing of written statement the defendant No.2 discussed with the defendant No.1 to execute a Registered sale deed as per Agreement of Sale. During the course of negotiation he got doubt about the conduct of defendant No.1 then he came to know that above suit has been filed. At the time of filing of written statement he did not notice the said fact and could not obtained the necessary documents. Hence, he prays to allow the application.

3. On the other hand, the plaintiffs have filed objection to the said application stated that, the plaintiffs have filed this suit for relief of injunction against defendants. It is further submitted that, the present application filed by the defendant No.2 is not maintainable. The plaintiff No.2 is already examined as PW.1 now case is posted for further evidence of PW.1. Once trial is commenced no amendment application can be allowed. Hence plaintiffs pray to dismiss the application.

4. Per contra, the defendant No.1 has filed objection to the said application stated that, this court was pleased to framed the issues and matter was now posted for evidence. Now the defendant No.2 came up with present application only to drag the adjudication of the above case. It is further submitted that, the Hon'ble Senior Civil Judge and JMFC at Doddaballapura was pleased decree suit on 19.09.2011 in OS No. 99/2009 in favour of this defendant in respect of the suit schedule properties. But the vendor of this defendant has filed miscellaneous case in Misc. No. 32/2016 for the relief of setting aside decree dated

19.09.2011 and the restore the above said suit filed by this defendant. The said miscellaneous case is pending. It is further submitted that, for the purpose of development above suit schedule properties this defendant has borrowed the hand loan from the defendant No.2 by executing the registered nominal sale agreement dated 04.03.2017 to him for security purposes in respect of the suit schedule properties. This material fact has been very well within the knowledge of defendant No.2 on the basis alleged sale agreement dated 04.03.2017, the defendant No.2 has without serving any notice to this defendant and he had filed false suit in OS No. 421/2022 against this defendant for relief of specific performance of contract. That this defendant has ready to repay the hand loan borrowed from the defendant No.2 and therefore instant application is not maintainable when above suit and Misc. No. 32/2016 are pending.

5. It is further submitted that, the defendant No.2 had sworned to false affidavit with malafide intention to insert the new plea/stand in written statement which cannot be allowed. The defendants are trying to introduce the complete new facts, pleadings through the present application which is not at all maintainable either in law. The defendants have not approached this court with clean hands. The defendant No.2 has netted false story which is sought to be inserted in their written statement are all false far from truth. The defendant No.2 without allowing the above case proceedings in flow, unnecessarily came up with instant application to drag on the proceedings and to harass parties in the above case. It is further submitted that therefore seeking amendment of pleading of written statement is not warranted at this stage. Thus the defendants have filed the instant application deliberately with an intention to drag on proceedings. Hence defendant No.1 prays to dismiss the application.

6. Heard and perused the documents which are available on record.

7. I have gone through the application, objections and materials available on record. In the accompanying affidavit, the

defendant No.2 has sworn to the fact that, the plaintiff has filed this suit against the defendants for the relief of permanent injunction. The case is pending for further chief examination of P.W-1. In the meanwhile, the defendant No.2 has filed this present application seeking permission for incorporating proposed amendment. On perusal of written statement averments it appears that the defendant No.2 has already taken such contention regarding proposed amendment in the written statement. Now came up with present application for inserting para No.10(a) which are already stated in para No.9 and 10 of written statement. Again inserting such paragraphs in different meaning is not necessary. Therefore, the proposed amendment is not necessary for defendant No.2. If the application is not allowed, defendant No.2 will not be put to irreparable loss and injustice.

8. As per order 6 Rule 17 of CPC the court may allow the parties to amend the pleadings at any stage of the pleadings if it is just and necessary for the purpose of determining real question in controversy between the parties. But, such amendment shall not be allowed if trial has commenced and of the court comes to the conclusion that in spite of due diligence the party could not have raised the amendment before the commencement of trial. In the application, the only contention of the defendant No.2 that he has taken contention regarding sale agreement. The defendant No.2 had known the same at the time of filing of written statement and he has already taken such contention in the written statement. It is not proper to reject the application only on the basis of delay. Order 6 Rule 17 of CPC has not been properly complied by the defendant No.2 to get allowed the application. Moreover issue no. 3 has been framed with regard to proving of possession of suit schedule property. There is also issue which is casted burden upon the defendant No.2 to prove that the defendant No.1 is in peaceful possession and enjoyment of the suit property. If there is evidence with regard to issue no. 3, it is sufficient to determine the real question in this case. Here defendant No.2 has already taken such contention in the written statement and issue No.3 has been framed. Therefore, present amendment cannot be permitted.

9. In view of above discussion, I proceed to pass the following:

ORDER

I.A filed by the defendant No.2 U/o 6 Rule 17 of CPC is hereby rejected.

For Further chief of PW.1 by 16.04.2024.

Sd-

Addl. Civil Judge & JMFC,
Doddaballapura.