



**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 day of 16th day of August, 2025

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

V/s

Defendants : Smt. Shahajadbegum M Biradar & others

PARTIES IN IA-LIII and IA-LIV (IA-53 & IA-54)

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

V/s

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

i	Provision under which the application is filed:-	IA-53:- U/O 1 Rule 10(2) of CPC IA-54:- U/O VI Rule 17 of CPC
ii	Relief sought for :-	IA-53:- To implead proposed defendant as defendant in the suit. IA-54:- To amend the pleadings in the plaint by including the proposed amendment.
ii i	The date on which the application is filed :-	IA-53:- 01-07-2025 IA-54:- 01-07-2025



i v	The date on which the objection is filed by different opponents:-	IA-53:- 01-07-2025 IA-54:- 03-07-2025
v	The date on which the order was passed on the said applications :-	16-08-2025

COMMON ORDERS ON I.A.No.LIII and I.A.No.LIV
(I.A.No.53 and 54)

The plaintiffs have filed this I.A.No.LIII (I.A.No.53) under Order I Rule 10(2) of CPC, seeking permission to implead proposed defendant as defendant in the suit, in the interest of justice and equity and I.A.No.LIV (I.A.No.54) under Order VI Rule 17 of CPC, seeking permission to amend the pleadings in the plaint by including the proposed amendment, in the interest of justice and equity.

2. In the accompanying affidavit of I.A.No.LIII, the plaintiff No.18 has stated that the plaintiffs have filed this present suit seeking for the relief of declaration etc. The defendant no.1 and 2 have produced some documents including the alleged gift deed said to have been executed by the defendant no.1 in favour of proposed defendant on 01-06-2024. The said factum of alleged transfer was not within their knowledge. They came to know about the same after the production of the alleged gift deed, but due to



oversight they could not make necessary application for impleading the proposed defendant at earliest point of time. Hence they have filed this application. He further deposed that the delay in filing this application is not intentional no deliberate. It is further stated that the plaintiffs have also having share and right over the said property. Hence he prays to implead the proposed defendant as defendant as he is the necessary and proper party to the suit and prays to allow the application.

3. In the accompanying affidavit of I.A.No.LIV, the plaintiff No.18 has stated that the plaintiffs have filed this present suit seeking for the relief of declaration etc. It is stated that the plaintiffs have challenged the decree in question on fraud misrepresentation. Therefore, we are advised to submit that the fraud, misrepresentation and collusion requires to be stated in the plaint in detail. Further stated that after production of the alleged gift deed, we have noticed the defendant no.1 has executed alleged gift deed in favour of proposed defendant. Due to oversight we could not give instructions to our counsel to seek necessary amendment in this regard. It is further stated that though the amendment is sought after commencement of trial, but the amendment sought is very much necessary and essential to



decide the suit between the parties effectively. It is further stated that the proposed amendment will not change the nature of the suit, are not mutually destructive existing reliefs, those not causing prejudice to the causes which will not purport to set up new cases and does not lead to injustice to defendants, and those are necessary for the purpose of determining controversy between the parties, and the proposed amendment is not barred by the limitation, and it is not a surprise to the defendants. It is further stated that amendment sought for is very much necessary and essential to adjudicate the above said case effectively and also to avoid multiplicity of proceedings. On the contrary, no loss or prejudice will be caused to the defendants. Hence the plaintiff prays to pass necessary orders as prayed in the application in the interest of justice and equity.

4.a) On the other side, the proposed defendant has filed objection to the I.A.No.53. The proposed defendant contended that application is not maintainable. They denied the contents of the affidavit. They contended that the applicant has failed to demonstrate how the proposed defendant qualifies as a necessary or proper party to the suit. The said application is misconceived and wholly irrelevant to the issues involved in the present suit. It



is filed with the sole intention to harass the proposed defendant and defendant no.1 and 2 by unnecessarily involving in the present proceedings.

b) The basis for I.A.No.53 is a gift deed pertaining to the property situated at Hubli, bearing CTS No.563 owned by defendant no.1. The said gift deed is registered prior to filing of this suit i.e., on 21-02-2009 and same is marked as Ex.D.46 and 47 on 21-06-2024. The property extract of said CTS No.563 standing in the name of proposed defendant is produced by the plaintiffs and marked as Ex.P.75 on 30-03-2023 by PW-1. It is crucial to note that the Ex.P.75 is the certified copy obtained on 09-10-2009 by the plaintiffs.

c) The impleadment of proposed defendant would alter the nature of the suit and unnecessarily enlarge its scope. The proposed defendant is 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 said property. They have no locus standie 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 he prays to dismiss the application with costs.

5.a) On the other side, the counsel appearing for the defendant No.1 and 2 have filed objection to the said application. They contended that the said application has been filed after lapse of 15 years from the institution of the suit and more than 2 years since the commencement of trial, at a stage when the matter is posted for final arguments. The present application is filed with malafied intention and is clear attempt to protract the proceedings and obstruct the expeditious adjudication of the case. It is further contended that the motive behind this IA is evident from the past conduct of the plaintiffs, more particularly in the light of plaintiff's prior unsuccessful attempts to delay the matter through various dilatory procedural tactics which have failed miserably.

b) It is further contended that under Order VI Rule 17 the proviso stipulates that no application for amendment shall be allowed after the trail has commenced unless the court concludes



that, despite due diligence, the party could not have raised the matter before the commencement of trial

c) The proposed amendment sought in the paragraph 10(a) pertains to registered gift deed, originally owned by defendant no.1, subsequently transferred to her son by way of gift deed dated 21-02-2009 well before this suit institution. The certified copy of said gift deed was obtained on 09-10-2009 by the plaintiffs. It shows the knowledge regarding the title and ownership of the said property. The same is marked as Ex.P.75 by PW-1. The said gift deed is registered dated 21-02-2009 and CTS property extract are marked as Ex.D.46 and 47 respectively on 21-06-2024. Despite knowing this, the plaintiffs remain silent for over 15 years. The plaintiffs have failed to disclose any bona fide efforts and have failed to demonstrate due diligence between 2010 to till today to incorporate the proposed amendments at an earlier stage prior to commencement of the trial. In the absence of any justification for this undue delay, the application is liable to be rejected.

d) Further contended that the amendment application fails to demonstrate any due diligence and as such, no due diligence coming forth from the amendment application as to why plaintiffs choose to introduce these amendments when the matter is posted



for final arguments. The proposed amendment is neither necessary nor relevant for the determination of the real issues in controversy. Further they have contended the malafide conduct of the plaintiffs in their objection. Therefore they pray to dismiss the application with cost and compensatory costs in the interest of justice and equity.

6. The hearing on I.A.No.53 and 54 from plaintiffs side is taken as nil. Heard the counsel appearing for the proposed defendant and the defendant no.1 and 2 and perused the materials on record.

7. 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 in the suit?
2. Whether the plaintiffs have shown Due Diligence as required under the proviso to Order VI Rule 17 of CPC and is the proposed amendment is necessary for determining the real questions in controversy ?
3. What order?

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

Point No.1: In the Negative



Point No.2: In the Negative

Point No.3: As per the final order for the following;

REASONS

9. 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.

10. The plaintiffs have filed I.A.No.LIII (I.A.No.53) under Order I Rule 10(2) of the Code of Civil Procedure, 1908, seeking permission to implead the proposed defendant as a party to the present suit. They have also filed I.A.No.LIV (I.A.No.54) under Order VI Rule 17 CPC seeking amendment of the plaint to include pleadings arising from the alleged execution of a gift deed by defendant No.1 in favour of the proposed defendant.

11. In the affidavit filed in support of I.A.No.53, plaintiff No.18 has stated that the plaintiffs came to know about the execution of the gift deed in favour of the proposed defendant only after its production by defendant Nos.1 and 2 during the course of trial. According to them, the said transfer affects their alleged rights in



the suit property, and the presence of the proposed defendant is necessary for complete and effective adjudication. It is further contended that the delay in filing the application was neither deliberate nor intentional.

12. In the affidavit filed in support of I.A.No.54, it is stated that the plaintiffs have challenged the decree obtained by defendant No.1 in O.S.No.171/1984 on the grounds of fraud, misrepresentation, and collusion. They assert that the proposed amendments are necessary for determining the real controversy and will not change the nature of the suit or cause prejudice to the defendants.

13. The proposed defendant in his objection to I.A.No.53, has opposed the impleadment on the ground that he is neither a necessary nor proper party to the suit. It is contended that the gift deed dated 21-02-2009 was executed much prior to the institution of the present suit and the plaintiffs were aware of it as early as 09-10-2009, when they obtained the certified copy which is marked as Ex.P.75. Therefore, the plaintiffs plea of unaware of knowledge of said gift deed false and unbelievable. It is further contended that no relief has been sought against the proposed



defendant and his presence will not facilitate the adjudication of the issues in the suit.

14. The Defendant No.1 and 2 have also objected to I.A.No.LIV (I.A.No.54) application contending that it has been filed at a belated stage, i.e., more than 15 years after the institution of the suit and after commencement of final arguments. It is alleged that the plaintiffs have been adopting dilatory tactics and the present IAs are only intended to drag the proceedings. It is further contended that under the proviso to Order VI Rule 17 CPC, no amendment can be allowed after commencement of trial unless the party shows that despite due diligence, the matter could not have been raised earlier. The plaintiffs have not shown any due diligence and the plaintiffs have failed to discharge the same.

15. On a careful examination of the pleadings and documents, 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.



16. 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.

17. It is undisputed that the gift deed dated 21-02-2009 in favour of the proposed defendant was registered prior to the filing of the present suit. The plaintiffs themselves produced the CTS extract which is marked as Ex.P.75 in 2023, which shows that they were well aware of the information regarding the proposed defendant's title long before filing the present application and institution of suit. The plea that the fact of transfer came to their knowledge only after production of the gift deed during trial is therefore untenable.

18. 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).



19. Allowing impleadment at this belated stage, when the matter is posted for final arguments, would necessarily require reopening the case, giving the newly added defendant, an opportunity to file a written statement and lead evidence, resulting in a de-novo trial. This will cause undue delay in disposal of a suit already pending for 15 years.

20. In view of the above, the Court finds that the proposed defendant is neither a necessary nor proper party for the adjudication of the present dispute. Accordingly, this court answered point no.1 in the negative.

21. It is relevant to the read Order VI Rule 17 of CPC. It is as follows;

17. Amendment of pleadings.—*The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.



22. The proviso to Order VI Rule 17 CPC mandates that no application for amendment shall be allowed after commencement of trial unless the court comes to the conclusion that despite due diligence, the party could not have raised the matter before the commencement of trial. The suit was instituted in 2010, trial commenced more than two years ago, and the case is now at the stage of final arguments. Now the plaintiffs have filed this present application.

23. The plaintiffs have failed to demonstrate any bona fide reason for not seeking the amendment earlier. On the contrary, the record shows that they had knowledge of the gift deed in 2009. No specific steps taken between 2010 and 2025 to bring these facts on record.

24. This court has relied on the decision of Hon'ble High Court of Karnataka, Bengaluru, in WP.No.16411/2025 in the case of Smt.Venkatamma Namasivayam since dead by LRS Vs. Anil Kumar and others dated 08-07-2025 and held as follows;

13. Insofar as the judgments relied on by the learned senior counsel for the petitioners with regard to the purport of Order VI 28 Rule 17 CPC, there can no qualm about the principles laid down therein. He has placed heavy reliance upon the judgment in the case of DINESH GOYAL @ PAPPU v. SUMAN AGARWAL



(BINDAL)6 wherein the Apex Court has held as follows: “....”

12. The question that we have to consider, in the above backdrop is whether the High Court fell in error in allowing the application seeking leave to amend pleadings, in contravention of the statutory language.

17. Any and all delays in judicial processes should be avoided and minimised to the largest extent possible, and should generally be, and are rightly frowned upon. However, not in all cases can delay determine the fate of a Suit. The defendant submits that the time gap between submitting the written statement to the Suit and the presentation of the application seeking leave to amend is unexplained. If this argument of the defendant is accepted, the question of Will shall remain undecided or at best will be decided with great delay. The trial which has admittedly already commenced, would be stalled by way of a challenge to the framing of issues which, in turn, would not be in consonance with the object of Order VI Rule 17 of CPC which is aimed at preventing multiplicity or multiple avenues of litigation, subsumed under the umbrella of one dispute.”

The Apex Court holds that any and all delays in judicial processes should be avoided and minimised to the largest extent possible. However, not in all cases can delay determine the fate of the suit. The defendant therein had



contended that the time gap between the written statement to the suit and the present application seeking leave to amend is unexplained. Even then the Apex Court permitted the amendment on the ground that it was an issue of a Will, which will remain open even after disposal of the suit and result in multiplicity of litigation. The said judgment is distinguishable, on the facts obtaining in the case at hand, without much ado. Though Order VI Rule 17 of the CPC as amended, permits amendments to pleadings at any stage, but tempers such liberty with a proviso that postulates the necessity of due diligence. The rationale is unmistakable, it is to curb interminable litigation and to ensure trials are not derailed by belated pleas. Proviso to Rule 17 of the CPC, is thus, not an ornamental appendage, but a substantive limitation.

25. The suit is now at the stage of final arguments and the proposed amendment would result in reopening the case. This would delay the proceedings further, possibly requiring recall of witnesses, filing of additional pleadings and re-examination. This would be prejudicial to the defendants who have already completed their evidence and are ready for final arguments.

26. It is observed that if the application is filed before commencement of trial, the court is expected to adopt a liberal approach, particularly when the amendment is essential for adjudicating the real issue. If the application for amendment is



made after commencement of trial, the strict test under the proviso to Order VI Rule 17 CPC must be satisfied. The party must prove that despite Due Diligence, the matter could not have been raised earlier.

27. In view of the above findings, this court is of the opinion that the plaintiffs have not made out sufficient grounds to allow the proposed amendment. The plaintiffs have failed to demonstrate DUE DILIGENCE as required under the proviso to Order VI Rule 17 CPC. The proposed amendment, if allowed, would cause prejudice to the defendants and prolong the already long-pending litigation. Therefore, the application is liable to be dismissed. Therefore, this court answered ***point no.2 in the Negative.***

28. POINT NO.3:- The grounds urged in the present I.A.No.53 are substantially the same as those urged in I.A.No.51. In I.A.No.51, this Court had already held that impleadment of a purchaser is not necessary, since his rights are subject to the doctrine of lis pendens under Section 52 of the Transfer of Property Act. The present attempt to implead the donee under the gift deed also stands on the same footing.

29. Similarly, the present I.A.No.54 is similar of the earlier I.A.No.52, which sought amendment of the plaint. In I.A.No.52,



this Court, after detailed consideration, had rejected the amendment on the ground of want of due diligence. The only distinction now is that the amendment sought in I.A.No.54 is with reference to the donee and for seeking relief against him. However, the nature of the proposed amendment remain identical to those urged in I.A.No.52. Since this Court has already adjudicated such an amendment and found no merit, allowing the present application would result in inconsistent and contradictory orders in the same proceedings.

30. For the above said reasons, I proceed to pass the following;

ORDER

**I.A.No.LIII (I.A.No.53) U/O Order I Rule 10(2)
of CPC and I.A.No.LIV (I.A.No.54) U/O Order
VI Rule 17 of CPC, filed by the plaintiffs is
hereby dismissed with cost of Rs.1,000/-
each.**

(Dictated to the Stenographer directly on computer, corrected and initialed by me and then pronounced in the open court on this day of 16th day of August, 2025.)

(Srinivasa.S.N)
CJ & JMFC., Savanur.

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