



**IN THE COURT OF THE HONOURABLE ADDITIONAL CIVIL
JUDGE & JMFC, AT KRISHNARAJANAGAR.**

PRESENT: SMT. ASRINA.,B.A, LLB.
ADDL. CIVIL JUDGE AND JMFC, KRISHNARAJANAGAR.

DATED THIS 27TH DAY OF JUNE, 2025

O.S.No.26/2017

BETWEEN

PLAINTIFF	Shri.Ramegowda S/o Late.Ningaiah Aged: 65 years R/at: Kalammanakoppalu Village Saligrama Hobli K.R.Nagar Taluk Mysuru District (By Sri.D.M.T. Advocate)
DEFENDANTS	Shri.K.T.Masthigowda S/o Late.Thimmegowda @ Lakshmegowda, Aged: 45 years Teacher, Government Primary School Subbegowdanakoppalu Village Seegavalu Post Saligrama Hobli K.R.Nagar Taluk Mysuru District.



	And also at C/o Shri.C.B.Yallappa Honnenahalli Road Saligrama Town K.R.Nagar Taluk Mysuru District. 2. Smt.Chikkamma W/o K.T.Masthigowda Aged: 38 years. 3. Shri.Nikhil M. S/o K.T.Masthigowda Aged:19 years Defendants No. 2 & 3 are R/at: C/o C.B.Yallappa Honnenahalli Road Saligrama Town K.R.Nagar Taluk Mysuru District. 4. Shri.Rajegowda S/o Doddegowda Aged: 43 years 5. Shri.Doddegowda, S/o Late.Karigowda Aged 70 years. Defendants No.4 & 5 are R/at: Kalammanakoppalu Village
--	--



	Saligrama Hobli K.R.Nagar Taluk Mysuru District. (Defendants No.1,2 & 4 By: Shri.M.C.S. Adv) (Defendants No.3 is placed Ex-parte) (Defendant No.5 By: Shri.J.G. Adv)
--	--

IA NO.12**BETWEEN**

APPLICANT/ PLAINTIFF	Shri.Ramegowda
OPPONENTS/ DEFENDANTS	Shri.Masthigowda and others

Provision of law	Order 6 Rule 17 R/w Sec.151 of CPC.
Relief sought in the application	To amend the plaint.
Date of filing the application	14/03/2025.
Date of filing the objection to the application	09/04/2025.
Date of order	27/06/2025.

(SMT. ASRINA)
ADDL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR.

KAMS410000562017



**ORDERS ON IA.NO.12 FILED BY THE PLAINTIFF UNDER
ORDER 6 RULE 17 R/W SECTION 151 OF CPC**

Plaintiff has filed the present suit as against the defendants for the relief of specific performance of contract. After conclusion of the plaintiffs side evidence as well as the evidence of Dw.1, when the above case was at the stage of cross-examination of Dw.2, the plaintiff has filed the instant application under Order 6 Rule 17 of CPC praying this court to allow him to carry out the amendment in the plaint so as to add additional pleadings as well as to seek additional relief of declaration in respect of the registered sale deed dated 03/01/2017, registered on 04/01/2017 registered as a document No.MIR-1-03282/2016-17.

2. In the affidavit accompanying the IA.No.12, it is averred that the plaintiff has filed the present suit as against the defendants for the relief of specific performance of contract. It is averred that from last 3-4 years the plaintiff is suffering from old age ailments. It is averred that due to his ill-health and also due to lack of his knowledge, the plaintiff could not bring on record the subsequent developments in respect of execution of registered sale deed dated 03/01/2017 in favour of the defendant No.5. It is averred that the proposed amendment is very much necessary to resolve the real dispute involved between the parties. The

KAMS410000562017



proposed amendment will not take away the defence of the defendants. If the application is allowed no hardship will be caused to the defendants and the proposed amendment will also not change the nature of the suit. If the proposed amendment is not allowed, then it will lead to the multiplicity of proceedings. Hence on the above grounds the plaintiff has prayed to allow the application.

3. The application was objected by the defendants by filling their objections by contending that the application filed by the plaintiff is not maintainable under the law. The reasons assigned in the accompanying affidavit is not just and proper. The defendants have contended that the plaintiff is not diligent in prosecuting this suit. It is only after the commencement of the trial the plaintiff has filed the present application at this belated stage with an intention to further drag on the matter. The proposed amendment sought by the plaintiff in the instant application is not proper. The defendants have contended that if the proposed amendment is allowed then the nature of the suit will be changed. With these objections the defendants have sought for dismissal of the application.

4. Heard arguments from both the side.

KAMS410000562017



5. Perused the records. After going through the application along with affidavit, objection statement and the relevant documents placed on record, the following points arises for my consideration:

Point No.1: Whether the plaintiff has made out valid grounds to allow the application?

Point No.2: What order?

6. My answers to the above points are as hereunder:

Point No.1 : In the Negative.

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

REASONS

7. POINT NO.1: Plaintiff has filed the present suit for the relief of specific performance of contract as against the defendants. The record reveals that on 05/08/2019 the trial of this case was commenced and on 05/08/2021 the plaintiff side evidence was concluded. The record further reveals that on 22/09/2021 itself the defendants have commenced their evidence. The record further reveals that it is at this point the plaintiff has come up with the instant application seeking permission to amend the plaint. **Order 6 Rule 17 of CPC reads as under:**

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just,

KAMS410000562017



and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

8. The provisions of Rule 17 of Order 6 of CPC enable the parties to the suit to amend their respective pleadings if such amendment is necessary for the purpose of determining the real dispute between the parties. However, the legislatures have imposed a rider to the order 6 Rule 17 of CPC by inserting the proviso. The Proviso appended to Rule 17 of Order 6 states that the court shall not permit the parties to amend their pleadings after the commencement of trial, unless the party seeking amendment satisfies the court that in spite of his or her due diligence, the party could not have raised the matter before the commencement of trial, the court should not allow any amendment after the commencement of trial. Thereby, the proviso appended to Rule 17 of Order 6 of CPC makes it mandatory for the party seeking the amendment to satisfy the court that he or she could not raised the matter covered under the amendment before the commencement of trial. Hence, as per the proviso, no amendment of pleadings shall be permitted after the commencement of trial. However, only exception carved out

KAMS410000562017

by the proviso appended to Order 6 Rule 17 is that if the party seeking the amendment satisfies the court that inspite of his or her due diligence they could not seek the amendment prior to commencement of trial.

9. By way of proposed amendment the plaintiff is intending to add additional pleadings as well as to seek the additional relief of declaration in respect of the registered sale deed dated 03/01/2017, registered on 04/01/2017 registered as a document No.MIR-1-03282/2016-17. The records reveals that the plaintiff has filed the present suit on 07/01/2017. After filing of this suit, on 04/02/2017 the plaintiff herein has filed I.A.No.2 under Order 1 Rule 10(2) of CPC to implead the defendant No.5. At para No.3 of the affidavit annexed to the I.A.No.2, the plaintiff has categorically deposed on oath regarding the execution of aforesaid registered sale deed dated 03/01/2017, registered on 04/01/2017 registered as a document No.MIR-1-03282/2016-17 by the defendants No.1 to 3 herein in favour of the defendant No.5. The same is extracted below:

I further state on oath that, after filing of this suit I came to know that, the defendant No. 1 to 3 with malafide intention and also in order to disprove my legitimate rights over the suit schedule property, defendants No. 1 to 4 have colluded with each other and suppressed the

KAMS410000562017



Registered Sale Agreement in my favour, the Defendants No. 1 to 3 have sold the entire suit schedule properties i.e., landed property bearing Sy.No.43/13, situated at Kalammanakoppalu Village, Saligrama Hobli, K.R.Nagar Taluk, Mysuru District, totally measuring 12 guntas, through a registered Sale Deed dated 03/01/2017 and the same was registered before the Sub-Registrar, Mirle, vide document No. MIR-1-03282-2016-17 C.D No.MIRD-91 of Book 1 dated 04/01/2017 in favour of proposed Defendant No. 5.

10. Hence, the averments made on oath by the plaintiff in the affidavit accompanying the I.A.No.2 establishes that way back on 04/02/2017 i.e., even before the commencement of trial itself the plaintiff was very well aware about the execution of aforesaid registered sale deed dated 03/01/2017, registered on 04/01/2017 registered as a document No.MIR-1-03282/2016-17 by the defendants No.1 to 3 herein in favour of the defendant No.5. But the plaintiff has filed the instant application on 14/03/2025 i.e., at the fag end of the case, when the case is almost at the verge of conclusion of the trial. Hence the records speaks that the plaintiff has filed the instant application after the commencement of the trial. Therefore, in view of the mandate imposed in the proviso appended to Order 6 Rule 17 of CPC the plaintiff ought to have satisfied the court that inspite of his due diligence, he could not raised the matter covered under the amendment at the earliest point of time.

KAMS410000562017

11. As held above, the records reveals that way back on 04/02/2017 i.e., even before the commencement of trial itself the plaintiff was very well aware about the execution of aforesaid registered sale deed dated 03/01/2017 bearing document No.MIR-1-03282/2016-17 in favour of the defendant No.5. In the affidavit accompanying the present application, the plaintiff has stated that as he was suffering from old age ailments, he could not seek the proposed amendment at the earliest point of time. It is significant to note here that, though the ill-health of the plaintiff was pleaded as a ground for not seeking the proposed amendment at the earliest point of time, but the plaintiff has not produced any supportive documents to show his ill-health. Moreover, as held above, the records itself speaks that way back on 04/02/2017 itself the plaintiff was very well aware about the execution of aforesaid registered sale deed dated 03/01/2017 in favour of the defendant No.5. The records reveals that subsequent to 04/02/2017, the plaintiff has led his evidence and also the plaintiff has also subjected himself for cross-examination. When the plaintiff is hale and healthy to appear before the court and to give his evidence and also when the plaintiff is hale and healthy to appear before the court and to subject to himself for lengthy cross-examination, this court do not understand how did his health caused trouble for him to seek the proposed amendment at the earliest point of time. Further, the records also reveals that on 23/08/2024, the very

KAMS410000562017



same plaintiff has also filed I.A.No.9 under Order 39 Rule 1 and 2 of CPC. But the alimnet of the plaintiff did not come in the way of the plaintiff in filing the said I.A.No.9. According to the plaintiff, his health did not co-operate to file the instant application at the earliest point of time. Hence, when the plaintiff is hale and healthy to give his evidence and to file I.A.No.9, the reason assigned by the plaintiff that due to his old age alimnets, he could not seek the proposed amendment at the earliest point of time does not inspire the confidence of this court and the same is liable to be rejected out rightly.

12. The records speaks that though the plaintiff could have raised the proposed matter before commencement of trial, the plaintiff has filed the instant application after the commencement of the trial and when the case is at the fag end. Absolutely no valid reasons are forthcoming from the plaintiff as to why he did not seek the proposed amendment at the earliest point of time itself. Though the plaintiff had all the opportunities to raise the matter covered under the proposed amendment even before the commencement of trial, the plaintiff did not raise the said matter until the fag end of the case. Therefore, the same establishes that the plaintiff is not diligent in pursuing the above case. The plaintiff has failed to establish that in spite of his due diligence he could not raised the matter covered under the proposed amendment before the commencement of trial. The law

KAMS410000562017



says that ***Vigilantibus non dormientibus jura subveniunt***, meaning thereby the law aids the vigilant and not those who sleep over their rights. Hence, in view of the said principle and in view of the rider imposed under the proviso annexed to the Order 6 Rule 7 of CPC, the proposed amendment cannot be allowed. I do not find any merits in the application. The present application being devoid of merits, the same needs to be dismissed by imposing exemplary costs. Accordingly for has been discussed above, I answer **Point No.1 in the Negative.**

13. POINT NO.2: In view of my foregoing findings and discussions on Point No.1, I proceed to pass the following:

ORDER

IA No.12 filed by the plaintiff U/O 6 Rule 17
R/w Section 151 of CPC is hereby dismissed on
costs of Rs.2,000/-.

(Dictated to the Stenographer, typed by her, and the transcript revised and corrected by me and then pronounced in the open court on this **27th day of June 2025**)

(SMT. ASRINA)
ADDL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR.