



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

PRESENT : **SRI. SRINIVASA.S.N.**,  
Civil Judge and JMFC.,  
Savanur.

**O.S.No.118/2010**

**Dated, this day of 4<sup>th</sup> day of March, 2025**

**Plaintiffs** : Sri.Dilerkhan  
S/o Abdulkarimkhan Biradar & others

**V/s**

**Defendants** : Smt. Shahajadbegum M Biradar & others

**PARTIES IN IA- XLIV**

**Applicants** : Sri.Dilerkhan S/o Abdulkarimkhan Biradar &  
[Plaintiffs] others

**V/s**

**OPPONENT** : Smt. Shahajadbegum M Biradar & others  
[Defendants]

<b>i</b>	Provision under which the application is filed :	U/S. 151 of CPC
<b>ii</b>	Relief sought for :	To call for the records from the custody of the central records in Miscellaneous Petition No.369/1981
<b>iii</b>	The date on which the application is filed :	27-01-2025
<b>iv</b>	The date on which the objection is filed by opponents:	06-02-2025
<b>v</b>	The date on which the order is passed on the said applications	04-03-2025



**ORDERS ON I.A.NO. XLIV**

The plaintiff has filed application seeking to call for the records from the custody of the Central Records in Miscellaneous petition No.369/1981 on the file of Hon'ble II Additional District and Sessions Judge Court, Dharwad, which was disposed on 16-12-1994, in the interest of justice and equity.

**2.** In the accompanying affidavit, the plaintiff No.10 has sworn to in that the plaintiffs have filed this suit seeking for the relief of declaration of heirship and etc. He stated that defendant No.1 had filed Miscellaneous Petition No.369/1981 for revocation of probate order passed in P & SC No.8/1979 on the file of Hon'ble II Additional District and Sessions Judge Court, Dharwad, wherein the Defendant No.1 herein had disputed the so called WILL said to have been executed by Nawazkhatu in favour of Kumbarwad Masjid, stating that the alleged WILL are forged, fabricated and created by the Respondent no.1 therein and she had also filed application for seeking expert opinion and the said application allowed and the alleged WILLS were sent to expert opinion. The expert had filed their opinion stating that the signatures appearing on the WILL are forged.

**3.** Later the Respondent No.1 therein, after the submitting of the expert report, colluding with present Defendant No.1, dismissed the petition for default. Later in R.A.No.73/1994 on the file of Hon'ble Senior Civil Judge, Haveri, colluding with each other, got the compromise decree in the said appeal dated 17-12-1998. To substantiate the fraud played by the Defendant No.1 and



2 and kumbarwad masjid, we have made certain suggestions in the cross-examination of DW-1, but the DW-1 is denying and ignoring the documents stating that he not remember. Hence this application and they pray to allow the application.

**4.** The defendant No.1 filed his detailed objections. He contended that the said Miscellaneous petition No.369/1981 bears no relevancy to the present suit. Agreed that they filed said petition and same is dismissed for default. The plaintiffs have not claimed any right over the property that was the subject matter of the Miscellaneous Petition No.369/1981. The pleadings in the present plaint are completely silent on the said proceedings and not even a whisper regarding the same. The plaintiffs have failed to furnish any specific details demonstrating any fraud allegedly committed by defendant no.1 while obtaining OS No.171/1984. The present plaintiff had instituted Miscellaneous No.43/2018 before the additional district and sessions judge court, Dharwad, seeking cancellation and recall of the probate order passed in P & SC No.8/1979. The said miscellaneous petition was dismissed on 20-3-2023 and the court observed that the allegation of fraud raised by the plaintiffs therein were vague unsustainable and devoid. Summoning the original Miscellaneous petition No.369/1981 records serves no legal purpose. The plaintiffs can obtain certified copy from the appropriate authority. Hence defendant No.1 prays to reject the application.

**5.** Heard the arguments of both the counsels and perused pleadings, materials available on court records.



6. The following points arise for my determination.

**POINTS**

1. Whether the IA No.XLIV filed by the plaintiffs have made out sufficient grounds to allow?
2. What order?

7. My answers to the above points are as here under:

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 suit seeking for the relief to declare that the plaintiffs are legal heirs of deceased Nawazkhatu, declare the Judgement obtained by defendant No.1 in OS No.171/1984 on 30-10-1994 through fraud and restrain the defendant No.1 from claiming her as legal heir of deceased Nawazkhatu and for other reliefs.

9. In the present suit, this court has framed one of the issue regarding the O.S.No.171/1981 as follows;

***ISSUE NO.2.*** *whether the plaintiffs prove that the defendant No.1 obtained decree in OS No.171/1984 through mis-representation and playing fraud?*

10. The counsel appearing for the plaintiffs Sri. M.S.B., Advocate argued that the present suit has been filed seeking the following



reliefs that Declaration that they are the legal heirs of the deceased Nawazkhatu, further declaration that the Judgment in OS No.171/1984, obtained by defendant No.1, was obtained through fraud and restraining defendant No.1 from claiming herself as the legal heir of Nawazkhatu.

**11.** He further contended that the defendant No.1 herein had filed Miscellaneous Petition No.369/1981 challenging the probate order granted in P & SC No.8/1979 in favor of Kumbarwad Masjid. In that petition, defendant No.1 herein alleged that the WILL executed in favour of Kumbarwad Masjid was forged. In the said petition, an expert opinion was sought and the Expert Report confirmed that the signatures on the WILL were forged.

**12.** However, after that, defendant No.1 herein, allegedly colluding with Kumbarwad Masjid, made that petition dismissed for default. Subsequently, the Kumbarwad Masjid challenged the said order in R.A.No.73/1994 before the Hon'ble Senior Civil Judge, Haveri. Later the defendant No.1, Kumbarwad Masjid and other party compromised the matter and a compromise decree was passed on 17-12-1998.

**13.** The plaintiffs claim that the compromise in R.A.No.73/1994 was fraudulent and that Kumbarwad Masjid, defendant No.1, and



others colluded to suppress the Expert Report regarding the alleged forged WILL. To prove this, they argue that summoning the original records of Miscellaneous Petition No.369/1981 is necessary, as the defendant No.1, while deposing as DW-1, has denied knowledge of these documents and their contents in his cross-examination.

**14.** The plaintiffs further contended that under the Civil Rules of Practice, non-parties to a case cannot obtain certified copies of certain documents, including expert opinions. Therefore, summoning the original records is the only way to place the relevant material before the court.

**15.** The Rules which deal with the certified copies in **THE KARNATAKA CIVIL RULES OF PRACTICE, 1967** are as follows

**231.** Application by a person who is not a party.- Any person who is not a party to the suit or proceeding, may, for sufficient reason shown to the satisfaction of the Court, obtain copies of the plaint, written statement, applications and affidavits filed in the suit, depositions of witnesses or judgment, decree or order.

**232.** Any person who is not a party to the suit or proceeding, desirous of obtaining copies of documents admitted in evidence, shall make an application, supported by an affidavit specifying the purpose for which such copies are required,



and Court may for sufficient reason shown to its satisfaction order the grant of the same.

**233.** Copies of confidential papers.- Copies of the Judge's minutes, of correspondence not strictly judicial, or generally of any confidential proceedings shall not be granted.

**234.** Order of Judges in doubtful cases.- Where any doubt arises as to whether the document, of which a copy is applied for, is one of which a copy could be granted or not, the Examiner shall obtain the order of the Judge. If for any reason the Judge decides that a copy cannot be granted, the application shall be rejected.

**235.** (1) An application for a copy of a document or other paper, a certified copy of which can be given, shall be made to the Court having custody of the record or to the Court in which the document or paper is filed or exhibited in the record.

Explanation.- The records lodged in the Central Record Room shall be deemed, for purpose of this Rule, to be in the custody of the District Court, to which the Central Record Room is attached.

(2) Such application shall set forth.-

(a) the name of the applicant and his position (if any) in the suit or proceeding; also the name of his pleader and pleader's clerk (if any);

(b) the number of the suit or proceeding mentioning whether the same is pending or disposed of and the date of disposal, if disposed of; and

(c) the description of the document or the paper and if the document is exhibited, its exhibit



number and the proceeding in which it is filed or exhibited and the date of the document, if any.

(3) The application should be presented to the Chief Ministerial Officer or such other officer as the Court may appoint for the purpose.

(4) The officer receiving the application shall endorse, in red ink, on the application the date of receipt and the number of copying sheets, if any, produced with it and after making an entry or getting an entry made in respect thereof in the Daily Register of Court-fees of the Court (Register No. VIII), pass on the application with its enclosures of the Examiner of Copies.

Therefore, the plaintiffs prays for summoning the original records in Miscellaneous Petition No.369/1981 is the only way to place the relevant material before the court and prays to allow the application.

**16.** The counsel appearing for the defendants No.1 and 2 Sri.S.K., Advocate argued that the Miscellaneous Petition No.369/1981 has no relevance to the present suit. He contended that the defendant No.1 herein had filed Miscellaneous Petition No.369/1981, but the same was dismissed for default. The plaintiffs, in this present suit, have not made any specific pleadings regarding Miscellaneous Petition No.369/1981. There is



no mention in the plaint about this petition, its proceedings, or how it impacts the plaintiffs' claims.

**17.** He further argued that the plaintiffs have not demonstrated how the Miscellaneous Petition No.369/1981 is useful for them to prove the case of fraud played in OS No.171/1984. The plaintiffs have previously challenged the probate order in Miscellaneous No.43/2018 before the Hon'ble II Additional District and Sessions Judge, Dharwad. That petition was dismissed on 20-03-2023 and the court observed that the fraud allegations raised by the plaintiffs were vague, unsustainable, and devoid of merit.

**18.** Therefore summoning the records of Miscellaneous Petition No.369/1981 serves no legal purpose since the plaintiffs can obtain certified copies from the appropriate authority if required.

**19.** He also argued that the plaintiffs are unnecessarily dragging the matter by filing one or the other applications. Further he contended that there is no clear pleadings in their plaint about this case and about fraud. They further contended that when there is no specific pleadings, they cannot cross examine the witness beyond their pleadings. Hence he prays to reject the application with cost.



**20.** He also relied on some of the Apex court decisions in regard of the fraud, the manner in which the fraud has to be proved.

- (1) Judgment of Hon'ble Supreme Court in Civil Appeal No.78 of 1950 dated 04-05-1951 in the case of Bishundeo Narain and another Vs. Seogeni Rai and another
- (2) Judgment of Hon'ble Orissa High Court in Second Appeal No.68/1968 dated 15-11-1971 in the case of Bira Jena Vs. Tauli Dei and another
- (3) Judgment of Hon'ble High Court of Karnataka in R.F.A No.46/1977 in the case of K.S.Mariyappa Vs. K.T.siddalinga Setty
- (4) Judgment of Hon'ble High Court of Karnataka in Writ Appeal Nos.4371-4405/2010 dated 13-06-2012 in the case of M/s. National Technological Institutions (NTI) Housing Co-operative Society Ltd., and others Vs. The Principal Secretary to the Government of Karnataka, Revenue Department and others.
- (5) Judgment of Hon'ble High Court of Karnataka in Writ Petition No.82837/2013 (GM-RES) in the case of Dilerkhan S/o Abdulkarimkhan Biradar and others Vs. The State of Karnataka Chief Secretary to the Government, Vidhanasoudha, Bangalore.
- (6) Judgment of Hon'ble High Court of Karnataka Dharwad Bench in Writ Appeal No.100371/2014 (GM-RES) in the case of



Dilerkhan S/o Abdulkarimkhan Biradar and others Vs. The State of Karnataka Chief Secretary to the Government, Vidhanasoudha, Bangalore.

- (7) Judgment of Hon'ble Supreme Court of India in Civil Appeal Nos.9642/2010 and 9643/2010 dated 10-04- 2024 in the case of Manisha Mahendra Gala and others Vs Shalini Bhagwan Avatramani and others.
- (8) Judgment of Hon'ble Supreme Court of India in Civil Appeal No.6669/2021 dated 26-11-2021 in the case of Electrosteel Castings Limited Vs. UV Asset Reconstruction Company Limited and others.

**21.** Upon consideration of both the sides and their documents, the key issue in the present application is whether summoning the records of Miscellaneous Petition No.369/1981 is necessary for the adjudication of the present suit.

**22.** The suit in O.S.No.171/1984, which was decreed on 31-10-1994, seeking for the declaration of legal heirs. The present suit also seeks a declaration of legal heirs along with other reliefs. However, there is no pleading in the plaint regarding P and SC No.8/1979 and Miscellaneous Petition No.369/1981 or its impact on the case. A party cannot lead evidence on matters that are not pleaded in the suit. Since there are no pleadings in the present suit regarding Miscellaneous Petition No.369/1981, summoning its records would serve no legal purpose.



**23.** Additionally, Miscellaneous Petition No.369/1981 was dismissed for default on 31-12-1994, and the challenge to that order in RA No.73/1994 resulted in a compromise decree in 1998. The miscellaneous petition no. 369/1981 does not help for this court to come to conclusion that who is the legal heirs of Nawazkhatu and the said petition was for challenging the probate which was obtained by the kumbarwad masjid by playing fraud on defendant No.1.

**24.** The O.S. No. 171/1984 suit was filed for the declaration of legal heirs of the deceased Nawazkhatu. The suit was decreed on 31-10-1994. The plaintiffs in the present suit allege that defendant No.1 obtained this judgment fraudulently. The Miscellaneous Petition No. 369/1981 was filed before O.S. No. 171/1984 was decreed, and it was dismissed for default after the decree in O.S. No. 171/1984. The RA No. 73/1994 was filed challenging the dismissal of Miscellaneous Petition No. 369/1981. However, in 1998, the parties entered into a compromise decree related to the WILL.

**25.** The order in Miscellaneous Petition No.369/1981 and the compromise in RA No.73/1994 occurred after O.S. No.171/1984 was decreed. This means that any findings or conclusions from those proceedings did not influence the judgment in O.S. No.171/1984. Since the plaintiffs have not made specific pleadings regarding these cases in their present suit, summoning those records may not serve any legal purpose. In view of the aforesaid reasoning and discussions, it is clear that the



application filed by the plaintiffs deserves to be rejected. Accordingly, I answered **point No.1 in the Negative.**

**26. POINT NO.2 :-** In view of above said discussion and reasonings, I proceed to pass the following;

**: ORDER :**

**I.A.No.XLIV filed by the plaintiffs  
under Section 151 of CPC is hereby  
rejected.**

*(Dictated to the Stenographer directly on computer, corrected and initialed by me and then pronounced in the open court on this day of 04<sup>th</sup> day of March, 2025.)*

**Civil Judge and JMFC,  
Savanur.**