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I.A. No. 01/2025 in
A.S. No.27/2025

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, THENI.

PRESENT: Thiru. Swarnam J. Natarajan , M.L.,
Principal District Judge, Theni.

Thursday, this the 22nd day of January, 2026

I.A. No.01/2025

- in -

A.S. No.27/2025

C.N.R. No.TNTH01-001109-2025

Tmt. Shanthi

...Petitioner / Appellant

/ Vs /

Tmt. Vallimuthu

...Respondent / Respondent

This petition is coming upon 22.01.2026, for today hearing before me in the presence of Thiru. C. Jakkaiyan, Advocate for the Petitioner and Thiru. V.P.S. Nagaraj, Advocate for the Respondent and upon perusing the case records and the case having stood over for consideration, this court delivered the following:

ORDER

This petition is filed under Order 6 Rule 17 r/w Section 151 of the CPC, to permit the petitioner to amend the plaint by including the alternative relief of refund of the advance amount of Rs.3,00,000/- mentioned in the agreement marked as Ex.A1, together with subsequent interest.

2. The facts stated in the application in brief is as follows:-

(i) The petitioner in the present petition is the appellant in the above appeal and is well acquainted with the facts of the case. The petitioner had filed the original suit against the respondent seeking the relief of specific performance alone and did



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not seek the alternative relief that, in the event of the Court declining to grant a decree directing the defendant to execute the sale deed by way of specific performance, the defendant be directed to refund the advance amount of Rs.3,00,000/- as mentioned in the agreement (Ex.A1) with lawful interest. Since such alternative relief was not sought, the original suit came to be dismissed against the petitioner on 03.02.2025. Aggrieved by the dismissal of the original suit by the trial Court, the present appeal has been preferred.

(ii) The present appeal is now at the stage of arguments. On perusal of the pleadings and the counter filed by the respondent, it is seen that the respondent contended that the amount was received only as a loan carrying interest, and based on the said contention, the judgment was rendered. The petitioner ought to have sought, even before the trial Court, the alternative relief directing the respondent to refund the advance amount of Rs.3,00,000/- mentioned in Ex.A1 with interest as determined by the Court, but due to inadvertence, the same was not sought. Even though the trial Court had the inherent power to grant such relief, no such order was passed in favour of the petitioner.

(iii) Further, in the memorandum of appeal filed by the petitioner, paragraphs 9 and 10 clearly mention the alternative relief. Since it is necessary to include in the plaint, the alternative relief of refund of the advance amount of Rs.3,00,000/- with interest as per Ex.A1, the petitioner has filed the present petition.



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If this petition seeking to include the alternative relief in the plaint is not allowed, the petitioner will suffer great hardship, loss, and irreparable injury. Hence, the petition.

3. The facts stated in the counter filed by the respondent in brief is as follows:-

Except for the averments expressly admitted in the counter, all other averments are false and denied, and the petitioner is put to strict proof of the same. The present interlocutory application filed in the appellate stage seeking amendment of the plaint to include a new relief for recovery of the advance amount of Rs.3,00,000/- with interest is not maintainable in law. The appeal itself has been preferred on the ground of alleged errors in the judgment of the trial court and improper appreciation of evidence; however, the petitioner, having failed to seek alternative relief at the trial stage, cannot now attempt to introduce a new relief by way of amendment after disposal of the suit. Amendments under Order 6 Rule 17 CPC at the appellate stage are permissible only in limited circumstances and do not extend to introducing fresh reliefs, which would give rise to new issues requiring trial and evidence. Moreover, no cause of action for the newly claimed relief arises from the original suit, and the application has been filed without payment of the requisite court fee. Hence, the respondent prays for dismissal of the application.

4. This is the petition under Order 6 Rule 17 r/w Section 151 of CPC filed to amend the appeal petition/plaint on the ground that the alternative prayer of refund of



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the advance amount was omitted to be pleaded in the original appeal as well as in the suit. Thereby, the same is now required to be amended.

5. The application was resisted by the respondent by filing counter stating that the cause of action for the filing of the present suit is entirely different and now the amendment sought for would entirely lead to different cause of action. Thereby, the respondent opposed the application by way of counter. Considering the fact that the petitioner suffered an order before the learned trial court and now seeking for amendment of the original plaint for alternative relief, the said relief sought for is to be considered and the application is allowed accordingly.

In the result, this petition is allowed. No cost.

Dictated to the Steno-Typist, taken by him in shorthand, transcribed and typed by him with the help of voice recorder, and Microsoft 365, corrected and pronounced by me, in the open court, this the 22nd day of January - 2026.

**Principal District Judge,
Theni.**

Principal District Court,
Theni.
Copy of Order in
I.A. No.01/2025 in
A.S. No.27/2025
Dated : 22.01.2026