

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE &
J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Additional Senior Civil Judge and JMFC.,
Hubballi.

O.S. No.45/2025

Dated this the 07th day of April, 2026

Plaintiff : Maruti S/o Bharamappa Kabber.

.Vs.

Defendant : Dr. Rayanagouda S/o Gurunath
Kulkarni and others.

PARTIES TO I.A. NO.IX

Applicant/s : Maruti S/o Bharamappa Kabber.

.Vs.

Opponent/s : Dr. Rayanagouda S/o Gurunath
Kulkarni and others.

- i. Provision under which application is filed : Under Order 8 Rule 9 R/w Sec.151 of CPC.
- ii. Relief sought for : Seeking permission to the plaintiff to file the replication to the written statement filed by the defendant No.1, in the interest of justice and equity.
- iii. The date on which application is filed : 02.02.2026
- iv. Number of the application : IX
- v. The date on which objections are filed by different opponents : 25.02.2026

vi. The date on which : 07.04.2026
orders were passed on
the said application

ORDERS ON IA No.IX

This order arises out of interlocutory application No.V filed by the applicant/plaintiff under Order VIII Rule 9 R/w Sec.151 of CPC, seeking permission to the plaintiff to file the replication to the written statement filed by the defendant No.1, in the interest of justice and equity.

2. The brief facts of the affidavit annexed to application is that, the defendant No.1 has falsely filed the written statement denying the part of contents of the plaint and he has relied the unregistered agreement of sale and he has raised the new points which are no way concerned to the present suit in hand. To file the replication to the contents of the written statement, it is necessary for him to file the replication to the written statement, which is very much necessary for the adjudication of the case. If the said application is allowed, no harm or prejudice will be cause to the defendants, on the contrary if the same is not allowed he will be put to untold hardship and loss. Hence, prayed to allow the application.

3. The defendants have resisted the application by contending that the application is false, frivolous and vexatious and same is neither tenable in law nor on the facts of the case. It is further contended that the defendants have clearly pleaded about existence of the unregistered agreement of sale even in the reply notice to the notice issued by the plaintiff

before present suit but the plaintiff has not pleaded anything in his plaint despite knowing the existence of agreement of sale. Therefore, the application is totally devoid of merits. There is no provisions in CPC to file replication. Therefore, seeking permission to file such replication is totally unknown to law. Hence, prayed to dismiss the application with costs.

4. *Heard arguments.*

5. *The following points are for my consideration.*

- *Point No.1: Whether the application filed by the plaintiff seeking leave to file replication is maintainable ?*

- *Point No.2: What order?*

6. *My findings 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:** *This is the suit filed by the plaintiff against defendants for the relief of specific performance of contract is concerned. When the matter was set down for issues, the counsel for plaintiff came up with this application seeking permission to file replication to the written statement filed by defendant No.1.*

8. *The brief averments of the application disclose that defendant No.1 has filed his written statement belatedly and in the said written statement certain pleas have been raised regarding an alleged unregistered agreement of sale and other*

facts, which according to the plaintiff are not germane to the suit and require specific reply by way of subsequent pleading. Hence, the plaintiff seeks leave of this Court to file replication.

9. The said application is opposed by defendant No.1 by filing objections contending that there is no provision under the Code of Civil Procedure for filing replication, that the plaintiff was already aware of the alleged agreement of sale, even prior to the institution of the suit. And that the present application is only an attempt to fillup lacuna in the plaint after commencement of trial. Hence, they prayed for dismissal of the application.

10. It is not in dispute that defendant No.2 has filed his written statement at a belated stage and the same came to be received by this Court on payment of cost by order dated:22.01.2026. Thereafter, the matter was posted for framing of issues, and at that stage the present application has been filed.

At the outset, the contention of defendant No.1 that there is no provision under law to file replication cannot be accepted. Though the plaintiff has filed the present application under Sec.151 of CPC the filing of a pleading subsequent to written statement is traceable to Order 8 Rule 9 of CPC which specifically contemplates presentation of subsequent pleadings with the leave of the Court. Therefore, the present application is certainly maintainable in law.

11. However, it is equally well settled that replication cannot be claimed as a matter of right and the same can be

permitted only where the written statement discloses new facts, special pleas, or such contention which require specific denial or explanation for effective adjudication of the dispute. Replication cannot be used as a substitute for amendment of plaint, nor can it be permitted for introducing an entirely new case inconsistent with the plaint averments.

12. In the present case, defendant No.2 has admittedly filed written statement after commencement of trial. The plaintiff contends that the said written statement contains plea regarding an alleged unregistered agreement of sale and certain other assertion which require reply. Since the written statement of defendant No.2 was not available earlier on record. The plaintiff cannot be denied an opportunity to place his specific response to such pleadings, particularly when the suit is one for specific performance of contract, where the nature of contractual pleadings and rival claims assumes significance for adjudication.

13. At the same time, this Court is of the considered view that the plaintiff cannot be permitted to use replication as a device to fillup omissions in the plaint or to introduce a wholly new foundation inconsistent with the original pleadings. Therefore, leave deserves to be granted only to the limited extent of enabling the plaintiff to specifically answer the new pleas raised in the written statement of defendant No.2. Therefore, no prejudice would be caused to defendant No.2 if such leave is granted, as liberty can always be reserved to the said defendant to address argument on the effect and admissibility of such pleadings and, if necessary, to seek

consequential opportunity in accordance with law. Hence, this Court answers **point No.1 in the affirmative.**

14. **Point No.2:** In view of findings on point No.1, this court proceeds to pass the following;

ORDER

I.A. No.IX filed by the plaintiff Under Order VIII Rule 9 R/w Sec.151 of Civil Procedure Code is hereby allowed.

The replication of the plaintiff is taken on record.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **07th day of April, 2026**)*

sd/-

(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.