

**IN THE COURT OF THE II ADDL CIVIL JUDGE & JMFC,
CHANNAGIRI.**

PRESENT: **SMT. MAHALAKSHMI G M.A. L.L.B.,**
II Addl Civil Judge & JMFC, Channagiri.

Dated this the 05th Day of June 2024.

ORIGINAL SUIT No. 209/2017

BETWEEN :

Vishala

...Plaintiff

AND

Shivalingappa and others

...Defendants

I.A. No. V to VII

BETWEEN :

Vijaya

...Applicants/Original Defendant-1(c)

AND

Vishala

...Opponent/Original plaintiff

1.	Provision under which the application is filed:	:	U/o 6 Rule 17 R/w 151 of CPC., and 8 rule 1(a)
2.	Relief sought for	:	Amendment in written statement and production of document
3.	Date on which the application is filed	:	----
4.	Number of the application	:	IA.No.V to VII
5.	Date on which the objections	:	

	are filed by different opponents:		
6.	The date on which the orders is passed:		05-06-2024

ORDERS ON No. V to VII

These are the applications filed by the defendant under order 6 rule 17 of CPC. And U/o 8 rule 1(A) of CPC, praying for amendment in the written statement along with list with documents when the case is posted to defendant evidence.

2. In support of the application she has sworn affidavit and stated that, she is the defendant in the present suit, she filed the written statement in this suit. The plaintiff filed this suit against the her father claiming the relief of specific relief of sale agreement dated 11-02-2015. The father of the defendant No.1 died by living behind the defendant No.1(a) to (c) as his LR's and they are brought as legal heirs to the present suit. She in her written statement specifically contended that the alleged sale agreement is not genuine sale agreement it is only the document executed by deceased defendant No.1 as security to the loan amount taken from the father of the plaintiff namely Manjappa. She found deed of the cancellation of Will at her parents house recently dated 11-02-2015. A registered Will was executed in favour of plaintiff. Bequeathing the suit property infavour of plaintiff. Then she applied the certified copy of the Will on 15-07-2021. After obtaining the said document, she came to know that on 11-02-2015, on same day the alleged sale agreement and the Will was created in favour of the plaintiff and so called witnesses as well as the scribe of the document who are attested the said Will are the attestor to

the sale agreement also. So it is clear that, the defendant No.1 never intended to execute the documents on 11-02-2015 in favour of the plaintiff. So the alleged sale agreement is not genuine. Therefore, prays to allow the application.

3. The plaintiff has filed objections to the IA No.V denying the proposed amendment and contended that, sale agreement was registered before the Sub register of Channagiri. As per the consideration passed in the agreement value maintained by the office, the registration of sale agreement was not disputed by the defendants. The proposed amendment as para No.8(a) is utterly false on the narration made in the application is unbelievable and created one. The Will was secret document. The written statement was filed by defendant on 05-12-2019. This amendment application was filed during the Month of August 2021. The suit of the plaintiff is once for specific performance of contract to execute sale deed in her favour the allegation made in the application is that the Will is last wording of executant, after the death it is coming into force. The plaintiff and defendant No.1/Shivalingappa are not blood relatives and no such transaction held between them.

4. As per the para No.2 of the affidavit suit filed by the plaintiff against defendant is admitted. in his life time and he was not denied nor expressed the transaction. After his death his wife and daughter are brought on record they also restricted their claim and denied the execution of sale agreement, in favour of plaintiff. As per the principles of law Will is final document of deceased. The said Will and Agreement of Sale registered before the sub register on same day and witnessed by the same parties and the scribe of the both document written by the same person.

5. The allegation made in the affidavit that there is Will

bequeathed by deceased father in favour of plaintiff dated 06-03-2015 prior to that there is sale agreement between the plaintiff and deceased Shivalingappa dated 11-02-2015. In what strength the defendant is going to prove her defence in this case is very much suspicious. Moreover, the plaintiff denied the very existence of Will. Therefore, prays to reject the application with cost.

6. Heard the arguments.

7. The point that would arise for my consideration is as follows:-

POINTS

1. Whether defendants are entitled for amendment in the written statement as prayed in IA.No.VI?

2. What order?

8. My Answers to the above points are as follows:-

Point no.1: In the Affirmative

Point No.2:As for final order

REASONS

9. POINT NO.1: This suit filed by the plaintiff seeking the relief of specif performance against the defendant No.1. During the pendency of the suit the defendant No.1 was died and his LR's are brought on record and the present application filed by the defendant No.1(c) at the stage of when the case is posted for defendant evidence. Seeking proposed amendment in the written statement. which reads as follows;

10. The legal heirs of deceased 1st defendant recently came to know that the father of plaintiff forced the deceased defendant No.1 to execute

registered Will in respect of the suit property in favour of the plaintiff bequeathing the same in favour of the plaintiff, on the guise, in case the deceased defendant and his legal representatives denied the execution of the sale agreement and intended to use the said will for the benefit of plaintiff as if the deceased defendant No.1 voluntarily bequeathed the suit property to her. The original Will is with the plaintiff. The said will was attested by the same witnesses who alleged by attested the disputed sale agreement in this case and the scribe of the said will is the same person who prepared the alleged sale agreement. Thus, the alleged sale agreement is not genuine document. It is submitted that the daughter of the deceased defendant No.1 after through search found a document which is cancellation of will executed by the deceased defendant No.1 infavour of the plaintiff and same was registered on 06-03-2015.

11. Same is insertion after para No.8 of written statement as 8(a). On perusal of facts narrated in the affidavit and the facts of the case the defendant taken a specific contention that, genuineness of the relief claimed by the plaintiff.

12. The learned counsel for plaintiff filed objection to the said application and stated that, the defendant was sought in IA there is a transaction of Will executed by the defendant No.1 infavour of plaintiff is very much surprised to her. The Will is create document. The written statement was filed by defendant No.1(a) on 05-12-2019 and the present application filed by the one of the LR's of defendant No.1 in the month of August 2021. The suit of the plaintiff is ones for the specific performance of contract to execute sale deed in her favour. The allegation made in the application is Will. the Will is last wording of execute after his death it is coming to force and the plaintiff and Shivalingappa are not have any blood relationship and denied the transaction of Will and it is suspicious one

that, the suit related to the agreement between the plaintiff and deceased Shivalingappa, Hence, the application filed by the defendant is not maintainable. The defendant denied the sale agreement between the plaintiff and Shivalingappa, as he executed registered agreement infavour of plaintiff. The plaintiff also not no any thing about the said registered Will which suppose to executed by the said Shivalingappa in her favour. It shows the conduct of deceased and this defendants.

13. I have perused the application and the objection filed by the both parties. I am opinion that, the truth and veracity of the document cannot be considered at this stage. Hence, I am of the view that, to curtail further litigation on the suit schedule property it is very much necessary to allow the application. Moreover, the plaintiff also have the right to cross examine the other side and to bring the truth before this court. Hence, the proposed amendment will not change the nature of defence taken by the defendant. Hence, it is very much necessary to allow the proposed amendment to adjudicate the matter effectively. Such amendment would not cause any prejudice to plaintiff.

14. In view of the same to avoid the multiplicity of proceedings and to adjudicate the matter between the parties effectively this court found that allowing the application is very much necessary. The other side also have opportunity to cross the defendant if they have any grievance to bring the truth. Hence, if this application is not allowed it will leads to injustice and curtails the rights of parties. Therefore, the said proposed amendment will not change the nature of defence. So, for these reasons I am of the opinion that, defendants are entitled for the amendment as sought in the written statement. Accordingly, I answered Point No.1 in the **Affirmative.**

15. **Point No.2:-** In the result, I proceed to pass the following;

ORDER

**IA. No.V to VII filed by the defendant
under order 6 rule 17 and U/O 8 rule 1(A)
hereby allowed with cost of Rs.500/-**

**The defendants are directed
to carry out amendment and to
furnish amended Written statement.**

C/o 11-06-2024.

(Dictated to the stenographer typed by her, corrected by me and
then pronounced in the open court on this the 05th Day of June 2024)

**(Smt. Mahalakshmi G)
II Addl Civil Judge & J.M.F.C.,
Channagiri.**

For order

Call on 01-04-2024

**II Addl Civil Judge & J.M.F.C.,
Channagiri.**

For order

Call on 27-04-2024

**II Addl Civil Judge & J.M.F.C.,
Channagiri.**

For order

Call on 03-06-2024

**II Addl Civil Judge & J.M.F.C.,
Channagiri.**

For order

Call on 05-06-2024

**II Addl Civil Judge & J.M.F.C.,
Channagiri.**

(vide separate order pronounced
in the open court)

ORDER

**IA. No.V to VII filed by the
defendant under order 6 rule 17
and U/O 8 rule 1(A) hereby
allowed with cost of Rs.500/-**

**The defendants are
directed to carry out amendment
and to furnish amended Written
statement.**

C/o 11-06-2024..

**II Addl Civil Judge & J.M.F.C.,
Channagiri.**