

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC,  
PERIYAPATNA**

Dated: this 26<sup>th</sup> day of April, 2018

Present

***Sri Arjun S.Mallur, B.A.L, LL.B.,***  
Senior Civil Judge and JMFC

**OS.No.202/2015**

**PLAINTIFF** : K.P.Sadashiva

**V/s**

**DEFENDANT** : K.P.Jagadisha

**IA.No.III**

**APPLICANT/  
PLAINTIFF** : Sri. K.P.Sadashiva

***(By Sri C.K.Manjunath, Adv.,)***

**V/s**

**OPPONENT/  
DEFENDANT** : Sri. K.P.Jagadisha

***(By Sri N.G.Prasad, Adv.,)***

**ORDERS ON IA.NO.III**

I.A.No.III is filed by the plaintiff under Order 6 Rule 17 R/W Sec.151 of CPC seeking permission to amend the plaint and insert additional pleadings by way of introducing para 6(a) to the plaint wherein the plaintiff intends to plead that the original of alleged agreement of sale dated: 20.12.2012 was produced before the panchayath held at Kiranelli village

with respect to the suit subject matter and after the said panchayth the plaintiff misplaced the alleged original agreement of sale dated: 20.12.2012 which has been now lost and therefore the plaintiff seeks to produce notarized copy of the alleged agreement of sale by way of secondary evidence. It is submitted that the proposes pleadings could not be averred at the earlier stage and as the evidence is not yet completed he intends to introduce the proposed pleadings and the proposed amendment would not in any manner change the nature of suit nor prejudice the interest of the defendant.

2. The defendant filed objections to the application contending that the proposed amendment is sought only to cover up the lapses and that previously plaintiff had filed an application to produce the notarized copy and tender the same by way of secondary evidence which came to be rejected by this court and only with and oblique motive the plaintiff seeks to aver the same by way of amendment of pleadings which cannot be permitted in law. It is further contended that the amendment having been sought after commencement of trial not being supported by sufficient reasons cannot be permitted and on these grounds sought for rejecting the application with costs.

3. Heard both sides and perused the records.

4. The point for consideration is-

*“Whether plaintiff has made out justifiable grounds for amendment of pleadings as sought?”*

5. My answer on the above point is in the “**NEGATIVE**” for the following-

### **REASONS**

6. The plaintiff has filed this suit for specific performance of the agreement of sale dated: 20.12.2012. On service of summons the defendant has filed written statement denying plaint averments in toto raising several defences particularly contending that the alleged agreement of sale dated: 20.12.2012 is a forged, fabricated and bogus document. Necessary issues have been framed. The plaintiff has examined himself in part and has got marked documents at Ex.P1 to Ex.P5. At his request his further examination has been deferred and is yet to be completed and he is yet to be subjected to cross-examination. At this stage the present application is filed.

7. Prior to filing of the present application the plaintiff had filed I.A.No.II under Sec.63 of Indian Evidence Act seeking permission to tender the notarized copy of agreement of sale dated: 20.12.2012 as secondary evidence urging the similar ground that the original has been misplaced and lost. The said application after being heard on merits was rejected by this court vide order dated: 20.11.2017. This application is filed for the purpose of introducing pleading with respect to the event which has led to the misplace or loss of the original agreement of sale. By the proposed pleadings the plaintiff chooses to aver that with respect to the suit subject matter a panchayath was convened at Kiranelli village and in the said panchayth the original of the agreement of sale dated: 20.12.2012 was given to the panchayathdars and on failure of the panchayath subsequently plaintiff has misplaced the original agreement of sale and

subsequently has lost the same. It is pertinent to mention here that production of the original agreement before the panchayathdars and subsequently loss of the same are not events related to each other. It is not the contention of the plaintiff that the original document came to be lost in the said panchayath. More over as rightly contended by the defendant in the statement of objections no grounds have been urged as to why the proposed pleadings could not be averred at the time of filing of the suit itself. The application does not make it clear when the said panchayath was held. Suit has been filed on 10.12.2015. The very suit is based on the agreement of sale. Therefore the contention of the plaintiff that he was not aware about misplace or loss of the original agreement of sale cannot be accepted under any circumstance.

8. With the amendment of provisions of CPC brought into effect since 2002 it is now made clear that amendment of pleadings has to be sought prior to commencement of trial. The proviso to Order 6 Rule 17 of CPC mandates that no amendment shall be allowed once the trial has commence unless the court comes to the conclusion that inspite of due diligence the party could not have raised the matter before the commencement of trial. Keeping in mind the proviso to Order 6 Rule 17 of CPC in the present case neither in the application nor in the affidavit filed in support of the application there is absolutely any mention about what prevented the plaintiff to raise the proposed pleadings at a time of filing of the suit. As already mentioned above the very agreement is the genesis for the suit and it cannot be comprehended that the plaintiff was not aware about misplacement or loss of the original agreement of sale at the time of filing of the suit. Therefore absolutely no justifiable ground has been averred to infer that inspite of due diligence plaintiff could not have raised the proposed amendment at the time of fling of the suit or before

commencement of trial. In this regard the learned counsel for the defendant has relied upon following judgments of Hon'ble Supreme Court and our Hon'ble High Court.

1) **AIR 2013 SC 3188 Mashyak Grihnirman Sahakari Sanstha Maryadit V/s Usman Habib Dhuka & others** wherein it has been held as under-

***“Civil Procedure Code, 1908- Order 6, Rule 17- Amendment of plaint- Suit for injunction- Main ground for seeking relief is that plaintiff-respondent were allegedly not aware of conveyance deed- plaintiff-respondent was office- bearer of society at relevant time and by resolution taken by society respondent was authorized to complete transaction- No ground for allowing amendment sought for any plaintiffs which was not only a belated one but was clearly an after-Thought for obvious purpose to avert inevitable consequence- High Court committed serous error of law in setting aside order passed by trial court whereby amendment sought for was dismissed- appeal allowed.(paras 7 & 8).”***

2) **2016(2) AKR 644 M.Ramachandran V/s Smt. Dhanamma and another** wherein it has been held as under-

***“Civil P.C. (5 of 1908), Order 6 Rule 17- Amendment of written statement- permissibility- proposed amendment filed at evidence stage, four years after filing of original written statement that too without any***

***explanation- application of amendment liable to be rejected.(para 6)."***

The principles laid down by the Hon'ble Apex Court and our Hon'ble High Court in the above cited decisions applies in full force to the facts and circumstances of the case on hand. On the other hand the learned counsel for the plaintiff vehemently argued that the proposed pleading would not in any manner change the nature of the suit and also would not affect the interest of the defendant. In support of his argument he relied upon following decisions of our Hon'ble High Court and Hon'ble Supreme Court.

**1) ILR 1992 KAR 110-DB M.R.K. Rau V/s Corporation of the City of Bangalore** wherein it has been held as under-

***"(A) CIVIL PROCEDURE CODE, 1908 (Central Act No.5 of 1908)- Order 6 Rule 17- Bar of fresh suit on amended claim on date of application, factor to be considered in exercise of discretion- However power of court to allow amendment to do justice, not affected.***

***HELD,***

***It is a settled position of law that amendment of pleadings can be allowed at any stage of proceeding either in the suit or in the appeal provided it is necessary for the purpose of deciding the controversies between the parties and it is not barred by time; in other words, a fresh suit on the amended claim shall not be barred by limitation on the date of the application but this is a factor to be taken into consideration in exercise of the discretion as to whether***

***amendment should be allowed or not. However it does not affect the power of the court to allow the amendment if it is required to do justice.”***

2) **AIR 1974 Supreme Court 1178 Shikharchand Jain V/s Digamber Jain Praband Karini Sabha and others** wherein it has been held as under-

***“Index Note: (B) Civil P.C.(1908) Order 6 Rule 17-  
Amendment of written statement in appeal-  
Amendment necessitated by subsequent events-  
Amendment if can be allowed. (X-Ref: Section 151).***

***Brief Note: (B) Ordinarily, a suit is tried in all its stages on the cause of action as it existed on the date of its institution. But it is open to a court (including a court of appeal) to take notice of events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances where it is shown that the relief claimed originally has (1) by reason of subsequent change of circumstances become inappropriate; or (2) where it is necessary to take notice of changed circumstances order to shorten the litigation, or (3) to do complete justice between the parties. AIR 1915 Cal. 103, Rel. On. (Para 11).”***

I have carefully gone through the above cited decisions. In the above cited decisions the position of law was as existed prior to amended provisions of CPC coming into effect i.e. prior to introduction proviso to

Order 6 Rule 17 of CPC. Further the facts and circumstances under which amendment has been allowed in the above cited decisions are entirely different from the facts of the case on hand. In the present case as already mentioned above the very basis for the suit is the original agreement of sale dated: 20.12.2012. As mentioned in the earlier para when the plaintiff I.A.No.II seeking permission to tender in evidence notarized copy of the said agreement contending that the original was misplaced or lost no averment was made with respect to the said panchayath being conducted with respect to the said agreement and the agreement being lost soon thereafter. **Moreover while passing orders on the said application this court has made a specific observation that the copy of the agreement of sale dated: 20.12.2012 has been notarized on 09.12.2015 a day before filing of the suit and that notarization of a copy of the document has to be made only after comparing it with its original as per the prevailing rules.** Under such circumstances inference has to be drawn that as on the date of notarizing the copy of agreement of sale i.e. as on 09.12.2015 the original of the agreement of sale was with the plaintiff. Therefore under these circumstances it has to be inferred that absolutely no justifiable grounds exists for permitting proposed pleadings and the proposed pleading has been sought to be introduced only to overcome the observation that has been made by this court while rejecting the application under I.A.No.II and therefore the application deserves to be rejected. Accordingly I answer the point raised in the “**NEGATIVE**” and pass the following-



**ORDER**

I.A.No.III filed by the plaintiff under Order 6  
Rule 17 R/W Sec.151 of CPC is **REJECTED**.

No order as to costs.

(Dictated to the stenographer directly on computer, same is corrected and  
then pronounced by me in the open court on this 26<sup>th</sup> day of April 2018)

(Arjun S.Mallur)  
Senior Civil Judge and JMFC.,  
Periyapatna.

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