



**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 10<sup>th</sup> day of September, 2025**

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

**V/s**

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

**PARTIES IN IA-LV and IA-LVI (IA-55 & IA-56)**

**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:-	<p><b>IA-55:-</b>U/O XVIII Rule 17 R/w Section 151 of the CPC</p> <p><b>IA-56:-</b> U/s.151 of the CPC</p>
ii	Relief sought for :-	<p><b>IA-55:-</b> To set aside the order dated 25-03-2025 and recall of DW-1 for further cross-examination.</p>



		<b>IA-56:-</b> To set aside the order dated 25.03.2025 and thereby reopen the plaintiffs side.
ii	The date on which the application is filed :-	<b>IA-55:-</b> 23-08-2025 <b>IA-56:-</b> 23-08-2025
i	The date on which the objection is filed by different opponents:-	<b>IA-55:-</b> 28-08-2025 <b>IA-56:-</b> 28-08-2025
v	The date on which the order was passed on the said applications :-	10-09-2025

### **ORDER ON IA NO-LV and LVI**

The plaintiff has filed I.A. No.LV under Order XVIII Rule 17 R/w Section 151 of the CPC, praying to set aside the order dated 25.03.2025 and recall of DW-1 for further cross-examination by the plaintiffs and I.A.No.LVI under Section 151 of the CPC praying to set aside the order dated 25.03.2025 and thereby reopen the plaintiffs side enabling them to further cross examine of DW-1, to meet the ends of justice and equity.

**2.** In the accompanying affidavit of the application, the Plaintiff No.18 stated that he know the facts of the case. They have filed this suit for declaration and other reliefs. To avoid repeating the same facts, the contents of the plaint may be treated as part of this affidavit. It is further stated that the case was posted for



further cross-examination of DW-1 on 25.03.2025. On that day, our counsel, who is the President of the Hubballi Bar Association, had to attend a function. Therefore, we filed an application requesting adjournment. But this Hon'ble Court rejected our request and recorded the further cross-examination of DW-1 as nil. Further stated that not cross-examining DW-1 on that day was not intentional or deliberate. It happened only because of the bonafide reason mentioned above. Further stated that they still have important points to bring on record through the further cross-examination of DW-1. Hence, it is just and necessary to set aside the order dated 25.03.2025 and thereby reopen our side enabling us to cross examine DW.1 as otherwise again that will leads multifarious of proceedings and thereby we will be put much loss and injustice and on the contrary no loss prejudice will be caused to the defendant. Therefore, he respectfully pray that this Hon'ble Court may be pleased to allow the application by reopening the case for recall of DW-1 and permit for further cross-examination of DW-1, in the interest of justice and equity.

**3.** The counsel for defendant no.1 and 2 have filed objection to I.A. No.LV and LVI contending that I.A.No.LV and LVI have been filed to recall D.W-1 for further cross examination and to reopen



the case for further cross examination of D.W-1, at the stage of final argument. Both the IA's are filed solely to drag the matter and to employ the delaying tactics there by hindering the delivery of justice. However the Plaintiffs have completely cross examines the D.W-1 and thereafter just to delay the proceeding sought the adjournments and moreover the plaintiffs have not utilized the ample opportunities provided by this Hon'ble Court in earlier occasion to complete the cross examination. Further DW-1 has already been subjected to extensive and repetitive piece-meal cross-examination on multiple occasions spanning over two years:

a) First Phase (April-July 2023)- The plaintiffs sought and obtained 7 adjournments for cross-examination from 20 April 2023, to 15 July 2023, and ultimately, the cross-examination was taken as no cross due to their failure to proceed in all the 7 instances. On 15-07-2023, the stage was set for FINAL ARGUMENTS as further adjournment was denied.

b) On 04-09-2023, DW-1 was examined in relation to certain additional documents produced, which were duly marked as exhibits. This Hon'ble Court specifically granted liberty to the plaintiffs to cross-examine DW-1 only with respect to the said documents marked on 04-09-2023.

c) Second Phase (September 2024 - February 2025)- Despite the



limited scope of cross-examination being confined to the documents marked on 04-09-2023, this Hon'ble Court, in the interest of justice, permitted the plaintiffs to cross-examine DW-1 on the entire matter. However, the plaintiffs misused this indulgence by seeking as many as seven adjournments, thereby subjecting DW-1 to fragmented and piece-meal cross-examination on seven different occasions. On the eighth occasion, when yet another adjournment was sought, this Hon'ble Court rightly recorded the further cross-examination of D.W-1 as nil, holding that DW-1 had already been sufficiently and extensively cross-examined. The stage was set for Final Arguments for second time. Between Sept 2024 to February 2025, the total length of cross examination ran into 39 pages.

d) Third Phase (March 2025)- Upon rejection of the plaintiffs request for further adjournment on 05-02-2025, the plaintiffs thereafter filed I.A.No.46 seeking recall of D.W.1 for further cross-examination. On 17-03-2025, this Hon'ble Court, while allowing I.A.No.46, imposed a specific condition that the plaintiffs shall complete the cross-examination of DW-1 within one hearing without seeking any adjournment. In deliberate breach of this order, the plaintiffs, instead of complying, filed I.A.No.48 on 25-03-2025 seeking a further adjournment of ten days. The said



application was rightly rejected with costs. Thus, despite the indulgence granted under I.A.No.46, the plaintiffs failed to complete the cross-examination of DW1, clearly demonstrating abuse of the liberty granted by this Court.

**4.** The Hon'ble High Court of Karnataka, in W.P. No. 104426/2023, vide order dated 20-07-2023, directed disposal of the present suit within six months. Thereafter on 04-06-2024 granted a further extension of four months, on 04-11-2024 once again, another four months extension was granted. Further on 23-06-2025 for the fourth time, the Hon'ble High Court reluctantly granted an extension of six months, recording the persistent pendency. Despite such indulgence, the plaintiffs, instead of respecting the Hon'ble High Court's repeated directions, continue to seek recall of DW-1 even now, when the suit is posted for Final Arguments for the third time.

**5.** This Hon'ble Court has taken all necessary measures to expedite the adjudication of the suit, granting next date of hearings on a day to day basis to ensure the timely dispensation of justice. This Hon'ble Court has made every possible effort and has gone beyond its ordinary course to uphold the principles of justice and to remain compliant with the directives of the Hon'ble



High Court by listing the matter on day to day basis despite extensive work load. However, the plaintiffs have consistently engaged in deliberate tactics aimed at delaying the adjudication of the suit, thereby obstructing the efficient disposal of the matter.

**6.** The reason cited by the plaintiffs that their counsel had function as president of Hubballi Bar Association is neither a valid nor compelling reason for recall of witness, especially when the Court had specifically directed completion of cross-examination without adjournment. The plaintiffs conduct throughout these proceedings demonstrates a flagrant disregard for the dignity and authority of this Hon'ble Court, amounting to a systematic abuse of procedure designed to delay and obstruct justice. Their persistent pattern of seeking adjournments, filing frivolous interlocutory applications, and willfully violating express court directions reveals not negligence but a calculated attempt to weaponize the judicial process against the defendants and this Court itself. This Hon'ble Court has already recorded findings to this effect in its orders dated 11-07-2023 and 13-07-2023, where costs were imposed for such dilatory conduct. Yet, even after this, vide order on I.A. No. 46 dated 17-03-2025, granted a final indulgence with the explicit condition to complete DW-1's cross-



examination in a single sitting, the plaintiffs brazenly flouted the order within eight days by filing I.A.No.48 seeking further adjournment

7. While the plaintiffs claim no prejudice to defendants, the continuous delay in a 15-year-old case causes substantial prejudice to the defendants who are entitled to expeditious disposal of the matter. This Court must now exercise its inherent powers to prevent further degradation of judicial dignity and put an immediate end to this mockery of legal proceedings. Hence he prayed to reject the applications with compensatory costs.

8. Heard both sides. Perused the applications and the objections.

9. The points arise for my consideration is as follows,

**POINTS**

1. **Whether the plaintiffs have made out sufficient grounds to allow the I.A.No-LV and LVI ?**

2. **What order?**

10. My findings are as follows,

**Point No-1 : In the Negative.**

**Point No-2 : As per the following :-**



### **REASONS**

**11. 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. These applications have been filed at the stage of arguments.

**12.** The plaintiffs contended that on 25.03.2025 the case was posted for further cross-examination of DW-1. On that day, their counsel, being the President of the Hubballi Bar Association, had to attend a function and hence an adjournment application was filed. Since the same was rejected, the Court recorded the cross-examination of DW-1 as nil. It is contended that the failure to cross-examine was not deliberate but due to a bonafide reason, and that important points still remain to be elicited from DW-1. It is further stated that if DW-1 is not recalled and the case is not reopened, serious injustice will be caused to the plaintiffs, whereas no prejudice will be caused to the defendants.

**13.** Per contra, the learned counsel for Defendants No.1 & 2 has filed objections opposing both the IAs. It is contended that the



plaintiffs have already cross-examined DW-1 extensively on multiple occasions within a span of two years. The defendants point out that DW-1's cross-examination has been conducted resulting in 39 pages, that the plaintiffs were repeatedly indulged with adjournments. The earlier applications for recall of DW-1 i.e., I.A. No.46 were already allowed subject to strict condition to complete cross-examination in one hearing. Instead of complying, the plaintiffs again sought adjournment by filing I.A.No.48, which was rejected. It is further pointed out that despite the Hon'ble High Court's repeated directions in W.P. No.104426/2023 for expeditious disposal, the plaintiffs continue to prolong the matter.

**14.** The defendant no.1 and 2 counsel relied on the decisions of  
**a) Hon'ble Supreme Court of India in K.K. Velusamy v. N. Palanisamy (2011) 11 SCC 275 held that:**

*"Order 18, Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination. The power is discretionary and should be used sparingly in appropriate cases to enable Court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined."*



b) **Hon'ble Supreme Court of India in Rahul S. Shah v. Jinendra Kumar Gandhi**, has condemned such tactics, holding that remedies meant to prevent injustice are being misused to cause injustice.

c) **In State of Karnataka v. L. Muniswamy**, the Court cautioned against litigants misusing the machinery of justice as a weapon rather than a shield.

**15.** I have carefully considered the submissions of both sides and perused the records. It is evident that DW-1 has already been cross-examined on several occasions. The record discloses that the plaintiffs were earlier given liberty not only to cross-examine DW-1 with reference to documents marked on 04.09.2023 but in the interest of justice, even allowed to cross-examine the DW-1 on the entire matter. In spite of this, the plaintiffs sought adjournments repeatedly, resulting in prolonging the cross-examination on several dates. The record further shows that the liberty granted by this Court in I.A.No.46 was subject to a clear condition that cross-examination must be completed in one hearing but plaintiffs once again failed to comply. However, plaintiffs again filed I.A.No.48 seeking further adjournment, which was rejected. The explanation now offered that counsel had to



attend a Bar Association function, cannot be treated as a valid or sufficient cause. When liberty was granted with conditions, strict compliance was expected.

**16.** It is also relevant to note that this suit is of the year 2010 and is already more than 15 years old. The Hon'ble High Court has issued strict directions for its expeditious disposal, which this Court is bound to comply with. Entertaining such repeated applications would frustrate those directions and cause further delay in adjudicating the case. Having regard to the above circumstances, this court is of the considered view that the plaintiffs have not shown any valid or sufficient cause to justify recall of DW-1 or reopening of their side. On the contrary, their conduct reveals a consistent pattern of delaying the matter. Entertaining these applications would not serve the ends of justice but would amount to permitting further misuse of the judicial process. In view of the aforesaid reasoning and discussions, it is clear that the applications filed by the plaintiffs deserves to be rejected. Accordingly, I answered ***Point No.1 in the Negative.***

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



**ORDER**

The I.A.No.LV filed under Order XVIII Rule 17 R/w Section 151 of the CPC and I.A.No.LVI filed under Section 151 of the CPC, by the plaintiffs, are hereby rejected with cost of Rs.1,500/- each.

Out of said cost, Rs.2,000/- is to be paid to the TLSC, Savanur and remaining cost of Rs.1,000/- is to be paid to the defendant no.1 and 2.

*(Dictated to the stenographer on computer, corrected, signed and then pronounced by me in the Open Court on this the 10<sup>th</sup> day of September, 2025)*

**(Srinivasa.S.N)**  
**Civil Judge and JMFC,**  
**Savanur**