

**ORDERS ON IA NO.4 FILED UNDER**  
**ORDER VI Rule 17 R/w SEC.151 OF**  
**C.P.C**

The learned counsel for the defendants has filed this application seeking permission to amend the written statement as stated in the application.

2. In support of this application the defendant No.3 has filed affidavit. In his affidavit he has stated that the plaintiffs have filed a false and vexatious suit against them seeking relief of specific performance of the contract on 31.12.2022. He further state that they are in receipt of Rs.10,00,000/- paid by the plaintiffs are part of the sale consideration. But due to the circumstances as detailed in their written statement, the sale agreement could not be concluded by way of registered sale deed. The plaintiffs are now trying the make unlawful gains on the basis of a sale and misconceived document which is already terminated by them. The plaintiffs are not entitled for the specific performance of the sale agreement or in that matter any other relief as claimed by them. Further stated that state as a matter of caution, of Rs.10,00,000/- amount held by them is the only ground for the plaintiff to seek the relief. In view of the same they have also already deposited the

said amount before this court. He stated that even prior to the filing of the above suit, it is they who have got issued the legal notice at the 1st instance and calling upon the plaintiff to terminate that sale agreement. The plaintiffs have failed to comply with the legal notice demands. The encumbrance of the sale agreement on 31.12.2022 is reflected in the certificates and the plaintiffs are taking undue advantage of the same. In view of the exchange of notices, they have got a cause of action against the plaintiffs to seek necessary relief for cancellation of the agreement by way of counter claim. Further stated that they have only filed their written statement contending that allegations leveled against them in the plaint averment. Due to inadvertence and oversight the proper and necessary relief which they could have sought for in the above case is not pleaded and sought for. Though the cause of action for the counter claim has arose, without resorting to filing of a new case in between the same parties. In order to adjudicate all the dispute under a single suit. He further stated that amendment sought for and the relief by way of counter claim will be very helpful to avoid multiplicity of proceedings and miscarriage of justice. If this application is not allowed they will be put to untold hardships and inconveniences whereas no great hardship would

be caused to the other side. Hence, he prays to allow the application.

**3.** On the other hand the learned counsel for plaintiffs has filed detail objections. In the objection he has denied the entire averments made in the application as well as affidavit. In his objection he has reiterated the plaint averments. It is further contended that the defendants had failed to file their written statement in time. The plaintiff No.1 had filed his affidavit for his examination-in-chief and was also cross-examined in part by the counsel for the defendants. At that stage, the defendants came up with the present application seeking amendment of their written statement on concocted grounds to include counterclaim. The application under IA 4 for amendment of the written statement is highly belated and is barred by time. The defendants cannot make counterclaim after the filing of the written statement. The claim for counterclaim is also barred by time and the defendants cannot include the said claim in their written statement. The application is also barred by the provisions of order 2 rule 2 of CPC. The defendants cannot contend that there is already cancellation of the aforesaid registered sale agreement and seek for counterclaim or cancellation of the said agreement by way of counterclaim. It is false to

state that the defendants had the right to cancel the registered sale agreement unilaterally by issue of notice or by any other mode. It is false to state that they had the right to forfeit the advance amount and that there was breach of agreement by the plaintiffs.

4. It is false to state that the defendants were always ready and willing to perform their part of the obligations under the aforesaid agreement for sale and that the breach was committed by the plaintiffs. It is false to state that the defendants had the right to cancel the agreement for sale, that too unilaterally. It is false to state that the aforesaid agreement for sale was not in force on the date of the filing of the suit. After the filing of the suit, the defendants have no right to seek for cancellation of the registered sale agreement before the final adjudication of the suit for specific performance filed by the plaintiffs. The proposed amendment does not spring out from the averments made in the written statement and is in the nature of altering the cause of action. There is no cause of action for the proposed amendment and for amendment of the written statement and for the counterclaim. The proposed amendment changes the nature of suit and the cause of action pleaded. The plaintiffs will be put to irreparable loss, serious hardship and inconvenience if the proposed amendment were

to be made to the written statement. It requires de novo trial. The defendants cannot seek for amendment of the written statement and to include the prayer for cancellation or the relief of counterclaim after the framing of the issues. The application is highly belated and is not maintainable either in law or on facts and probabilities of the case and the same is liable to be dismissed. Hence, he prays to dismiss the application.

5. Heard the arguments and perused the material placed on records.

6. The points arise for my consideration is as follows:

**“Whether the amendment as sought by the defendants deserves to be allowed?”**

7. My answer to the above point is in the **negative** for the following:

**:REASONS:**

8. The present suit is filed by the plaintiffs for relief of specific performance of contract in respect of the suit schedule property. Now the case is posted for further cross of PW.1. In the meantime the defendants have appeared and filed present application seeking amendment of written statement as stated in the proposed amendment. In the affidavit it is stated that due to

inadvertence and due to over sight the proper and necessary relief which they could have sought for in this case is not pleaded and sought for. Though the cause of action for the counterclaim has arose, without resorting to filing of new case in between the same parties, in order to adjudicate all the dispute under a single suit, they have been advised to seek the relief by way of counter claim. Hence, he may permitted amend the written statement by way of counterclaim.

**9.** The court has also framed issues on 16.01.2025. Thereafter the plaintiff has been examined as PW.1 and PW.1 is partly cross examined. When the suit was posted for further cross of PW.1 this application for amendment by way of counterclaim came to be filed by the defendants.

**10.** The learned counsel for the defendants has argued that the proposed amendment will not change the basic structure of the suit or the cause of action. So also no injustice will be caused to the plaintiffs if the amendment is allowed. Further argued that due to inadvertence and due to over sight the proper and necessary relief which they could have sought for in this case is not pleaded and sought for. Though the cause of action for the counterclaim has arose, without resorting to filing of new case in between the same parties, in

order to adjudicate all the dispute under a single suit, they have been advised to seek the relief by way of counter claim. Hence, he prays to allow the application.

**11.** The learned counsel for the plaintiffs has argued that the defendants in order to drag the proceedings has come up with this application at this later stage. Further argued that the defendants while filing the written statement not taken this specific contention. Further the defendants had failed to file their written statement in time. Now by way of intended amendment the defendants are attempting to introduced on concocted grounds to include the counterclaim, which is not permissible under law. If the intended amendment permitted, automatically the very nature of the suit will be altered and thereby, it will alters the original nature of the written statement filed by the defendants. Further application is also barred by provisions of Order 2 Rule 2 of CPC. He further has argued that even otherwise the suit is at the stage of further cross of PW.1 and the amendment is not tenable as the defendants have not shown any cause for not seeking the same at the earlier stage.

**12.** Under the present application the defendant No.3 intends to amend the written

statement by way of counterclaim seeking to include pleadings. U/o 6 Rule 17 of CPC the court has powers at any stage of the suit to permit either party to alter or amend the pleadings. However such amendment must be necessary for the purpose of determining the real questions in controversy between the parties. No such amendment can be allowed after the trial has commenced unless the court comes to the conclusion that inspite of due diligence, the party could not raise the matter before commencement of trial.

**13.** In the case on hand already the issues are framed by the Court way back on 16.01.2025. Now the present application is filed on 29.09.2025, when the suit was posted for further cross of PW.1. It is settled principal that once the issues are settled the trial in a suit commences. In the said circumstances unless the defendants establishes due diligence on their part why the proposed amendment could not be sought earlier, the application cannot be allowed. But the defendant No.3 has not shown any valid ground for allow the application. The defendants while filing the written statement they are not specifically pleaded the aforesaid facts. Now by way of intended amendment the defendants are attempting to introduced new facts, which is not permissible under law. Hence, the question of

amendment of written statement by way of counterclaim does not arise at all. Therefore, the reasons assigned by the defendant No.3 for seeking the amendment of written statement by way of counterclaim at this belated stage does not appear to be bonafide. Further in his affidavit he has specifically stated that though the cause of action for the counterclaim has arose, without resorting to filing of new case in between the same parties. It clearly shows that the present amendment is the barred by limitation. But in view of the amended provisions of 6 Rule 17 of CPC when any amendment is sought after the settlement of issues the party seeking the same has to satisfy the court that inspite of due diligence he/she could not raise the matter before the commencement of the trial. Therefore, in the absence of any convincing reasons assigned by the defendant No.3 as to his due diligence for seeking the amendment after the settlement of issues, this court is of the opinion that the same cannot be allowed. Hence, the amendment as sought by the defendant No.3 cannot be permitted and I.A.No.4 is to be rejected. Accordingly, point under consideration is answered in the negative. Hence, in view of the above discussions, I proceed to pass the following:

**ORDER**

I.A.No.4 filed by the defendants under order VI Rule 17 R/w Sec. 151 of CPC is hereby rejected.

No order as to costs.

Hence, case is posted for further cross of PW.1. Call On:

**Sd/-**

**Sr. Civil Judge & J.M.F.C  
Channagiri**