

**ORDER ON APPLICATION FILED BY THE
PLAINTIFF UNDER ORDER 06 RULE 17 OF CPC**

The Plaintiff filed this application for amendment of plaint and sought for following amendment :

SCHEDULE

1) ವಾದಪತ್ರದ 4 ನೇ ಪುಟದ 9 ನೇ ಪ್ಯಾರಾದಲ್ಲಿ 2 ನೇ ಸಾಲಿನಲ್ಲಿ ರಂದು ನಂತರ ಚಳ್ಳಕೆರೆ ತೆಗೆದು ಹಿರಿಯೂರು ಎಂದು ಸೇರಿಸುವುದು.

2) ವಾದಪತ್ರದ 2 ನೇ ಪುಟದ 5 ನೇ ಪ್ಯಾರಾದಲ್ಲಿ 16 ನೇ ಸಾಲಿನಿಂದ 21 ನೇ ಸಾಲಿನಲ್ಲಿ ಇರುವುದಿಲ್ಲ ತನಕ ತೆಗೆದು ಬರೆದುಕೊಟ್ಟಿರುತ್ತಾರೆ ಎಂದು ಸೇರಿಸುವುದು.

The plaintiff in her affidavit submits that, she filed the suit for the relief of specific performance of contract against the defendant. Due to the typographical mistake, the mistake has been caused in the suit schedule property. The above said mistake typographical mistake. The rectification of the error is necessary to prove her case, if the said application is allowed, no prejudice or inconvenience will be cause to the other side. Therefore prayed to allow the application.

On the other hand the defendant filed objection and contended that, the said application is not maintainable in law or facts. The plaintiff made some admissions in her pleadings, now by order of the court, she intended to withdraw the said admission, the same is opposed to principle of law. As the admissions made by the party cannot be withdrawn by way of amendment and the same is not maintainable in law. The averments made in affidavit is false. Therefore, prayed to dismiss the application.

Heard both sides.

Perused the application as well as affidavit filed by the plaintiff and objection filed by the defendant. The plaintiff is filed this suit for the relief of specific performance of contract of the suit schedule property. In this case the trial is not yet commenced. The plaintiff intended to insert some facts as stated in the application. As per contention of defendant that, once a party admitted the fact, the same cannot be withdrawn. The same is not maintainable in law. But the plaintiff is came with specific prayer before the Court. The burden of proof is on the plaintiff. On the technical defect the case of the plaintiff cannot be thrown-out at the threshold without trial. In this case the plaintiff by way of affidavit submits that, through oversight and typographical mistake, the error is caused in the plaint. Perused the application and pleading, this Court come to the conclusion that, the said error is only typographical mistake. While drafting the plaint. It is well settle position of law that, the amendment has to be liberally considered. If the said application is allowed, no hardship or loss would be cause to the defendant. On the other hand if the application is not allowed it will cause multiplicity of the proceedings. Moreover, on the technical grounds the case of the plaintiff cannot be thrown-out at threshold. Therefore, this Court come to the conclusion that, the said application is deserves to be allowed, for these reasons and discussions, this Court proceed to pass the following:

ORDER

The application filed by the plaintiff
Under Order 6 Rule 17 is hereby allowed.

For amendment of plaint and submit
the amended plaint. Call on: 26.02.2020.

[N.B. Shaikh]
Prl. Civil Judge and JMFC,
Hiriyur.