

KACM510002662022



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC
AT N.R.PURA, ITINERATE AT KOPPA**

Present: Sri Raghunatha Gowda K.T., B.Com.,L.L.B,
Senior Civil Judge & JMFC.,
N.R.Pura, Itinerate at Koppa.

Dated this the 05th day of September, 2024

O. S. No.23/2022

Plaintiffs : Mrs. Girija Dhruva,
aged about 80 years,
W/o Late Dhruva
Narashimha Murthy,
Earlier residing at Hosur Village,
Ayanuru Post,
Shimoga Taluk and District.

Also at

No.202, "Venkatagiri",
Kumbar Street, K.R.Puram,
Bangalore-560 036.

represented by her power of
attorney holder
Sri K.S. Rajagopala,
aged about 54 years,
S/o K.V. Seshagiri,
No.202, Kumbar Street,



K.R.Puram,
Bangalore-560 036.

(By Sri B.C.V.S., Advocate)

Vs/-

- Defendants** :
1. Mr. H.M. Ramachandra,
Aged about 65 years,
S/o Late H.Manjappaiah,
 2. Mrs. Janaki,
aged about 57 years,
S/o Mr. H.M. Ramachandra.
 3. Mr. Abhinava Chandra,
aged about 57 years,
S/o Mr. H.M. Ramachandra.
 4. Kumari Prathyaksha,
aged about 20 years,
D/o Mr. H.M. Ramachandra.
 5. Mr. H.M. Shivashankar,
Aged about 68 years,
S/o Late H.Manjappaiah,
 6. Mrs. N.V. Srimathi,
Aged about 56 years,
W/o Mr. H.M. Shivashankar.



All are residents of
Harakodu, Huligardi Village,
Agalagandi Posti,
Megunda Hobli,
Koppa Taluk,
Chickmagaluru District.

(Defendant No.1 to 4 represented by Sri SRS/HSA.,
Advocate, Defendant No.5 and 6 represented by Sri BSN.,
Advocate)

I.A. No.VIII

Applicant/Plaintiff : Mrs. Girija Dhruva
represented by her power of
attorney holder Sri K.S.
Rajagopala

V/s

Opponents/Defendants : Mr. H.M. Ramachandra & others.

ORDERS ON I.A. No.VIII

When the matter posted for plaintiff evidence at this stage the present application is filed by the plaintiff under order VI Rule 17 of C.P.C. seeking permission to amend the plaint i.e proposed amendment as under;



1. After the para (C) of the prayer column in added the following prayer

(C-1) “If this Hon’ble Court comes to conclusion that the decree of specific performance to execute the sale deed with respect to suit schedule property in favour of the plaintiff cannot be passed, alternatively this Hon’ble Court may be pleased to direct the defendants to refund the advance sale consideration amount of Rs.88,00,000/- to the plaintiff with 18% interest p.a. from the date of 19.07.2018 i.e., from the date of sale agreement to till the date of realization of the amount”.

2. It is stated in the affidavit of the plaintiff that she filed the suit against the defendant for a relief of specific performance of contract based on sale agreement dated 19.07.2018 in respect of suit property. Further she contended that, at the time of filing the suit by over sight in



the prayer column the proposed amendment was not sought and the proposed amendment is very much necessary, if the amendment application is allowed the nature the suit and cause of action will not be changed. Hence, she prays to allow this application.

3. Per contra, the defendant's counsel filed objection to said application contended that the application filed by the plaintiff is not maintainable either in law or facts. Further he contended that the plaintiff filed this application in order to prolong the matter and when the matter posted for plaintiff evidence at this stage the present application is filed and said application is not maintainable and if the amendment application is allowed it will change the nature of the suit. Hence he prays to reject the application with exemplary costs.

4. Heard learned counsel for plaintiff and defendants. Perused the materials on record.

5. The following point arises for my consideration:



- i) Whether the application filed by the plaintiff deserves to be allowed ?
- ii) If so, what order?

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

Point No. 1 : In the Affirmative

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

REASONS

7. **Point No.1:-** The plaintiff filed this suit against the defendants for relief of specific performance of contract now the matter posted for plaintiff evidence, at this stage the plaintiff filed this application to seeking to amendment of plaint as stated in the earlier paragraph of this order.

8. I have gone through the entire materials available on record the plaintiff seeking amendment of the plaint in the prayer portion to seeking alternative remedy for refund of earnest advanced sale consideration amount with interest. On perusal of the records the plaintiff seeking alternative relief that if the Court comes to conclusion that the plaintiff is not entitle for relief of specific performance of



contract for execution of the sale deed based on agreement of sale dated 19.07.2018, the Court may grant alternative relief of refund of advance sale consideration amount. Further, if the amendment application is allowed the nature of the suit and cause of action will not be changed and in order to effectively adjudicate of the matter and to resolve the dispute between the parties the proposed amendment is very much necessary.

9. Further I relied on the judgment reported in **2022 (3) KCCR 2078 in between Smt. Sarojamma and another V/s A.Y. Anil kumar**. In the said judgment at para No.5 the Hon'ble High Court held that the amendment given the real nature of controversy, would be necessary for effective and complete adjudication. Under such circumstances the amendment application can be allowed. Further moreover in order to avoid multiplicity of proceeding between the parties and also the court will come to proper conclusion the amendment is necessary and if the amendment application is allowed no loss or harm caused to the other



side and this court is of considered opinion that, the proposed amendment do not in any manner change the nature of the suit and would not cause prejudice to the other side. Thus, in order to effectually adjudicate the controversy involved in the suit, it is just and necessary to amend the plaint in prayer portion and in order to delay of filing this application by the plaintiff to impose a suitable costs. Accordingly aforesaid point for consideration is answered in the Affirmative.

10. **Point No.2**:- In view of my findings on Point No.1, I proceed to pass the following :-

ORDER

*I.A. No.VIII filed by the plaintiff
under order VI Rule 17 of C.P.C. is
hereby allowed with costs of
Rs.200/-.*

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*The plaintiff is permitted to
amend the plaint and also furnish
the amended plaint.*

(Dictated to the stenographer directly on computer, corrected by me
and then pronounced in open court on this **5th day of September,
2024**)

Sd/-

(Raghunatha Gowda K.T.)
Senior Civil Judge & JMFC.,
N.R.Pura, Itinerate at Koppa.