

**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 13th day of July 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.32

Applicants: Dilerkhan S/o Abdulkarimkhan Biradar,
(Plaintiff No.1)

Vs

Opponent: Shahazad Begum @ Rahamatkhatib W/o
(Defendant No.1) Mustaqkhan Biradar

ORDER ON IA NO.32

The plaintiffs have filed this application U/Sec.151 of Civil Procedure Code for club this suit with OS No.39/2001 have heard together and common evidence and to decide suits.

2. Plaintiff No.10 Amajadkhan Khasimkhan Biradar has sworn in an affidavit accompanying with this IA No.32, wherein he stated that they have filed this suit for declaration to declare that they were legal heirs of deceased Nawazkhatu W/o Dilerkhan Biradar Nawab and also for the declaration that the decree passed in OS No.171/1984 dated : 30.10.1994 was obtained through misrepresentation and playing fraud upon the court. Accordingly residents of Savanur had also filed suit OS No.39/2001 on the file of this Hon'ble Court for the declaration that the decree passed in OS No.171/1984 dated : 30.10.1994 and the decrees passed in the appeal against the decision of OS No.171/1984 are null and void and not executable decrees. The suit properties involved in the present and OS No.39/2001 are one and the same. Therefore, it is necessary to club the both suits to decide commonly. To decide separate it will

take much more time. Therefore, they prayed to club this suit with OS No.39/2001.

3. The defendant No.1 and 2 have filed objections to IA No.32, wherein they stated that the application is false frivolous, vexatious and filed with mala-fide intention. Therefore, application is neither tenable in law or facts. The suit OS No.39/2001 was already concluded after full pledged trial on 01.08.2005 by this Hon'ble Court. The RA No97/2009 preferred on the file of Hon'ble fist Additional District and Session Judge Haveri, wherein the Hon'ble District Court remanded back the matter. Against the said judgment the defendant No.1 preferred MSA before the Hon'ble High Court of Karnataka Dharwad in MSA No.10079/2016. Wherein the judgment and decree passed by Hon'ble District and Sessions Court in RA No.97/2009 is stayed. Therefore the suit OS No.39/2001 is before the Hon'ble High Court of Karnataka. Hence, he prayed to dismiss the application with cost.

5. Heard both the sides and perused the materials on record.

6. The following points arise for my consideration:

POINTS

1) Whether the application is made out grounds to allow?

2) What order ?

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

Point No.1 : In the Negative.

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

:-REASONS:-

8. Point No.1 :- The plaintiffs have filed this application at the stage of cross of DW.1.

9. The plaintiffs have filed this suit for declaration of status that declare them as legal heirs of deceased Nawazkhatu W/o Dilerakhan Biradar Nawab of Savanur and also declare that the defendant No.1 and 2 obtained the decree in OS No.171/1984 by mis-representation and by playing fraud upon the court.

10. The defendants have produced the certified copy of judgment and decree in O.S. No. 39.2001 which is marked as Ex.D15. On perusal of the Ex.D.15 it appears that the 18 localities of Savanur

had filed suit OS No.39/2001 for declaration of the judgment and decree dated : 31.10.1994 in O S. No.171/1984 which confirmed in RA NO. 16/1996 on the file of Civil Judge Senior Division Haveri and RSA No. 139/1999 on the file of High Court of Karnataka and compromise decree in RA No.73/19994 on the file of Hon'ble Civil Judge Senior Division Haver was null and void and not binding upon them. And consequential relief of injunction to restrain the defendant No.3 by name Shazadbegum @ Rehamankhatu from causing changed in the records of properties mentioned in the schedule-A properties, they have filed this suit in the representative capacity against the defendant No.1 to 4.

11. On careful perusal of the Ex.D.16, plaint, written statement and materials on record, it appears that the present plaintiffs are not party to the said suit. Further the suit OS No.39/2001 filed in the capacity of representatives of the public. The present suit is in the individual capacity by stating that the plaintiffs also heirs of Nawazkhatu and rights in the suit properties along with defendant No.1 and 2. Therefore, the nature of the suit in both suits are very different.

12. Apart from that the suit Os No.39/2001 already decided But the Hon'ble District and Session court in the appeal RA No.97/2009 remanded back the matter for fresh adjournment to trial court. But against the said judgment the defendants in the said suit preferred MSA No.100079/2016, wherein Hon'ble High Court of Karnataka stayed the proceedings and entire file is before the Hon'ble High Court of Karnataka. Therefore, the file is not available in this court. Therefore the question of clubbing the present suit in OS No.39/2001 does not arise.

13. Apart from that in the present suit the plaintiffs claimed to declare themselves and defendant No.1 and 2 are legal heirs of Nawazkhatu i.e., Nawab of Savanur. But in the said suit OS No.39/2001 the public of Savanur had claimed declare the judgment and decree in OS No171/1994 is null and void. Therefore, the reliefs are not one and the same. The present suit is for cross of DW.1. Therefore, at this stage plaintiffs filed this application to club the suit in OS No.39/2001 which the proceedings is stayed by Hon'ble High Court Karnataka and as per the order of Hon'ble High Court this Court sent the entire file in O.S. no. 39.2001 to Hon'ble High

Court, in such circumstances if club this suit with OS No.39/2001 automatically the proceedings of present suit also stayed. For that intention only plaintiff filed this application to drag the proceedings. Therefore, application is not maintainable and the application has no grounds to allow.

14. The plaintiffs have been filing one after another IA's to avoid the cross of DW.1. The conduct of the plaintiffs clearly reveals that they have been dragging the proceedings. This suit is more than 13 years old. And the trial begins recently i.e. after laps of more than 12 years. Therefore, it is necessary to impose cost to the plaintiff. Therefore, this court has answered **Point No.1 in the Negative.**

15. **Point No.2** :- In view of the above discussion, I proceed to pass the following;

ORDER

**The I.A. No.32 filed filed U/Sec.151 of
Code of Civil Procedure by plaintiff is
hereby rejected with cost of Rs.500/-.**

(Dictated to the stenographer, transcribed and typed by her, corrected, signed and then pronounced by me in the Open Court on this the 13th day of July 2023)

CJ & JMFC., Savanur.

