

KACM200005462016



IN THE COURT OF SENIOR CIVIL JUDGE,
AT: KADUR

Present:- Sri. IRFAN.
B.A., LL.B.,
Senior Civil Judge & JMFC,
Kadur, Chikkamagaluru District.

Dated: this the 9th day of December - 2025

O.S. No. 41/2016

Plaintiffs : Sri. Vijayakumar & others.
(By: Sri. D.C., Advocate)

-V/s-

Defendants: Sri. R.K. Vinayababu & others.
(Defendant No.1 by: Sri. K.S.R., Advocate)
(Defendants No.2 to 4 by: Sri. K.V.M., Advocate)

RANK OF THE PARTIES ON I.A.NO.18

Applicant/
1st plaintiff : Sri. Vijayakumar.

V/s

Opponents/
Plaintiffs : Sri. R.K. Vinayababu & others.



i	<i>Provision under which the application is filed</i>	<i>U/O VI Rule 17 R/w Sec.151 of CPC</i>
ii	<i>Relief sought for</i>	<i>Amend the plaint.</i>
iii	<i>The date on which the application is filed</i>	<i>14.10.2025.</i>
iv	<i>Number of the application</i>	<i>18</i>
v	<i>The date on which the objections are filed by different opponent</i>	<i>16.10.2025 \by the defendants No.2 to 4.</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>09.12.2025.</i>

When the case is posted for cross of DW-2, the 1st plaintiff has filed this application.

ORDERS ON I.A.18

This interim application has been filed by the 1st plaintiff, U/O VI Rule 17 R/w Sec.151 of CPC seeking for the insertion of additional pleadings to their plaint.

2. This application is accompanied by an affidavit filed by the 1st plaintiff for himself and also on behalf of other plaintiffs. The gist of the application averment is that they have instituted this suit seeking for the relief of specific performance of contract. The present stage is for cross-examination of DW-2. At the earliest stage, the plaintiffs have made the defendants No.2 to 4 as parties, but they have not sought for necessary amendment in the pleadings. The proposed amendment to the plaint is necessary for proper



adjudication of the dispute on hand. There is no intentional delay. Accordingly, sought to allow the applications.

3. The defendant No.1 has filed separate objections and defendants No.2 to 4 have filed their common objections. They have taken a specific defence in their objections that the present application is hit by inordinate delay. After lapse of about 09 years, this application is filed seeking for proposed amendment that too at the fag-end stage. If the application is allowed same would change the nature of the suit. The defendants No.2 to 4 in their objections have taken a specific contention that the suit schedule property is entirely different from the property purchased by them and accordingly, sought to dismiss the same.

4. Heard both side. Perused the case records.

5. The following points that arise for consideration are;

1. Whether the proposed amendment is necessary for determining the real dispute



in controversy between the parties?

2. What order?

6. Answers to the above points are as under;

Point No.1 : In the Affirmative;

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

REASONS

7. **Point No.1** :- The present suit is one for the relief of specific performance of contract. In deed, the present application is filed when the matter was posted for cross-examination of DW-2. By way of amendment, it is sought to insert the pleading in the plaint with regard to the sale transaction taken place with respect to the dispute property on hand between the 1st defendant and the defendants No.2 to 4 under a registered sale deed dated 18.02.2016 coupled with a prayer to hold that said sale transaction does not bind the plaintiffs and also an alternative relief of refund of earnest money is also sought. It is indeed a matter of record that the defendants No.2 to 4 have been



subsequently impleaded and they have contested the suit. It is also a matter of record that evidence is also led in that regard. Necessary pleadings with regard to the aforesaid sale transaction are sought to be inserted in the plaint by way of proposed amendment along with a prayer of refund of earnest money. The objections of the defendants is only that this application has been filed after commencement of trial and there is inordinate delay.

8. By considering the fact that the defendants No.2 to 4 have been subsequently impleaded, the plaintiffs shall be permitted to incorporate necessary pleadings to that effect in the plaint. With regard to the second aspect of proposed amendment, it is very much clear that in a suit for specific performance of contract, the plaintiffs are with liberty to seek alternative relief at any time before the pronouncement of judgment. Therefore, the proposed amendment to the plaint is very much necessary. The learned counsel for the defendants No.2 to 4 has placed reliance upon the findings of ***Hon'ble Supreme Court of India reported in 2024 INSC 151 between Basavaraj V/s Indira and others*** and contended that as per proviso Order VI



Rule 17 of CPC, no application for amendments shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. But at the same stage, it is also necessary to refer the finding of the **Hon'ble Supreme Court of India reported in 2023(1) KCCR 1 (SC) between Life Insurance Corporation of India V/s Sanjeev Builders Pvt. Ltd., and another,** wherein the Hon'ble Supreme Court of India was pleased to set guidelines for consideration of the applications filed under Order 6 Rule 17 of CPC for the amendment of pleading which are as follows;

“B.CIVIL PROCEDURE CODE,1908- Order 6 Rule 17 -Amendment of pleadings-Rile of courts-Principles to be applied-All amendments to be allowed-Amendment shall not cause prejudice to the other side which cannot be compensated by costs-Amendment after statutory period-Discussed and stated ultimately that the amendments should be allowed liberally.

The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative



plea in defence which, however, is subject to be an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. The proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the application for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement. Every application for amendment has to be tested in the applicable facts and circumstances of the case. As the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts, this Court has repeatedly laid down the principle that such an amendment would be allowed even after the expiry of statutory period of limitation.



The court also held further that All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “Shall” in the latter part of order 6 rule 17 of CPC.

The prayer for amendment is to be allowed (I) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side, (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear (c) admission made by the party which confers a right on the other side and (4) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right(in certain situations).

(ii) A prayer for amendment is generally required to be allowed unless(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for is malafide, or

(iv) by the amendment, the other side losses a valid defences.

(v) In dealing with a prayer for amendment of pleadings, the Court should avoid a hyper technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.



(vi) Where the amendment should enable the Court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed

(vii) Whether the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Whether the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the Court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in



irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the Court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed”

In consideration of the same, if the facts and circumstances of the case on hand are taken, the proposed amendment is very much essential in order to determine the real controversy between the parties. If this application is rejected, the plaintiff will be put into irreparable loss and injury, which cannot be compensated in terms of money. As far as delay is concerned, same may be compensated in terms of money. Accordingly, the **point No.1 under consideration is answered in the Affirmative.**

9. **Point No.2** :- In view of the discussion in the foregoing point, the following;

ORDER

I.A.18 filed by the plaintiffs, under Order VI Rule 17 R/w Sec.151 of CPC



is allowed with cost of
Rs.2,000/-.

The plaintiffs are
permitted to carry out the
proposed amendment in the
plant.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by
me in open Court on this the 9th day of December, 2025)

Sd/-
(IRFAN)
Senior Civil Judge,
Kadur.