



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

PRESENT : **Sri. SRINIVASA. S. N,**
B.A., LL.M.,
Civil Judge and JMFC.,
Savanur.

O.S.NO.118 / 2010

Dated this 4th day of June, 2025

PLAINTIFF: **Sri Dilerkhan S/o Abdulkarimkhan
Biradar & others**

Vs

DEFENDANTS: **Smt. Shahajadbegum.M.Biradar and
Others**

PARTIES IN IA No.LI (IA No.51)

Applicants: **Sri Dilerkhan S/o Abdulkarimkhan
Biradar & others**

Vs

Opponents: **Smt. Shahajadbegum.M.Biradar and
Others**

i	Provision under which the application is filed	U/O Order I Rule 10(2) of CPC
ii	Relief sought for	For Impleading Proposed Defendant
iii	The date on which the application is filed	01-04-2025
iv	The date on which the objection is filed by different opponents	16-04-2025



v	The date on which the order was passed on the said application	04-06-2025
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ORDER ON IA No.LI (I.A.No.51)

The plaintiffs have filed this I.A.No.LI (I.A.No.51) under Order I Rule 10(2) of CPC, seeking permission to implead proposed defendant as defendant No.30 in the suit, in the interest of justice and equity.

2. In the accompanying affidavit, the plaintiff No.18 has stated that the plaintiffs have filed this present suit seeking for the relief of declaration etc. Further deposed that they had filed I.A.No.II restraining the defendant no.3 and 4 from delivering the possession of the suit properties in favour of the defendant no.1. After hearing the same, this court has allowed the application and restrained the defendant no.3 and 4 from delivering the possession of the suit properties to the defendant no.1. The defendant no.3 and 4 have preferred an appeal in M.A.no.7/2011 on the file of the Hon'ble Senior Civil Judge and JMFC, Haveri but the said appeal was dismissed on 21-04-2014. But presently the defendant no.1 has sold one of the suit property to the proposed defendant i.e., Mohammed Ismail S/o Abdulraheem Byahatti, without there being any possession. Hence they prays to implead



the proposed defendant as defendant No.30 as he is the necessary party to the suit and prays to allow the application.

3. On the other side, the proposed defendant and the defendant No.1 and 2 have filed objection to the said application. The counsel appearing for the defendant No.1 and 2, only appeared for the proposed defendant. The proposed defendant contended that application is not maintainable. The property purchased by the proposed defendant was sold by three members wherein two of them were not parties to the suit. The impleadment of proposed defendant on the ground of bonafide purchaser is beyond the scope of present suit and his addition would alter the nature of the suit and unnecessarily enlarge the scope of the suit. The proposed defendant neither necessary nor proper party to the suit. The relief sought in the plaint, even if granted will not affect the rights of the proposed defendant. The plaintiffs have failed to demonstrate the semblance of title of suit property. They have no locus standi to seek impleadment of proposed defendant. No relief has been claimed by plaintiffs against the proposed defendant. The addition of parties is a judicial discretion. This application filed at belated stage, i.e., after the commencement of trial and at the stage of arguments. Impleading the proposed defendant would necessitate a de-nova trial. Since no relief is sought against the



proposed defendant, his presence would not facilitate the adjudication of suit. Hence they prays to dismiss the application with costs.

4. Heard both the counsels and perused the materials on record.

5. The following points have arose for my consideration;

P O I N T S

1. Whether the plaintiffs have made out sufficient grounds to implead the proposed defendant as defendant No.30 ?

2. What order?

6. My answers to the above points are as under;

Point No.1: In the Negative

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

R E A S O N S

7. **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 Judgment 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.

8. Sri.M.S.B Advocate appearing for the plaintiffs argued that the Defendant No.1 and 2 had obtained a decree in O.S.



No.171/1984 by committing fraud upon the court and based on that decree, defendant No.1 got her name entered in the revenue records. The plaintiffs counsel argued that that Defendant No. 1 sold one of the suit properties to the proposed defendant during the pendency of the suit, and Defendant No. 1 was not in possession of the property at the time of sale. Further argued that the proposed defendant is a pendente lite purchaser and not a bonafide purchaser, as the sale took place while the suit was pending. The impleadment of the proposed defendant is necessary to ensure complete adjudication. The plaintiffs counsel further argued that they have sought relief against the proposed defendant in I.A.No.52 and their impleadment is essential to protect their rights. He further he raised question that, whether the defendant no.1 had right to sell the suit property to proposed defendant. Because the defendant no.1 was not in possession of the suit property, hence she was not competent to sell the suit property. He also argued that the proposed defendant had not obtained the permission from the court before purchasing the suit property.

9. The plaintiff counsel has relied on the decision of Hon'ble Supreme Court of India in Civil Appeal No.7305/2024 between



Yogesh Goyanka V/s Govind and ors. The Hon'ble Apex Court has observed that;

“16. The fulcrum of the dispute herein concerns the impleadment of a transferee pendente lite who undisputedly had notice of the pending litigation. At the outset, it appears pertinent to reiterate the settled position that the doctrine of lis pendens as provided under Section 52 of the Act does not render all transfers pendente lite to be void ab-initio, it merely renders rights arising from such transfers as subservient to the rights of the parties to the pending litigation and subject to any direction that the Court may pass thereunder. ”

The plaintiff counsel argued that the proposed defendant had knowledge of pending litigation and he has not obtained prior permission from this court.

10. Sri.S.K, Advocate appearing for the proposed defendant and the defendant No.1 and 2 argued that the proposed defendant is neither necessary party nor proper party and his involvement is not necessary for adjudication of suit. The order on I.A.No.II is not relevant to this present IA. The plaintiffs have not mentioned anything about I.A.No.52 in this application. Total three parties have sold the suit property to the proposed defendant, but the remaining two sellers are not parties to the suit.

11. Further he argued that after filing of this suit, the defendant no.1 had gifted another suit property to her son but the plaintiffs



have not made him as necessary party to the suit. They remained silent. Even this proposed defendant had purchased the suit property on 03-06-2024. But in 2025 they have filed this application for impleadment only to drag the proceedings. If they are really aggrieved by the transfer of suit properties, they have to take steps against all but here, they have filed this application only against the proposed defendant but they have not made the person who took gift of suit property from defendant no.1. The plaintiffs filed Civ.Misc. Petition No.3/2014 against defendant no.1 to 4 for civil disobedience. Earlier the court ordered status quo order on I.A.No.II but defendant no.3 and 4 delivered the possession of the suit property to defendant no.1. The said petition was dismissed stating that plaintiffs have failed to prove the disobedience. Said dismissal is not challenged by the plaintiffs till today. There is no relief of possession in the present suit.

12. He further argued that defendant no.1 and 2 are the title holders and are in possession of the suit properties. Even if the present application is allowed, the right of proposed defendant will not be affected. The proposed defendant is protected under section 52 of TP act. The plaintiffs have filed this application only to drag the proceedings. Hence he prays to dismiss the application.



13. On a careful examination of the pleadings and the arguments advanced, it is evident that the present suit is filed for the relief of declaration that the plaintiffs are the legal heirs of deceased Nawazkhatu and to declare that the judgment and decree obtained by defendant No.1 in O.S. No.171/1984 is fraudulent. Further, the plaintiffs seek to restrain defendant No.1 from claiming herself to be the legal heir of the deceased.

14. The main issue in the suit relates to the status of legal heirship and the validity of the decree passed in O.S.No.171/1984. It is not related to the title or possession of the suit properties as such. The plaintiffs have not sought any relief directly against the proposed defendant either in the original plaint or in the present application. Even though the plaintiffs counsel argued that they have filed I.A.No.52 seeking some relief against the proposed defendant, it is clear that the present application stands independently and it does not mention I.A.No.52 or the reliefs claimed therein. The Court cannot read the pleading of another application to pass orders on present application.

15. The law under Section 52 of the Transfer of Property Act protects the rights of the parties to a litigation by making transfers



during the pendency of the suit subject to the final outcome. The pendente lite purchaser is bound by the decree passed in the pending litigation and does not need to be impleaded unless the presence of the purchaser is absolutely necessary for deciding the questions involved. The addition of the proposed defendant to the proceedings is not necessary for deciding the main issues involved in this suit. The rights of the proposed defendant are subject to the final result of this suit by operation of law. Therefore, his impleadment is not necessary.

16. It is also pertinent to note that the plaintiffs have not challenged other transactions made by defendant No.1 with third parties, nor have they sought similar impleadment against other parties. On perusal of Ex.P.45, the defendant No.1 had executed gift deed in favour of her son in regard of the one of the suit property but the plaintiffs have not made the donee who received the gift from the defendant No.1 as necessary party to the suit.

17. Under Order I Rule 10(2) of CPC, a person may be impleaded in a suit only if:

- a) They are a necessary party (i.e., the suit cannot be decided without their presence), or



b) They are a proper party (i.e., their presence is necessary to enable the court to completely and effectively adjudicate the dispute).

18. Allowing the impleadment at this stage would delay the adjudication of the suit and it leads to the beginning by filing the written statement, resulting in de-novo trial. The plaintiffs have not demonstrated how the presence of the proposed defendant would assist the Court in the effective adjudication of the real issues in controversy. Therefore, the proposed defendant is neither necessary nor proper party to the suit. For the above said reasons and observations, I answered the ***point No.1 in the Negative.***

19. POINT NO.2:- For the foregoing reasons, I proceed to pass the following;

ORDER

I.A.No.LI (I.A.No.51) under Order I Rule 10(2) of CPC, filed by the plaintiffs is hereby dismissed.

CJ & JMFC., Savanur.