

KARN410005972016



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND J.M.F.C., AT MAGADI.**

-:: PRESENT ::-

**SRI. SHIVAKUMAR R., B.A.L., LL.B.,
ADDITIONAL SENIOR CIVIL
JUDGE & ADDL. JMFC., MAGADI.**

Dated: 23rd Day of February 2026

O.S.No.398/2016

Plaintiff : Smt. M. Jayalakshamma
(By Sri. A.S.S. Advocate)

--V/s--

Defendants : Smt. B. R. Rajeshwari & Ors.,
(D1, 2 & 4 by Smt. P.A.V. Advocate)
(D3(a) Exparte)

PARTIES TO I.A.NO.XIV

Applicant : Smt. M. Jayalakshamma

Vs.

Opponent : Smt. B. R. Rajeshwari & Ors.,



ORDER ON I.A.NO.XIV

When the matter is set down for arguments, the plaintiff has moved this I.A.

2. The plaintiff has filed the instant I.A., under Order VI Rule 17 r/w. Section 151 of C.P.C., and pleaded to permit her to amend the plaint as sought in the I.A.

3. The I.A., is supported with the affidavit of the plaintiff. It is stated in the affidavit that, the plaintiff has filed this suit for the relief of specific performance of contract in respect of suit schedule property against the defendants. After filing of this suit, the defendant No.1 & 2 have colluded with the defendant No.4 and executed the alleged sale deed in favour of defendant No.4 in respect of suit schedule property. At the time of execution of the sale deed the original survey number of the suit schedule property assigned as new survey number and to an extent of property reduced to an extent of 1 acre 3 guntas instead of 1 acre 4 guntas. The said fact came



to the knowledge of the plaintiffs at the time of discussion while preparing the cross-examination of DW-1. The said extent was mutated in RTC Extract in respect of suit schedule property also. For effective adjudication of the above suit, the proposed amendment is very much necessary. Hence, this application.

4. The copy of I.A., was served to the other side. The defendants have filed the detailed objection and resisted the I.A., filed by the plaintiff. When the matter is set down for arguments, the application filed by the plaintiff is not tenable and moreover the plaintiff has not produced any iota of documents to support his version in the above matter. The proposed amendment sought by the plaintiff is contrary to the alleged agreement of sale. For all these grounds the defendants pray to reject the I.A., with exemplary cost.

5. Heard arguments on both sides.



6. On perusal of the rival contentions and other materials placed on record, the following points that would arise for my consideration are :

1) Whether the I.A.No.XIV filed by the plaintiff is deserves to be allowed and whether the amendment sought by the plaintiff is very much necessary to determine the real controversy between the parties?

2) What order?

7. My findings on the above points are as follows :

Point No.1 : In the Affirmative,

Point No.2 : As per the Order,

for the following:

REASONS

8. **POINT NO.1:** On perusal of the materials available on record, admittedly the plaintiff has filed present suit against the defendants for the relief of specific performance of contract in respect of suit schedule property. When the matter is set down for the arguments on merits, the plaintiff



has moved this I.A., and sought to permit her to amend the
plaint as sought in the I.A.

9. It is the urge of the plaintiff that, After filing of this
suit, the defendant No.1 & 2 have colluded with the defendant
No.4 and executed the alleged sale deed in favour of
defendant No.4 in respect of suit schedule property. At the
time of execution of the sale deed the original survey number
of the suit schedule property assigned as new survey number
and to an extent of property reduced to an extent of 1 acre 3
guntas instead of 1 acre 4 guntas. The said fact came to the
knowledge of the plaintiffs at the time of discussion while
preparing the cross-examination of DW-1. The said extent
was mutated in RTC Extract in respect of suit schedule
property also. For effective adjudication of the above suit, the
proposed amendment is very much necessary.

10. Per contra, it is the urge of the defendants that,
When the matter is set down for arguments, the application



filed by the plaintiff is not tenable and moreover the plaintiff has not produced any iota of documents to support his version in the above matter. The proposed amendment sought by the plaintiff is contrary to the alleged agreement of sale. For all these grounds the defendants sought for to reject the I.A., filed by the plaintiff.

11. At this juncture, I would like to refer Order VI Rule 17 of CPC which reads as follows :

"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, 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."

12. On perusal of the aforesaid provision, it is clear that, the parties to the suit are permitted to bring forward amendment to their pleadings at any stage of the proceedings for the purpose of determining the real questions in controversy between them. If such application is made after commencement of the trial, in that event, the court has to arrive at conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial. In the instant suit, the matter is set down for arguments on merits.

13. At this juncture, I would like to refer the decision rendered by the Hon'ble Apex Court of India in the case of **Pandit Malhari Mahale Vs. Monika Pnadit Mahale and others**, reported in **(2020) 11 SC 549**, wherein the Hon'ble Apex Court held that:



"It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed."

14. In another decision rendered by the Hon'ble Apex Court of India in the case of **Rajesh Kumar Aggarwal and others Vs. K.K.Modi and others**, the same is reported in (2006) 4 SCC 385, wherein the Hon'ble Apex Court of India held that:

"The court should allow the amendment would be necessary to determine the real question of the controversy between the parties, but the same indisputably would be subject to the condition that no prejudice is caused to the other side."

15. The another decision of Hon'ble Apex Court of India reported in **2019 SCC On-line SC 194** between **M. Revanna Vs. Anjinamma**, pleaded to explained under what circumstances an application for amendment of pleadings



filed after commencement of trial can be allowed. The Hon'ble Apex court of India pleased to held that,

“Though normally amendments are allowed in the pleadings to avoid the multiplicity of litigations, the court need to take consideration whether the application for the amendment is bonafide or malafide and whether the amendment caused such prejudice to the other side which cannot be compensated in terms of money”.

16. The ratio laid down in the aforesaid decisions are aptly applicable to the present case on hand. Admittedly it is a suit for specific performance of contract against the defendants in respect of the suit schedule property. In a suit for specific performance of contract the burden of proof always lies upon the plaintiff to prove his title over the suit schedule property by adducing cogent and credible evidence. In the instant I.A., the plaintiff has sought to amend the plaint with regard to the original survey number of the suit



schedule property assigned as new survey number and to an extent of property reduced to an extent of 1 acre 3 guntas instead of 1 acre 4 guntas. On perusal of the rival contentions of the both parties and other materials placed on record, this court has to arrive at conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial. It is very pertinent to note that, on perusal of the materials available on record, the proposed amendment sought by the plaintiff in the I.A., is very much necessary to determine the real question in controversy between the parties. If the proposed amendment is allowed, it will not change the nature of the suit and also cause of action. If the application is allowed, there is no harm caused to the other side. Considering all these reasons, I answer Point No.1 in the '**Affirmative**'.

17. **POINT NO.2** : In view of my findings on Point No.1, I proceed to pass the following :



ORDER

I.A.No.14 filed by the plaintiff under Order VI Rule 17 r/w Section 151 of CPC is hereby allowed on payment of cost of Rs.1,000/-.

The plaintiff is hereby directed to carry out the necessary amendment in the plaint and to file amended plaint copy by 25.02.2026.

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open Court, on this the day of **23rd day of February, 2026.**)

(Shivakumar R.)
Additional Senior Civil Judge & J.M.F.C.
Magadi.