

KASM310012362020



**IN THE COURT OF I ADDITIONAL CIVIL JUDGE
& JMFC., AT BHADRAVATHI.**

Present: **Sri. RAVI KUMARA. V. BA.L.,L.L.B.,**
c/c 1st Additional Civil Judge & JMFC.,
Bhadravathi.

DATED THIS THE 5th DAY OF JANUARY, 2026

O.S.No.217/2020

Plaintiffs

- :1. R. Rajendra s/o C. Ramakrishna,
Aged about 49 years,
2. A. R. Keshava s/o C. Ramakrishna,
Aged about 47 years,
3. Dharani d/o C. Ramakrishna,
Aged about 51 years,
All are r/o Upstair building,
SWMC 18/2A, new colony,
Bhadravathi.

V/s

Defendant :

Smt. U. Sumathi
w/o late G. K. Uday Kumar,
Aged about 55 years,
R/o Bommanakatte village,
Hiriyur post, Bhadravathi.

I.A.No.VIII

Applicant : Smt. U. Sumathi

(Rept. by Sri. S. K. Adv)

V/s

Opponents : R. Rajendra and others

(Rept. by Sri. K. N. R., Advocate)

ORDERS ON I.A.No.VIII

The defendant filed this IA under Order 6 Rule 17 read with 151 of CPC and praying to permit her to amend her written statement.

2. Under the proposed amendment, the defendant is intending to insert Para 14(a) to (c) and further intending to set up counter claim for the relief of specific performance of registered sale agreement dated 07.03.2003 and 31.10.2003 in respect of the suit schedule properties.

3. In her affidavit accompanying to the IA, the defendant has stated that, at the time of she filing her written

statement in this suit, though she has stated regarding the registered agreements executed by the plaintiffs in respect of the suit properties, she has not specifically pleaded in detail about the said transaction and due to oversight and she was also not sought the relief of specific performance by way of counter claim. She stated that, the proposed amendment is necessary as it would avoid the multiplicity of proceedings as not allowing the proposed amendment may necessitate her to file separate suits in respect of the disputed agreements. She stated that, trial of this suit is still at preliminary stage and hence, the proposed amendment will not cause any injustice to the plaintiff. She also stated that, the proposed amendment neither change the nature of the suit nor will cause hardship to the plaintiff. Hence, she prays to allow the IA.

4. Per contra, the plaintiffs filed their objection and seriously opposing to allow the proposed amendment on the ground that, same will change the nature of the suit and seriously affect the case of the plaintiffs. They contending

that, the defendant may institute separate suit for vindication of their independent right said to be arose on the disputed agreements and proposed amendment is nowhere necessary for adjudication of real controversy between the parties. They also contending that, the cause of action for the defendant to seek relief of specific performance is purely distinct and different from one arose to the plaintiff to file this suit and proposed amendment will totally create confusion and make further proceedings of this suit complicated. They also contending that, the relief of specific performance intended to be sought by the defendant is absolutely barred by time and hence, the defendant cannot be allowed to seek such relief by way of amendment. They stated that, the plaintiffs filed this suit on 09.07.2020 and defendant has appeared in this suit and filed her written statement on 06.02.2021 itself and despite of having knowledge about the refusal to perform the terms of the disputed agreements by the plaintiffs, she has not take any steps to seek the relief of specific performance by way of counter claim at the earliest stage and now come up

with this application after the said relief become time barred. They contending that, the defendant is trying to make a back door entry by way of seeking the proposed amendment to overcome the issue of limitation. They contending that, under the proposed amendment, the defendants are intending to claim a time barred relief, which is against to the general principles of amendment and accordingly, they prays for dismissal of the IA.

5. In view of the rival contentions of both the parties, the following points are arises for my consideration;

- 1. Whether the proposed amendment is necessary for determining the real controversy between the parties?**
- 2. Whether the defendant could not bring the proposed amendment before commencement of trial despite of due diligence?**
- 3. What order?**

6. In support of his arguments, the learned counsel for the plaintiff has relied upon following decisions;

1) B. S. Prakash v/s T. Gnaneshwara Rao and Others: KCCR (2016) 4 KCCR 2955

2) T. L. Muddukrishanan and Another v/s Smt. Lalitha Ramchandra Rao :(1997) AIR SC 772

6.1. On the other hand, the learned counsel for the defendant has relied upon following decisions;

1) M. Krishna Rao and others v/s. M Manjunatha :(2022) 5 KCCR SN 261

2) Smt. Sarojamma and another v/s A. Y. Anilkumar : (2022) 3 KCCR 2078

3) Kum. Meenakshi and others v/s Smt. H. Nagarathnamma and Ors : (2023) 3 KCCR 2485

4) Life Insurance Corporation of India v/s Sanjeev Builders private Limited and another : (2023) 1 KCCR 1 SC

7. I have heard both the parties and carefully perused the entire materials available before this court.

8. My answers to the above points are as follows:

Point No.1 : **In the Negative**

Point No.2 : **In the Negative**

Point No.3 : **As per final order,**
for the following;

REASONS

9. Points No.1 and 2:- These points are inter connected to each other and are based on common set of facts. Hence, they are taken together for my common consideration in order to avoid the repetition of facts and for the purpose of brevity.

10 .Undisputedly, the plaintiffs filed this suit seeking relief of cancellation of registered sale agreement dated 07.03.2003 said to be executed by the plaintiffs in favour of the defendant in respect of the suit item No.1 property and, consequently, they sought for the relief of permanent injunction in respect of both suit properties. It is the case of the plaintiffs that, the suit schedule properties are originally belonged to their mother Smt.Dhanalakshmi, who was died on 24.10.2013. It is the case of the plaintiffs that, during the year 2002, the plaintiff No.1 met with road accident and in order to meet the medical expenses, the mother of the plaintiff Smt.Dhanalakshmi availed hand loan from some several

persons. In order to repay such hand loans, she has approached the defendant seeking financial assistance and in turn, the defendant has agreed to advance the loan subject to condition that, the plaintiff No.1 and his mother shall execute a sale agreement as a security towards the loan. Accordingly, the mother of the plaintiffs entered into a sale agreement dated 07.03.2003 as a security towards the hand loan and without any intention to sell the suit item No.1 property. During the month of March-2003, the defendant also taken signatures of the plaintiff and their mother on some blank papers. Thereafter, the defendant started to interfere with the possession of the plaintiff in the suit properties. That, the plaintiffs have repaid the entire loan borrowed from the defendant together with interest as on 25.10.2015 and requested her to execute a deed by canceling the registered sale agreement dated 07.03.2003. But the defendant avoided to do so on one or other pretext and ultimately, issued a legal notice through her Advocate on 28.10.2015 by misrepresenting the facts and calling upon the plaintiffs to

execute the registered sale deed pertains to the suit item No.1 property in pursuance to the disputed agreement. Thus, the plaintiffs claims to have filed this suit without any other alternative.

11. In response to the summons, the defendant appeared through her counsel and filed her written statement on 06.02.2021 itself by denying the plaint allegations. She further contended that, the plaintiff No.1 and his mother have executed registered sale agreement dated 07.03.2003 by agreeing to sell 0.32 guntas of the property out of entire extent of suit item No.1 property for sale consideration amount of Rs.1,50,000/- and also by receiving advance amount of Rs.75,000/-. She further contended that, the plaintiffs have entered into another agreement of sale dated 31.10.2003 and along with their mother, have agreed to sell 2.00 acres of land out of entire extent in suit item No.2 for consideration amount of Rs.2,60,000/-. She also contending that, the plaintiffs have received total consideration amount

of Rs.2,48,000/- in pursuance to agreement dated 31.10.2003 and executed Shara to that effect on 15.12.2003 and 24.03.2004. She contending that, registration of the sale deed in pursuance to the above agreement was deferred for want of survey records and in the meanwhile, the defendant having delivered the possession of 0.32 guntas in suit item No.1 property and 2.00 acres in suit item No.2 property have gone elsewhere, waited till expiry of time fixed for performance of the terms of the agreement and, with an intention to wrongful gain, have filed this false suit. She also alleged that, the plaintiffs themselves have interfered her possession in the suit property during the month of October 2015 and by suppressing the true facts, filed this false suit. Accordingly, she prays for dismissal of the suit.

12. Based on aforesaid pleadings, this court framed as many as 6 issues as on 04.06.2022 itself and posted the matter for plaintiff evidence. The records further reveal that, the plaintiff No.1 examined himself as PW.1 and produced

several documents at Ex.P.1 to 15. When the matter was posted for cross examination of PW.1, the defendant has come up with this IA seeking amendment of her written statement.

13. As already said, under the proposed amendment, the defendant is intending to set up a counter claim and seeking the relief of specific performance in respect of agreements dated 07.03.2003 and 31.10.2003. She also intending to insert para 14(a) to (c) by describing the manner in which the said agreements have come into existence and also about the transaction took place thereunder in detail. A bare perusal of proposed amendment may indicate that, the proposed amendment is sought in continuation of dispute between both the parties in respect of suit properties. However, the relief of specific performance intended to be sought by the defendant by way of proposed amendment is based on totally a different cause of action than one arose to the plaintiffs to file this suit.

14. Most importantly, under the proposed amendment, the defendant intending to seek the relief of specific performance in respect of registered sale agreement said to be executed 22 years ago i.e., 07.03.2003 and 31.10.2003. Interestingly, the defendant in her written statement itself has stated that, the plaintiff filed this suit after expiry of limitation fixed under the disputed agreements. Further, it is interesting to note that, one among the disputed agreement dated 07.03.2003 is available before this court as per Ex.P.12. The contents of the said document would clearly goes to show that, a time of 3 years fixed under the said agreement to perform the terms of the contract. As per covenants of the said agreement, 3 years of time fixed to perform its term would comes to an end as on 07.03.2006 itself. It is undisputed that, as per Article 54 of Limitation Act, 3 years of time begins to run to file a suit of for specific performance when the time fixed under a contract gets expire or from the date of knowledge of its refusal, when no such time is fixed. Since the time is essence of contract under

Ex.P.12 agreement, the defendant required to file the suit for specific performance within 3 years ie., on or before 07.03.2009. Admittedly, no such suit filed by the defendant till date. Thus, on the face of proposed amendment and contents of Ex.P.12 document, it is established that, the plaintiff is intending to seek a time barred relief of specific performance under the proposed amendment in respect of a registered agreement dated 07.03.2003.

15. Similarly, though the another registered sale agreement dated 31.10.2003 is not made available before this court, it remains undisputed that, the said document was also entered into between the parties nearly two decades ago. As admitted by the defendant herself in her written statement and affidavit affixed to the present IA, she had the knowledge about the refusal of the plaintiffs to perform the terms of the agreement as on the date of she filing the written statement in this suit in the year 2021 itself. Admittedly, the defendant filed the written statement on 06.02.2021. Thus, as per

Article 54 of Limitation Act, time of 3 years begins to run from the date of knowledge of the defendant about refusal to perform contract. Under the circumstances, the defendant ought to have sought the relief of specific performance in respect of agreement dated 31.10.2003 on or before 06.02.2024. But admittedly she has not sought for any such relief till the date of filing this application on 15.07.2025. Thus, it is also crystal clear that, relief of specific amendment intended to be sought by the defendant under the proposed amendment, in respect of agreement dated 31.10.2003, is also absolutely time barred.

16. The Hon'ble Apex court in **T. L. Muddukrishanana's (Supra)** case, upon which, the learned counsel for the plaintiffs is relied upon, has held that,

8. Under these circumstances, it must be held that for the purpose of limitation, what is material is that the limitation begins to run from the date the parties have stipulated for performance of the contract. The suit required to be filed within three years from the date fixed by the parties under the contract. Since the application for amendment of the plaint came to be filed after the expiry of three

years, certainly in changed the cause of action as required to be specified in the plaint. The suit for mandatory injunction is filed and the specific performance was sought for by way of an amendment. The cause of action is required to be stated initially in the plaint but it was not pleaded. It was sought to be amended, along with an application for specific performance which, as stated earlier, was rejected. Under these circumstances, even by the date of filing of the application, namely, November 5, 1992, the suit was barred by limitation. the high Court, therefore, was right in refusing to permit the amendment of the plaint.

17. The Hon'ble High court of Karnataka in **B. S. Prakash's (Supra)** case, relied upon by the counsel for the plaintiff, has relied upon the guidelines laid down by the Hon'ble Apex court in its land mark decision in **Revajeebu builders and Developers v/s Narayanaswamy and Sons** and others reported in **(2009) 10 SCC 84** has held as follows;

11. *As noticed herein above, factors explained by Apex Court though being illustrative in nature and not exhaustive, same would be squarely applicable to the facts on hand, inasmuch as, it is a general principle that where amendment sought for is expressly time barred as on date of raising such plea, such amendment should not be allowed. In other words, while the claim which is sought to be put forward through proposed*

amendment by raising new claim if it had become time barred namely if a fresh suit is brought for said relief is barred by limitation as on the said date, such claim through amendment came to be allowed. In the instant case, as noticed herein above, amendment sought for is for declaration of sale deed dated 26.07.1988 as null and void and not binding on plaintiffs and this fact was well within knowledge of plaintiff way back in the year 1990 itself. As such, trial Court had committed a serious error in arriving at a conclusion that proposed amendment would not change nature of the claim and valuable right which had accrued to the defendants by virtue of such lapse of time cannot be taken away inasmuch as, amendment of plaint if allowed, it would relate back to the date of presentation of the plaint and claim which plaintiffs are seeking to put forward through amendment which has become time barred as on the date of filing claim in question would stand revived or in other words, dead claim will become alive. In that view of the matter, trial Court was not justified in allowing the application for amendment.

18. The aforesaid decisions are squarely applicable to the case on hand, where the defendant is seeking the amendment with an intention to seek the relief of specific performance with respect to the registered sale deeds executed in the year 2003, which are expressly time barred as on the date of raising plea for the relief of specific

performance in respect of such documents. Hence, allowing the proposed amendment will be against to the settled position of law.

19. So far as the decision relied upon by the learned counsel for the defendant is concerned, the Hon'ble High court of Karnataka in **Smt. Sarojamma's** case has allowed the amendment sought by the defendant to effect correction of statement in regard to the description and identification of their property. But the same is not the case on hand and hence, said ratio cannot be applied to the case and circumstances of the present case.

20. In **Meenakshi's** case, the Hon'ble High court of Karnataka has clearly held that, applications for amendment are required to be considered liberally without considering the merits of the amendment except where the relief sought would be time barred. Here, relief of specific performance intended to be sought by the defendant is absolutely time barred and therefore, the ratio of the Hon'ble High court of

Karnataka would goes against the defendant. The said ratio itself is sufficient to deny the amendment sought by the defendant.

21. In **LIC's** case, the Hon'ble Apex court has laid down the guidelines in respect of the amendment of the pleadings. It was held that, amendments which intending to raise time barred reliefs shall not be allowed. Hence, the said ratio would goes against to the defendant. The ratio laid down by the Hon'ble Apex court would itself suffice to deny the proposed amendment in the case on hand as it would introduce a time barred relief.

22. Under the above facts and circumstances, this court is of the considered view that, this is not fit case to allow the amendment liberally. The proposed amendment does not qualifies to be considered in a liberal manner. Since the proposed amendment would introduce a counter claim for a time barred relief, allowing the said amendment will complicate the proceedings and would be of futile exercise.

Even if the defendant brings separate suit for the relief that has sought under the proposed amendment would be barred by limitation. Hence, allowing the such amendment will be nothing but abuse of process of law. The proposed amendment would neither necessary for the determination of real controversy between the parties nor the defendant has shown any due diligence in not raising the said amendment before commencement of trial. Accordingly, **Point No.1 and 2** are answered in the **Negative**.

23. Point No.3:- Resultantly, I proceed to pass the following;

ORDER

IA.VIII filed by the defendant
under Order 6 Rule 17 read with 151 of
CPC is dismissed on cost of Rs.500/-.

(Dictated to the Stenographer, translated, computerized by him, corrected and then pronounced by me in open court this **5th day of January, 2026**)

(Ravi Kumara V.)
c/c 1st Additional Civil Judge &
JMFC., Bhadravathi.