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**IN THE COURT OF THE II ADDL. CIVIL JUDGE
AND JMFC, KANAKAPURA.**

:Present:

Kum.Parvathi.V, B.A.L, LL.B.
II Addl. Civil Judge & J.M.F.C.,
Kanakapura.

Dated : This the 24th day of November 2022

O.S. No.154/2017

Plaintiff : Sri.Annadanaiah.

- V/s -

Defendant : Smt. Susheelamma.

* * * *

I A No.III

Sri.Annadanaiah : Applicant/Plaintiff

-V/s-

Smt. Susheelamma : Opponent/defendant

Orders on I.A.No.III

1. I.A. No.III filed by the applicant/plaintiff under Order 6 Rule 17 r/w Sec.151 of C.P.C., seeking amend the plaint pleadings by adding proposed paragraphs by way of additional pleadings at paras 7(a) & 7(b) in page No.3 of the plaint and to delete entire prayer (a) and entire prayer (d) and add proposed prayer (A) in place of previous prayer (A) in prayer column in page No.4.

2. In accompanying affidavit the plaintiff submitted that the suit for the relief of specific performance of the contract at the first instance against the defendant Smt.Susheelamma by enforcing the valid agreement of sale dated 05.05.1999 executed by Smt.Susheelamma before the court. After service of summons Smt.Susheelamma appeared through her counsel and filed her written contending that suit property is the joint family property of the defendant and her children and mentioned the names of proposed defendant Nos.2 to 4 in para 5 of written statement and also further added that they are all having equal right and share in the suit schedule property. As the

said property has been left by her husband and accordingly katha came to be mutated in her name on behalf of the joint family. Further that defendant execute a sale agreement in favour of the plaintiff by received entire sale consideration amount from the plaintiff. Hence, prays to allow the application.

3. On the contrary, the defendant filed objection and contended that the suit itself is not maintainable under law, as it is barred by limitation. There is no cause of action to file the suit. The alleged agreement dated 05.05.1999 is an invalid and un-enforceable document and the suit has to be rejected by this court under Order 7 Rule 11 of C.P.C. When the above suit is not maintainable and when the plaintiff is not entitled for suit relief, consequently his interim application/applications to seek amendment or otherwise also not maintainable under law and if the application is allowed the great hardship would be caused to the defendant, among all these grounds, she prays to reject the application.

4. Heard the argument both sides. In view of the materials before court and rival contention arisen by the parties, the following points arisen for my consideration :-

POINTS

1. Whether the plaintiff made out ground to allow the application under Order 6 Rule 17 of CPC ?
2. What order ?

5. My answers to the above points are as under:

Point No.1 : In the Affirmative

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

REASONS

6. Point No.1 : Perused the records of the case, the plaintiff has filed this suit for specific performance of contract against the defendants in respect of the suit schedule property. The plaintiff has filed the said application at the stage of hearing on I.A. as per order 6 Rule 17 of CPC amendment of pleadings: provides that the court may at any stage of the proceedings allow either party

to alter or amend their 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 that matter before the commencement of trial.

7. The plaintiff seeking amendment by adding the proposed paragraphs by way of additional pleading as sought in application. Hence, if the said application is allowed it will not change the nature of the suit. Amendment need to be allowed to minimize the litigation. Even it is equally settled principle of law that while allowing the amendment of pleadings, liberal approach can be granted and cannot be dismissed on technicality. Hence, in the view of above discussion and fact and circumstances of the case it is just and necessary to allow the application. Hence, this court **answer point No.1 in the Affirmative.**

8. Point No.2 : For above said reasons of point No.1, following ;

ORDER

The I.A.No.III filed under Order 6 rule 17 is here by allowed with cost of Rs.200/-.

Directed to plaintiff amend the original plaint before C.M.O. and furnish amendment plaint.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on this the 24th day of November 2022)

(PARVATHI.V)
II Addl. Civil Judge & JMFC,
Kanakapura.

Call on:19.01.2021

