

Case called out.

Both parties absent.

No representation from either side.

**ORDERS PASSED ON IA NO.6 FILED BY THE
PLAINTIFF UNDER ORDER 6 RULE 17 R/W SECTION
151 OF CPC**

The present IA filed by the counsel for the plaintiff and prays to permit the plaintiff to amend the plaint as per the proposed amendment as mentioned in IA no.6.

2. In support of the IA, plaintiff filed affidavit and stated that this suit has been filed seeking for return of advance amount and such other reliefs against the defendant. It is stated that plaintiff entered into an agreement of sale with the defendant in respect of item no.1 of plaint A schedule property and the prayer sought by the plaintiff is that the amount claimed in the plaint may be recovered on the charge of B schedule property.

3. It is stated that while preparing the plaint by oversight both the survey numbers have been described in plaint A schedule only by the previous counsel who appeared for the plaintiff and further stated that item no.2 property mentioned in the plaint A schedule are to have described in plaint B schedule. It is stated that the error in the plaint is not intentional but due to oversight. It is stated that the said error came to the knowledge of the plaintiff, when the evidence of plaintiff was about to prepare, as such for the purpose of clarity it is just and necessary to describe the item no.2 of plaint schedule property as plaint B schedule property.

4. It is stated that the amendment sought by the plaintiff will not change the nature of the suit nor cause of the action or will not introduce any new case. Further stated that if the amendment sought by the plaintiff is not allowed, plaintiff will be put to great loss and hardship and on the other hand If the amendment sought by the plaintiff is allowed no prejudice will be caused to the defendant. Hence prays to allow the IA.

5. Counsel for the defendant filed objections to IA no.6 and it has been contended that IA filed by the plaintiff is not maintainable either in law or on facts. It is stated that present suit has been filed by the plaintiff based on the alleged agreement of sale in respect of the property bearing Survey no. 1/16 measuring to an extent of 13.50 cents only and now by this amendment plaintiff is seeking to include survey no.1/24 measuring to an extent of 93 cents as plaint B schedule property. It is stated that the land bearing Survey no.1/24 is not the subject matter of the agreement of sale entered into between the plaintiff and defendant as claimed by her. It is stated that in the written statement that the agreement propounded by the plaintiff itself is false and created document and at no point of time he has entered into such agreement of sale with the plaintiff.

6. It is stated that during the year 2022, defendant was constructing a new house at his land, while constructing the house, the defendant was in need of funds as such he intended to avail loan from Sarasvati

Souharda Society for the construction, however at that point of time as the defendant has already availed certain amount of loan over his lands from the society, the society demanded the defendant to clear his earlier loans for granting fresh loan to him.

7. It is stated that plaintiff was a teacher by profession at that point of time and she has just retired from her service, since she was very familiar and had close contact with the family of the defendant including the defendant, as such defendant was well aware that at that point of time plaintiff has retired from her service and she has got her retirement benefits, hence he requested her to lend an amount of Rs.10,00,000/- (Rupees Ten Lakh only) for clearing his existing liabilities over his lands with Sarasvati Souharda Society with the assurance that he would repay the said loan amount immediately after getting a fresh loan from the said society.

8. It is stated that on considering the request of the defendant plaintiff has lend a sum of Rs.10,00,000/- (Rupees Ten Lakh only) to the him for clearing of his

existing liabilities with the society, accordingly defendant has cleared his liabilities with the money which was borrowed by him from the plaintiff and availed fresh loan from the society for his construction.

9. It is stated that out of the granted loan amount, he has already paid a sum of Rs.7,00,000/-(Rupees Seven Lakh only) to the plaintiff by cheque and the plaintiff has also received the said amount, subsequently for completion of the construction work as he required further funds, defendant has sold a portion of one of his lands to the third parties in order to meet the expenses for his construction, as such defendant has to pay only Rs.3,00,000/-(Rupees Three lakh only) to the plaintiff towards the loan which was taken by him from her.

10. It is stated that for to repay the loan amount plaintiff repeatedly demanded the defendant and ultimately she filed the present suit by creating a agreement of sale claiming that it has been entered into between her and the defendant. It is stated that the property which the plaintiff is intended to include as B

schedule is not at all the subject matter of the alleged agreement of sale and even the alleged agreement produced by the plaintiff before this Court is a incomplete document and the signature of the defendant is not found in the said document, hence the said document is not enforceable before this Court, as such the amendment which sought by the plaintiff is not at all necessary for the proper adjudication of this case.

11. It is stated that already once similar application for amendment of the plaint has been filed by the plaintiff at the early stage of this case and she has already got amended the plaint also, as such the application filed by the plaintiff for the relief of amendment does not survive for consideration. Hence prays to dismiss the IA.

12. Perused the IA, objections and rest of the material particulars available on record. Below mentioned points arisen for my consideration.,

P O I N T S

1. Whether the plaintiff made out grounds to consider the IA no.6 which is filed under Order 6 rule 17 r/w Sec. 151 of CPC and grant the relief as prayed for ?

2. What Order?

13. Heard counsel for the plaintiff and the defendant. Perused the IA, objections and rest of the material particulars available on record. My findings to the above points is as hereunder.,

Point Nos. 1 : In the Affirmative.

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

R E A S O N S

14. Point Nos.1: Plaintiff filed this IA and prays to permit her to insert the proposed amendment to the plaint. On the contrary counsel for the defendant resisted the IA by filing the objections.

15. The suit was filed by the plaintiff against the defendant and prays to direct the defendant to return the advance amount of Rs.15,00,000/- received by the defendant from the plaintiff on the strength of Agreement dated 22-10-2022 with interest and cost. Through this IA plaintiff intends to cause amendment to the plaint by inserting the plaint B schedule property.

16. Defendant appeared through his Advocate and filed the written statement. When the matter posted for framing of issues, plaintiff filed this IA seeking permission to insert the proposed amendment to the plaint. Admittedly the property which now plaintiff proposes to insert as plaint B schedule property is already mentioned as item no.2 of plaint A schedule property. The proposed amendment is clarity in nature and no new pleadings has been trying to insert by the plaintiff. Since the evidence of parties is not yet commenced and the matter is still at preliminary stage, this Court opines that permission has to be accorded to the plaintiff to cause amendment to the plaint by inserting the proposed amendment as mentioned in the IA. Further the

proposed amendment is not going to change the nature of the suit nor change the cause of action, further the proposed amendment is required to decide the real controversy between the parties to this suit. Plaintiff made out grounds to consider the IA, hence I proceed to answer Point No.1 in the Affirmative.

17. **Point no. 2:** For the reasons as discussed above in Point No.1, I proceed to pass the following.,

ORDER

IA no.6 filed by the plaintiff under Order 6 rule 17 and Sec. 151 of CPC is hereby allowed on cost of Rs.200/-.

Plaintiff permitted to amend the plaint by inserting the proposed amendment as mentioned in the IA to the plaint pleadings.

Counsel for the plaintiff is directed to
amend the plaint.

call on:06-12-2025

**Addl. Senior Civil Judge &
J.M.F.C, Puttur, D.K.**