

**IN THE COURT OF THE II ADDL. CIVIL JUDGE & JMFC AT
MADDUR**

Dated this the 14th day of March 2023

:Present:

Sri. KIRAN S.P., B.B.M., LL.B.,
II Addl. Civil Judge, Maddur

OS No. 307/2020

Plaintiff : - Smt. M.V.Kavyashree

V/s.

Defendants :- Sri. Ramesha and others

CAUSE TITLE ON IA NO.V

Applicant : - Smt. M.V.Kavyashree

(By Sri.K.C.K., Advocate)

V/s.

Respondents :- Sri. Ramesha and others

(By Sri.M.K.J., Advocate)

:ORDER ON I.A. No. V:

The plaintiff has filed IA No.5 U/o 6 rule 17 R-w section 151 of CPC praying for leave of the court to amend the plaint as indicated therein.

02. In the accompanying affidavit, it is stated that she has filed the above suit against defendants for the relief of specific performance of contract under the sale agreement. At the time of filing of the suit by typographical error the agreement dated wrongly mentioned as 01/08/2018 instead of

05/09/2017 and recently that mistake come to her knowledge. Hence she has advised to her counsel to amend the plaint paras of agreement date and I.A only as mentioned in the accompanying application. The amendment sought for is to adjudicate the matter on merits. The amendment sought for not at all create any new cause of action or nature of the suit. If the application is not allowed she will be put to much hardship and great injustice will be caused to her. On the other hand no prejudice of any kind will be caused to the other side. On these grounds she prays for allow the application.

03. This application is resisted by the defendants by filing objections. It is stated in the objections that the application filed by the plaintiff is not at all maintainable either in law or on facts and the same is liable to be dismissed in limine. The plaintiff wants to change the date of agreement is not maintainable earlier they are admitted in their plaint the agreement dated 01/08/2018. The proposed amendment is not permissible. Hence the very application is not maintainable and liable to be dismissed in limine. The plaintiff sworn false affidavit, she is not explained in their affidavit what purpose they are amend the plaint in that score alone the very application is liable to be dismissed. This application is not maintainable. This application contrary to the earlier plaint averments. It is further submitted that the above suit filed by the plaintiff in the year 2020. Now the above case is set down for to lead plaintiff evidence several time, the plaintiff is not given their evidence before this Hon'ble court, at this stage the proposed amendment is not considerable under law. If this application is allowed the

cause of action and nature of the suit will be changed. But if the application is not allowed no prejudice or inconvenience cause to the other hand. Hence they pray to dismiss the application.

04. Heard the arguments and perused the pleadings and materials available on record.

05. The point that would arise for consideration of this application is as follows:

Whether the proposed amendment is just and necessary to decide the real dispute in controversy between the parties to the suit ?

06. The findings on the above point is in the affirmative for the following;

REASONS

07. The plaintiff has filed the suit seeking the relief of specific performance of contract. It is noticed from the order sheet of the case that the trial is yet to be commenced and when the case is posted for plaintiff evidence, the plaintiff has filed this application praying for leave of the court to amend the plaint as indicated therein.

08. On going through the proposed amendment reveals that the plaintiff is not seeking any relief by way of proposed amendment. On going through the proviso of rule 17 of order 6 of CPC, it is very much clear that, no application for amendment shall be allowed after the trial has commenced.

In the instant case the evidence is yet to be commenced. If the proposed amendment is not allowed, it may leads to multiplicity of proceedings. If the proposed amendment is allowed, no loss or injury will be caused to the defendants. Moreover the proposed amendment will not changed the nature of suit and the plaintiff claimed her contention by way of proposed amendment, the opportunity has to be given to plaintiff to prove her case as per ascertainment of facts on the basis of oral and documentary evidence. Hence I deem it appropriate to allow the application. Hence, I answered the above point in the affirmative and proceed to pass the following;

ORDER

I.A No. 5 filed by the plaintiff U/o 6 rule 17 R-w section 151 of CPC is hereby allowed on cost of Rs.200/-.

The plaintiff is permitted to amend the plaint as indicated in I.A. No.5.

(Dictated to the stenographer, transcribed by him, corrected and then pronounced in the open Court on this the **14th day of March 2023**)

(KIRAN S.P)
II Addl. Civil Judge & JMFC: Maddur