

**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **Sri. Shreyansh Doddamani,**
B.Com., LL.B.,(spl)
Civil Judge and JMFC.,
Savanur.

ORIGINAL SUIT NO. 118/2010
Dated this 2nd day of September, 2022

PLAINTIFFS: Dilerkhan S/o Abdulkarimkhan Biradar,
Age : 25 years, Occ : Agriculture,
R/o :Old Bunglow, Savanur,
Tq : Savanur, Dist : Haveri and others.

Vs

DEFENDANTS: Shahajad Begum @ Rahamatkhatu
W/o Mustaqahammad Biradar.
Age : 60 years, Occ : Household work,
R/o : Kamalbangadi Street, Savanur,
Tq : Savanur, Dist : Haveri and others.

IA No.VIII

Applicants: Dilerkhan S/o Abdulkarimkhan Biradar,
(Plaintiffs) and others.

Vs

Opponent:1. The Deputy Commissioner, Dharwad,
(proposed Dist : Dharwad. (Incharge of Court of
defendants) wards) and others.

ORDER ON I.A. NO.VIII

The plaintiffs have filed this application under order 1 Rule 10 (2) of Code of Civil Procedure for implead the respondents as defendants as necessary parties to the suit.

2. The plaintiff No.7 Majidkhan S/o Dilerkhan Biradar has sworn in an affidavit accompanying with IA No.8, wherein he stated that they have filed this suit for declaration that they were the legal heirs of deceased Navazkhatu W/o Dilerkhan Biradar Nawab of Savanur and also for declaration that the judgment and decree obtained by defendant No.1 in OS No.171/1984 was through mis-representation and playing fraud upon the Court with consequential reliefs. This court passed an order directing the parties to maintain status-quo regarding disputed properties. The properties of the suit were under the custody of Deputy Commissioner Dharwad and Upper Deputy Commissioner Dharwad. They had made Government of Karnataka represented through deputy Commissioner, Haveri but during the pendency of this suit the defendant No.1 and 2 approached Deputy Commissioner

Dharwad and Upper Deputy Commissioner, Dharwad and got mutated their names in some of the suit properties. They requested the respondents not to change the records regarding the court of wards. Since the matter was not finally decided. But they stated that they are not party to the suit. Hence, order passed by this court has not binding to them. Hence, they are necessary parties to the suit. Therefore, the plaintiff prayed to permit them to implead the respondents as defendant No.5 to 7 in the suit.

3. The respondents appeared through AGP and respondent No.3 has filed objection to the IA No.8. Wherein he has denied the entire contents of the affidavit and contended that the plaintiffs before filing of this suit having knowledge that the properties have been under the custody of this respondents, but also they have not made this respondents as parties to the suit. Therefore at this stage application is not maintainable and there is no relief against this respondents. If there is any claim against this

respondents they are liberty to file fresh suit. Hence, he prayed to reject the application.

4. Heard both side and perused the materials on record.
5. The following points arise for my determination.

POINTS

1. Whether the respondents are necessary parties or proper parties to the suit?
 2. What order?
6. My answers to the above points are as here under:

Point No.1: In the Affirmative.

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

: REASONS :

7. **POINT NO.1:-** The plaintiffs have filed this suit for seeking declaration that to declare that they are legal heirs of Nawazkhatu W/o Dilerkhan Biradar Nawab of Savanur and also to declare that the judgment and decree obtained by defendant No.1 in OS No.171/1984 was through

mis-representation and playing fraud upon the court and consequential relief of restrained the defendant No.1 from claiming schedule-A properties as legal heir of deceased Nawazkhatu W/o Dilerkhan Biradar. The plaintiffs have filed schedule-A with plaint wherein have shown number of properties situated at Savanur taluk, Hanagal Taluk, Hubballi.

8. On careful perusal of the plaint it is not the case of the plaintiffs that they are the owners of the suit schedule properties by virtue of legal heirs of Nawazkhatu W/o Dilerkhan Biradar Nawab of Savanur. However, the plaintiffs have filed this application for implead the respondents as defendants as a necessary parties on the ground that the subject matter of the suit properties were under the custody of defendants as a court of wards even there is no claim against the respondents. Though there is no claim the respondents can be impleaded as defendants. Because the plaintiffs are the “dominus litus” of their case.

The plaintiffs are masters of their case. He can choose the party against whom claim the relief.

9. The provisions of order 1 Rule 10 (2) of CPC provides that the court can add any person who are necessary or proper party to the suit at any stage of the proceedings. The provision of order of 1 Rule 10(2) of CPC is very wide and the powers of the courts are equally extensive. Even without an application to be impleaded as a party, the court may, at any stage of the proceedings order that the name of any party, who ought to have been joined whether as a plaintiff or defendant or whose presence before the court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit, be added. In the present case even the relief is against defendant NO.1 and 2 the properties shown in the schedule-A are admittedly Court of Wards properties. Admittedly, the Nawab of Savanur i.e., deceased Nawazkhatu W/o Dilerkhan Biradar handed over the all

properties to the court of wards i.e., Deputy Commissioner, Dharwad, in the year 1947-48.

10. The plaintiffs filed IA No.2 U/o 39 Rule 1 & 2 of CPC against the defendants No.3 and 4 restraining them from handed over the suit schedule-A properties to the defendant No.1 pending disposal of the suit. Having heard this court allowed the application. Being aggrieved by the order on IA No.2 the defendant preferred an appeal in MA No.7/2011 before Additional Senior Civil Judge, Haveri. Same was dismissed. The main grievance of the plaintiffs that the most of the properties shown in the schedule-A are under the custody of respondents as court of wards. The respondents have been delivered the some of the properties to the defendant No.1 and 2 even though this Hon'ble court has granted an injunction. When this plaintiffs approached the respondents they have stated that they have not party to the suit. Hence, the order passed by this court is not binding to them. Therefore, they have been claiming to implead the respondents as a defendants as a necessary

parties. In such circumstances it appears that the respondents are not necessary parties but they are proper parties to the suit. If reject the application it leads to multiplicity of proceedings. To avoid the multiplicity of proceedings and to adjudicate the suit effectively and to determination of real controversy between the parties it is necessary to allow the application. Hence, with these observations this court has answered **point No.1 in the Affirmative.**

11. Point No.2: After filing of this application defendant No.8 to 29 have been impleaded, but there is no defendant No.5 to 7 because of pendency of this IA. By inadvertently this court was allowed IA's of defendant No.8 to 29 as it was. Hence, this respondent added to Defendant.5 to 7. In view of the above discussion this court proceed to pass the following,

ORDER

**The I.A. No.8 filed by the
plaintiffs U/O.1 Rule 10(2) of Civil
Procedure Code is hereby allowed.**

**The respondents are hereby
impleaded as defendant No.30, 31
and 32.**

**Plaintiffs' counsel is permitted to
carry out the amendment of cause
title of the plaint within stipulated
period.**

No order as to cost.

(Dictated to stenographer transcribed and typed by her, corrected, signed and then pronounced by me in the open court on this the 2nd day of September, 2022)

CJ & JMFC., Savanur.

