

KAMS600001762022



O.S./18/2022

**IN THE COURT OF THE SENIOR CIVIL JUDGE AT  
PERIYAPATNA.**

**Present**  
**Sri.A.SAMIULLA**  
**B.Sc., LL.B.,**  
**Senior Civil Judge,**  
**Periyapatna.**

**Dated: 2<sup>nd</sup> Day of December 2023**

**OS.No.18 of 2022**

Smt.Puttamma.

**..... Plaintiff**

***Versus***

Smt.Nagamma & Anr.

**..... Defendants**

**IA.No.6**

Smt.Puttamma.

**.... Applicant/Plaintiff**

***Versus***

Smt.Nagamma & Ors.

**.... Opponents/Defendants**

Provision under which IA is filed	u/Order 6 Rule 17 r/w Section 151 of CPC
Relief sought for	Amendment of plaint
Date of filing of application	14.09.2023
Application No.	6
Date of filing objection	-
Date of order	02.12.2023

**:Order on IA-6; u/O 6 Rule 17 r/w Sec.151 of CPC:**

Plaintiff moved this application seeking permission to amend the plaint. Proposed amendment reads thus:

*“1. To insert the below para as para No.8A at page No.4 in the plaint after the para No.8.*

*8A. It is further submitted by the plaintiff that, after the filing of the above suit, the plaintiff came to know that, after registration of the said sale agreement which was executed in favour of the plaintiff, the defendant No.1 and 2 herein colluding with the defendant No.3 and 4 have entered into a registered partition deed in respect of suit schedule property among themselves without the knowledge of the plaintiff by suppressing the execution of the registered sale agreement in favour of the plaintiff. Later also without the knowledge of the plaintiff, the defendant No.2 and his wife i.e., the defendant No.3*

*have illegally sold a portion of the suit schedule property in favour of the defendant No.5. These facts were not brought to the knowledge of the plaintiff. Further even though when there is a registered sale agreement has been executed and the same is still in force, the defendants have created the said documents in order to defraud the rights of the plaintiff over the suit schedule property. Hence the said alleged partition deed and also the registered sale deed do not bind the rights of the plaintiff over the suit schedule property”.*

**2.** Defendants have not filed any objection statement.

**3.** Heard arguments.

**4.** Following point arises for consideration:

*Whether the proposed amendment is necessary for the effective adjudication of lis?*

**5.** Answer to the above point is in ***affirmative*** for the following;

### **REASONS**

**6.** At the outset; suit is filed for specific performance of contract by asserting that; defendants being the owners in possession of lands bearing Sy.No.73/3 (20Gs) and Sy.No.73/4 (16Gs), which they got under

partition deed dated 25.07.18 have agreed to sell the same for a consideration of Rs.14 lakhs and by receiving advance sale consideration of Rs.12 lakhs they have executed registered sale agreement dated 26.04.19 in her favour agreeing to execute the sale deed within two years but they failed to do so. Plaintiff with ready balance sale consideration demanded the defendants to perform their part of contract but to no use. Hence, suit is filed.

7. Defendants resisted the suit by filing written statement denying plaint averments. They contended that; the plaintiff and his son Mahadeva are money lenders; defendants have availed loan of Rs.5 lakhs from them in part by part for interest at the rate of 5% per month. For the security of said amount they have taken four signed blank cheques and subsequently they have obtained suit agreement for the security of

loan amount. They never intended to sell the suit properties. Hence, they prayed to dismiss the suit.

**8.** After exchange of pleadings; settlement of issues; matter was set down for trial. At this stage the plaintiff filed the application at hand for the relief stated *supra* by stating that; after execution of registered sale agreement the defendants-1 and 2 in collusion with defendants-3 & 4 have entered into registered partition deed in respect of suit schedule property among themselves by suppressing sale agreement; thereafter, defendants-2 and 3 have illegally sold a portion of suit property in favour of defendant-5; defendants-3 to 5 are arrayed as parties by impleading them; as such plaint is to be amended, which is necessary for the complete and effective adjudication of lis. Proposed amendment will not alter the nature of suit and it will cause not any hardship to the other side.

**9.** Defendants have not objected the application.

**10.** It is well settled principle that; all amendments ought to be allowed which satisfy two conditions viz., not working injustice to the other side and of being necessary for the purpose of determining the real questions in controversy between the parties.

**11.** It is pertinent to note that; here, suit is filed for specific performance of contract; during pendency of suit the defendants-3 to 5 were impleaded stating that the defendants-1 and 2 in collusion with defendants-3 and 4 have entered into partition in respect of suit property and thereafter the defendants-3 and 4 have illegally sold a portion of suit property in favour of defendant-5, who are already added as additional defendants in the suit. In this backdrop the amendment of body of plaint is warranted. Under these

circumstances the proposed amendment is absolutely necessary for the complete and effective adjudication of real controversy between the parties to lis. Proposed amendment will neither alter the nature of suit nor cause of action. If it is allowed no injustice will be caused to the other side because entire burden of proof is on the plaintiff to prove the case projected by her.

**12.** Defendants argued that; trial is commenced, as such application filed without showing any reason that in spite of due diligence the proposed amendment was not sought at the earliest is not maintainable. This contention is tenable because; in case of Balder Singh V. Manohar Singh, **(2006) 6 SCC 498**, the Hon'ble Apex Court held that; *commencement of trial as used in proviso to Order 6, Rule 17 in the Code of Civil Procedure must be understood in the limited sense as*

*meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments.* In the instant case the defendants have not led evidence and they are yet to file their documents. In a decision reported in **2017(2) KCCR 1245**, Mahadevappa Vs Shankareppa & Ors, it is held that; *though evidence on behalf of plaintiff is complete, yet, it would be appropriate to permit petitioner to bring his amended pleading on record as it would facilitate trial Court to determine real question in controversy.*

**13.** It is worth to note that; the rule of amendment is indeed a rule of justice, equity and good conscience. Power of granting amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. Amendment is granted unless the party seeking amendment acts malafide. Here, there is no malafide on the part of plaintiff in

seeking amendment, which is necessary for effective adjudication of lis. In the light of discussion *supra* above point is answered in affirmative and proceeds to pass the following;

**ORDER**

IA-6; under Order 6 Rule 17 r/w Section 151 CPC filed by the plaintiff is allowed.

Plaintiff is permitted to amend the plaint.

No order as to costs.

(Dictated to Stenographer directly on computer, typed by her, corrected and initialed by me & then pronounced in the open Court on 02.12.23).

***sd/-***  
***(A.Samiulla)***  
***Senior Civil Judge***  
***Periyapatna.***