

KAKB410000592021



**THE COURT OF THE SENIOR CIVIL JUDGE**  
**& J.M.F.C., AT : CHINCHOLI**

**Present : Smt.Jyoti.Shantappa.Kale**  
**L.L.M.,**  
**Senior Civil Judge & JMFC, Chincholi.**

**DATED : THIS THE 30<sup>th</sup> DAY OF MARCH 2024**

**ORIGINAL SUIT No.23/2021**

I.	Provision under which the application is filed	U/o VI Rule 17 of CPC
II.	Relief sought for	For amendment.
III.	The date on which the application is filed	18/12/2023
IV.	Number of the application	I.A No.VII
V.	The date on which the objections are filed by different opponents	14/02/2024
VI.	The date on which the orders were passed on the said application	30/03/2024

**Plaintiff/s**

Bachupalli Nagamma W/o Bachupalli Bhupal reddy.

**V/s**

**Defendant/s:**

Sri. Mehabubsab S/o Gudusab Dastapur

**-: I.A.No.VII:-**

**Applicant/s:**

Bachupalli Nagamma W/o Bachupalli Bhupal reddy.

**V/s**

**Opponent/s:**

Sri. Mehabubsab S/o Gudusab Dastapur

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**Order on Interim application no.VII filed under Order 6 Rule 17 r/w Section 151 of the CPC by the plaintiff**

- 1.** Plaintiff has filed this application under Order VI Rule 17 of Code of Civil Procedure, 1908 with a prayer to permit the plaintiff to amend the original plaint by including the paragraphs shown in the proposed

amendment and allow the application in the interest of justice and equity.

- 2.** This application is supported by the affidavit of the power of attorney holder of the Plaintiff, wherein he has sworn to the effect that, he has filed the suit for the relief of specific performance of contract in respect of the suit schedule properties. She has stated that, he had instructed his advocate stating that they have kept the amount ready so their advocate mentioned that the amount is in bank. Therefore the same needs to be corrected as per the proposed amendment. It is further stated that the proposed amendment sought for will not change the nature of the suit and cause of action. It is necessary to permit her to amend the plaint by including the paragraphs as shown in the application. If the application is not allowed she will be put to irreparable loss and injury. Thus prayed to allow the application.
- 3.** The learned counsel for the defendant filed objection to the said application contending that application is not maintainable and the proposed amendment change the nature of suit and cause of action. In para No.5 of the plaint the plaintiff has admitted that he has kept balance amount in the bank but now he has arranged the amount and sought for proposed amendment. If

the application is allowed the defendant will be put irreparable loss. It is also stated that the plaintiff had no amount and therefore she could not get registered the sale-deed as per the agreement of sale. It is further contended that the plaintiff has stated that amount was kept in the bank and as now the plaintiff would be asked for the documents, hence they have sought for proposed amendment. Even in the police station the defendant has given undertaking that he would return amount to the plaintiff. The plaintiff has no amount and therefore he has got cancelled the agreement of sale entered by him for the land situated in Mogadampalli Village. On these grounds the defendants prayed to reject the application.

- 4.** Heard learned counsel for the Plaintiff. Counsel for Defendant remained absent. Perused the material placed on record.
- 5.** Upon hearing arguments and on perusal of material placed on record, the following points arise for consideration:
  1. Whether the Plaintiff has made out sufficient grounds for amendment of pleadings as sought in the application?

2. What order?

- 6.** My answers to the above points are as under:

Point No.1: In Affirmative.

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

R E A S O N S

- 7.** Point No.1: The plaintiff has filed application seeking permission to amend the plaint as per the proposed amendment. In the affidavit the plaintiff has stated that he has filed the suit for the relief of specific performance of contract in respect of the suit schedule properties. She has stated that, he had instructed his advocate stating that they have kept the amount ready so their advocate mentioned that the amount is in bank. Therefore the same needs to be corrected as per the proposed amendment.
- 8.** The suit is for the relief of specific performance of contract in respect of suit schedule property. On perusal of the proposed amendment, it shows that, the plaintiff intends to amend the amend the plaint in respect of balance consideration amount. In para No.5 of the plaint, the plaintiff has stated that she is ever ready to pay the balance consideration amount and get sale-deed and has kept the balance amount in bank without investment in the hope that the agreement will

materializes and suffering loss of value of money day by day.

- 9.** The financial capacity of prospective purchaser in suit for specific performance of contract is crucial aspect to be considered. No matter. The trial in this case is not yet commenced.
- 10.** On perusal of the plaint averments it shows that, the plaintiff has pleaded about the balance consideration amount kept in bank but now by virtue of proposed amendment the plaintiff intends to say that she has kept the amount at home. As the trial is not yet commenced, no much loss will be caused to the defendant. The defendant can cross examine the plaintiff to elucidate the case of plaintiff.
- 11.** The contention of the defendant in his written statement has warranted the plaintiff to seek amendment to her plaint in order to counter the contention of defendant. By virtue of proposed amendment, the Plaintiff intends to plead certain facts to the plaint.
- 12.** *It is well settled law that ground of application for amendment be subject to certain conditions namely:*
  - i) When the nature of it change by permitting amendment;*

- ii) *When amendment would result in introducing new cause of action and intending to prejudice other party;*
- iii) *When allowing amendment application, defeats law of limitation.*

13. Now we have to consider whether the present application for amendment of the plaint meets these requirements.

14. On perusal of the entire pleading, contents of the affidavit and the proposed amendment it makes clear that by virtue of the proposed amendment, plaintiff is intending to plead certain facts and the same are necessary for effectual adjudication of rights of the parties. Thus I am of the considered opinion that, by virtue of the proposed amendment, the nature of the suit or cause of action will not be changed. That apart, still we are in preliminary stage and the trial is not yet commenced. Under such circumstances, no prejudice or hardship will be caused to the other side. With these observations, I answer the Point No.1 in the Affirmative.

15. POINT.2: For the foregoing reasons, I proceed to pass the following:

**ORDER**

Interim application No. VII filed by the plaintiff U/o VI Rule 17 of CPC is hereby allowed on cost of Rs. 500/-.

Plaintiff is permitted to amend her pleadings as sought in the application as per the proposed amendment .

Plaintiff is directed to carry out amendment in the plaint and to furnish amended plaint.

(Dictated to Typist typed by her corrected by me, signed and pronounced by me in the open court on **30<sup>th</sup> day of March 2024**)

(Jyothi Shantappa Kale)  
**Senior Civil Judge & JMFC,  
Chincholi.**