

ORDERS ON I. A. FILED UNDER
ORDER VI RULE 17 OF CODE OF
CIVIL PROCEDURE

This application is filed under Order VI Rule 17 of CPC by the plaintiff seeking for amendment of plaint as stated in the application. Plaintiff has sought to insert the following proposed amendment in the prayer column as prayer (e) **“to declare that the sale deed dated 12/2/2016 executed by defendant No. 1 to 3 in favour of defendant No. 4 is not binding on the plaintiff”**.

2. In the affidavit annexed to the application, it is stated that plaintiff has filed this suit for the relief of Declaration and permanent injunction and the matter is set down for plaintiff's evidence. Even though there was an order of temporary injunction restraining the defendants No. 1 to 3 from alienating the suit property in favour of defendant No. 4, they have intentionally sold the

suit property in favour of defendant No. 4 as per sale deed dated 12/2/2016 in order to deceive the plaintiff by violating the order of the Court. As such it is very much necessary to insert the proposed amendment in the plaint. Further, the proposed amendment does not change the nature of suit or cause of action. There is no malafide intention in the same. The proposed amendment is necessary for the just decision of the case. Hence prayed to allow the application.

3. The defendants filed their objections contending that the application is not at all maintainable either under law or on facts of the case. The contents of the affidavit are all false. The amendment sought in the application will change the nature of suit and cause of action. The application is filed to drag the

proceedings. Hence prayed to dismiss the application.

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 Declaration and permanent injunction by the plaintiff. The defendants No. 1 to 3 have sold the suit property in favour of defendant No. 4 during the pendency of the suit by violating the interim order. As such the plaintiff has sought for proposed amendment to the

plaint. Per contra, the defendants objected the amendment by filing their 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 take away the right accrued to the other side and 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: 12/2/2019

**Addl. Civil Judge & JMFC
Arakalgud.**