

ORDERS ON I.A NO. I UNDER
ORDER VI RULE 17 OF CODE OF
CIVIL PROCEDURE

This application is filed under Order VI Rule 17 of CPC by the plaintiffs seeking for amendment of plaint as stated in the application. They have sought to insert in the second line of 16th paragraph in page No. 5 of the plaint that **“The Court fee is paid as per Section 40 (A) of Karnataka Court Fees and Suits Valuation Act”** and in the fifth line of 2nd prayer in page No. 6 of the plaint that **“on failure of the defendant to execute the sale deed, to appoint a Court Commissioner to execute the sale deed in favour of the plaintiff ”.**

2. In the affidavit annexed to the application, the plaintiff No. 1 stated that the suit schedule properties are in

the joint possession and enjoyment of the plaintiffs. Plaintiffs had obtained loan amount of Rs. 2,50,000/- from the defendant and for securing the said loan they had executed a name sake sale deed and the defendant had executed a mutual consent letter dated 23/8/2007 to execute the sale deed after repayment of loan with interest. The plaintiffs have filed the present suit for obtaining the sale deed in their favour. At the time of filing of the suit, some of the aspects has been left out by oversight. As such it is very much necessary to insert the amendment sought in the application. Hence prayed to allow the application.

3. The defendant filed his objections contending that the application filed by the plaintiffs is not at all maintainable either in law or on facts.

Further, he stated that the applicant has sworn to a false affidavit and the contents of the application and affidavit are false and untenable. The applicant has not stated where exactly and after which words the proposed insertions are to be inserted. Further the applicant has not set out proper and valid reasons why they want to insert the said averments, the same is confusing and the said averments do not convey any meaning. Also the said proposed amendments will change and alter the nature of the case and introduce new nature altogether. And also he has not stated why he had not given genuine reasons for filing the application. More so the reasons set out are very flimsy and unsubstantial and not supported by any valid grounds and documents. The said application is filed only to stall the proceedings of

the Court at this stage. Hence prayed to dismiss the application with exemplary costs.

4. On the basis of rival contentions, the following points arise for my consideration:

1. Whether the applicant has made grounds to allow the application?

2. What order?

5. My answer to above points are as under:

Point No.1: In the Affirmative

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

REASONS

6. Point No. 1:This suit is filed for the relief of specific performance of mutual consent letter dated 23/8/2007. The plaintiff filed this application under Order VI Rule 17 of CPC seeking for amendment of pleadings. Per contra, the defendant

objected the amendment by filing his objections.

7. Under Order VI Rule 17 of CPC, Courts discretion to grant permission for a party to amend his pleading can be exercised, firstly, where no injustice is done to other side and secondly, the amendment being necessary for the purpose of determining the real question in controversy between the parties also keeping in view the proviso under Rule 17 of Order 6 of CPC. Even after commencement of the trial, the amendment can be permitted, if it is shown that in spite of due diligence, the applicant could not have raised the matter, earlier to the stage of commencement of the trial.

8. Since the amendment sought in the application do not change the nature of the suit and further it will not take

away right accrued to the other side and the proposed amendment is necessary to decide the real question in controversy in the suit. Hence in order to avoid multiplicity of proceedings and for proper adjudication of matter, I answered Point No.1 in the Affirmative.

9. Point No. 2 :- For the above said discussion to point No.1, I proceed to pass the following:

: O R D E R :

The application filed under Order VI Rule 17 of CPC is hereby allowed.

Counsel for plaintiff is hereby directed to carry out amendment and to file amended plaint.

Call on: 12/06/2018

**(SMT. SAROJA. M)
Addl. Civil Judge & JMFC
Arakalgud.**

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(SMT. SAROJA. M)

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