

KACB610017842017



IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.,
AT SIDLAGHATTA

Dated this the 06th day of January-2023

:: PRESENT ::

Shri. Yamanappa KareHanumanthappa B.A., LLB.,
Senior Civil Judge & JMFC.,
Sidlaghatta.

O.S. No.32/2017

APPLICANT/S
PLAINTIFF/S:

Sri. B.A.Krishnappa
S/o. Abbaiah,
Aged about 60 years,
R/at. Venu Gopala Swamy Temple,
Belthur Village,
Kadagodi Post,
Bangalore-560067.

(R/by Sri.E.N/ A.M.. Advocates)

- V/s -

RESPONDENT/
DEFENDANT/S:

Sri.T.N. Ramesh
S/o. T.S.Nagaraja Rao,
Aged about 52 years,
R/at. Door No.22, H.S.Garden,
Sri. Harshamrutha Nilaya,
Chikkaballapura Town & District.

(R/by Sri.H.N.K./M.R. Advocate)

ORDER ON IA NO -17

The advocate for defendant No.2 has filed IA No.17 under Order 6 Rule 17 R/w Sec 151 CPC., seeking permission of this court to amend the written statment to know the real controversy between the parties in the interest of justice and equity.

2. Along with application, the defendant No.2 has filed affidavit stating that, the above suit is filed by the plaintiff seeking for the relief of specific performance of the alleged agreement of sale deed dated: 27.10.2016 pertaining to the suit property and alternatively for return of the advance money of Rs. 6,50,000/- with interest. The above suit was orginally filed against the defendant No.1 alone and subsequently the applicant was got impleaded as defendant No.2. Thereafter, the defendant No.2 his filed detailed statements on 06.07.2022, which is taken on record, and consequently additional issues are also framed. While filing the written statement, certain facts were not properly explained in support of his defence and the same is now sought to be properly explained by thus requesting this court to permit the defendant No.2 to amend his written statement. If the application is not allowed then the defendant No.2 will be put to great hardship.

The proposed amendment will not change the nature of the or cause of action, Hence, the application may be allowed.

3. The advocate for plaintiff has filed objection contending that, the application filed by the defendant No.2 is not maintainable either on law or on facts. The present suit is filed by the plaintiff against the defendants for Specific performance of agreement of sale deed dated: 27.10.2016, as alleged by the defendant No.2 the said agreement entered between the defendant No.1 and plaintiff, Further pertaining to suit property was admittedly a converted land the same being converted under the order of Deputy Commissioner dated: 05.12.2012 is not disclosed by the defendant No.1 at the time of execution of agreement of sale of Rs. 7,50,000/- for 4 acres of land.

The plaintiff further contend that, the defendant No.2 alleged in para No.10(2) is not way concerned to the plaintiff and the defendant No.2 with collusion of defendant No.1 to do alleged the same. The plaintiff stated that, suit is filed against the defendant No.1 for specific performance of the contract and the defendant No.1 engaged a counsel in the case and filed written statement admittedly the agreement of sale in favour of plaintiff. The advocate appears and also filed an application to produce unregistered agreement. The plaintiff files a

objection and the Hon'ble court dismiss the said application. The defendant No.2 is not disclosed the alleged transaction. If the application is allowed it will leads to multiplicity of proceedings. Hence, application may be dismissed.

4. Heard and Perused the records. After hearing the learned counsels appearing for the plaintiff and defendant No.2, on IA.No.17, the following points which arise for my consideration:

POINTS

1. Whether the defendant No.2 has made out a ground the amendment of written statement is necessary?
2. What order?
5. After going though the records and hearing the counsel for parties, I answer the above points as follow:

Point No.1: In the Affirmative

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

REASONS

6. **POINT No.1:** At the out set, the plaintiff has filed suit for specific performance of the contract against the defendants in respect of suit property. Case is posted for plaintiff evidence at this stage the

advocate for defendant No.2 has filed this application seeking permission of the court to amend the written statement.

7. The advocate of plaintiff submitted that, the defendnat no.2 has made allegation against him and he has relied the judgment of the Hon'ble Supreme court of India, reported in (2009) SCC, wherein it is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. If such a condition is fulfilled, the amendment is to be allowed. Howeverm proviso appended to Order 6 Rule 17 of the code restricts the power of the court. It puts an embargo on exersie of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.

8. Relied upon judgment of the Hon'ble Supreme court of India, passed in Revajeetu Builders & Developers V/s Narayanaswamy and Sons, reported in (2009) 10 SCC, wherein, on critically analysing both the english and indian cases, some basic principles emerge which

ought to be taken into consideration while allowing or rejecting the application of the case:

1. Whether the amendment sought is imperative for proper and effective adjudication for amendment.

2. Whether the application for amendment is bona fide or male fide.

3. The amendment should not cause such prejudice to the other side which can not be compensated adequately in terms of money.

4. Refusing amendment would in fact lead to injustice or lead to multiple litigation.

5. Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case.

6. As a general rule, the court should decline amendment if a fresh suit on the amended claims would be barred by limitation on the date of application.

9. The defendant No.2 has filed this application seeking of this court to amend the written statement. The proposed amendment though he has made allegation, in the proposed amendment he has to prove his case by producing oral and documentary evidence. The

proposed amendment is necessary for determination of real question with regard to the contents of the agreement as well as the conduct of the parties. The proposed amendment will not change the nature and character of the case and if the application is allowed no cause or prejudice to the other side. In order to avoid the multiplicity of proceedings and to decide the right of the parties fully and completely the proposed amendment is necessary. ***Therefore, I answer the Point No.1 in the Affirmative.***

10. **POINT No.2:** For the reasons stated and discussion made above, I pass the following:-

ORDER

I.A.No.17 filed by the advocate for defendant No.2 under Order 6 Rule 17 R/w Sec 151 of CPC., is hereby allowed.

The defendant No.2 is hereby directed to amend the written statement as prayed in the application and to furnish the amended written statement.

No order as to costs.

(Dictated to the stenographer directly on computer, typed by her, printout is revised, corrected, signed and then pronounced by me in the open court on 06th day of January-2023.)

Sd/-
(Yamanappa KareHanumanthappa
Senior Civil Judge & JMFC.,
Sidlaghatta.

