

**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 23rd day of May, 2023

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

Vs

DEFENDANTS: Shahazad Begum @ Rahamatkhatib
W/o Mustaqkhan Biradar, Age : 60 years,
Occ : Household work, R/o : Kamalabangadi
Street, Savanur, Tq :Savanur, Dist : Haveri
and others.

IA No.28

Applicants: Tahirabegum W/o Khasimkhan Biradar.
(Proposed Age : 85 years, Occ : Household work,
defendant R/o : Biradar Compound, Near old court,
No.30) Tq : Savanur, Dist : Haveri and another.

Vs

Opponent: Shahazad Begum @ Rahamatkhatib
(Defendants) W/o Mustaqkhan Biradar and others.

ORDER ON I.A. NO.28

The applicant by name Taher Begum W/o Khasimkhan Biradar has filed this application U/O 1 Rule 10(2) of the code of Civil Procedure for implead her as defendant No.30 in the suit.

2. One Thaherbegum W/o Khasimkhan Biradar has sworn in an affidavit accompanying with IA No.28, wherein she stated that she is the daughter of Ladalibegum who was the legal heir of Navazkhatu Biradar. Therefore, she is also one of the legal heir. This fact was well within the knowledge of the plaintiff. But they had not arrayed her as party to this suit. The plaintiff and defendants have been trying to get collusive decree with malafide intention to defeat her right. Hence, she prayed to implead her as defendant No.30 as necessary party to the suit.

3. Shri MSM advocate for plaintiffs submit no objection to the IA No.20.

4. The defendant No.1 and 2 have filed objection to this application by stating that in the said suit one of the main prayer is to set aside the decree passed by this court in OS No.171/1984 which was reached finality in Hon'ble High Court of Karnataka in RSA No.130/1999 clubbed with

277/1999. In the said decree they declared as sole legal heir of Nawazkhatu. Therefore, they will suffer irreparable loss, if they were not permitted to raise objections to the plaintiffs frivolous tactics collaborating with other defendants and delay in the adjudication of the present suit. The application filed after 13 years from the date of institution of this suit. Therefore, it is hopelessly delayed for 13 years. Therefore application is not maintainable. In view of the decision of Supreme Court in Vidur Implex & Traders Pvt. Ltd. Vs. Tosh Apartments Pvt. Ltd. Reported in (2012) 8 SCC 384 and in the case of Shaik Hussain Vs. Basheer Khan reported in 2011 AIR SC 1080 (Kar), he prayed to reject the application.

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

POINTS

1. Whether the applicant is necessary or proper party to the suit to implead ?
 2. What order?
7. 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 :

8. POINT NO.1:- The applicant has filed this application when it was posted for defendant evidence. It is more than 13 years old case.

9. The plaintiffs have filed this suit for declare them as legal heirs of deceased Nawazkhatu W/o Dilerkhan Biradar and also declared that judgment and decree obtained by defendant No.1 in OS No.171/1984 through mis representation and playing fraud upon court and consequently restrained the defendant No.1 from claiming suit schedule properties. The defendant No.1 and 2 are only contested parties in the suit. The applicant is the mother of plaintiff No.8 to 11. but also the plaintiff not implead her as party to the suit. The defendants raise this point in the cross-examination and PW.1. Therefore the plaintiffs have filed this application through their mother. Therefore the plaintiffs submits no objection to this application. The defendant No.1 and 2 admitted this fact in their petition at Para No.4. In such circumstances if reject the application only on the ground of delay it leads to multiplicity of proceedings.

10. The advocate for defendant No.1 and 2 relied on the decision of Hon'ble Supreme court in the case of *Vidur*

Implex & Traders Pvt. Ltd. Vs. Tosh Apartments Pvt. Ltd. reported in 2012(8) SCC 384. I have gone through the said decision. The said decision is in respect of suit for specific performance. In the said case during the pendency of the suit the applicant purchased the suit property from defendant, when suit is posted for arguments they filed the impleading application. The plaintiffs of the suit seriously objected to implead. Hence, the Hon'ble Supreme Court held that if there is unduly delayed, the court will be fully justified in declining the prayer for impleadment. The facts and circumstance of the present case and said case are very different. Therefore above decision is not applicable to the case on hand.

11. The plaintiff is the master of his case. He can choose against whom to claim, in the present case the plaintiffs submits no objection to implead the applicant who is none other than mother of plaintiff No.8 to 11. Hence, she is also necessary party to the suit. Hence, application is made out grounds to allow. Therefore this court has answered **point No.1 in the Affirmative.**

12. Point No.2: In view of the above discussion this court proceed to pass the following,

ORDER

The I.A. No.28 filed by the applicant/3rd party petitioner under order 1 Rule 10 of CPC is hereby allowed.

No order as to cost.

Plaintiffs is hereby directed to carry out amendment in the plaint cause title within stipulated period and file amended plaint.

(Dictated to stenographer transcribed and typed by her, corrected, signed and then pronounced by me in the open court on this the 23rd day of May, 2023)

CJ & JMFC., Savanur.

court

(Order pronounced in the open
vide separate)

ORDER

**The I.A. No.28 filed by the
applicant/3rd party petitioner
under order 1 Rule 10 of CPC is
hereby allowed.**

No order as to cost.

**Plaintiffs is hereby directed
to carry out amendment in the
plaint cause title within
stipulated period and file
amended plaint.**

CJ & JMFC., Savanur.

