



**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 8<sup>th</sup> day of December, 2025**

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

**V/s**

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

**PARTIES IN IA-LIX (I.A. No.59) and IA-LX (I.A. No.60)**

**Applicants** : Sri.Mustaqkhan S/o Fairozkhan Biradar  
(Defendant No.1 & another  
& 2)

**V/s**

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

i	Provision under which the application is filed:-	<b>IA-59:-</b> U/s.151 of the CPC  <b>IA-60:-</b> U/O XVIII Rule 17 R/w Section 151 of the CPC
ii	Relief sought for :-	<b>IA-59:-</b> To set aside the order dated 31-10-2025 and consequently reopen the defendants evidence for the



		purpose of further cross-examination of PW-1 <b>IA-60:-</b> To recall PW-1 for further cross-examination by defendants No.1 and 2.
ii	The date on which the application is filed :-	<b>IA-59:-</b> 17-11-2025 <b>IA-60:-</b> 17-11-2025
i	The date on which the objection is filed by different opponents:-	<b>IA-59:-</b> 20-11-2025 <b>IA-60:-</b> 20-11-2025
v	The date on which the order was passed on the said applications :-	08-12-2025

**ORDER ON I.A.No.LIX (I.A. No.59) and I.A.No.LX (I.A.No.60)**

The defendant no.1 and 2 have filed I.A.No.LIX (I.A. No.59) under Section 151 CPC praying to set aside the order dated 31-10-2025 and consequently reopen the defendants evidence for the purpose of further cross-examination of PW-1 and I.A.No.LX (I.A.No.60) under Order XVIII Rule 17 read with Section 151 CPC praying to recall PW-1 for further cross-examination by defendants No.1 and 2, in the interest of justice and equity.

**2.** In the accompanying affidavit of the applications, the defendant no.2 has stated that he know the facts of the case. He stated that during the cross-examination of DW-1, Ex.P.112 to 136 are got marked. It is stated that the above documents were



not produced or relied upon during the evidence-in-chief of the Plaintiffs, and therefore, the Defendants did not had a an opportunity to cross-examine PW-1 in respect of these documents at that stage. During the earlier cross-examination of PW-1, i.e., on 11-04-2023, the Defendants were constrained to conclude the cross-examination on the same day, without there being given an adequate opportunity to cover all the relevant issues. This Hon'ble Court denied the Defendants 1 and 2, the opportunity to cross-examine PW-1 further when they requested an adjournment to the next day. The Plaintiffs were provided ample and repeated opportunities to cross-examine DW-1. The Defendants, however, were afforded no such opportunity when requested for. The Plaintiffs further filed I.A. No.55 to recall the cross-examination of DW-1, which was rightly rejected by this Hon'ble Court. Plaintiffs challenged the order in I.A.No.55 before Hon'ble High Court of Karnataka in W.P. No.107791/2025. On 25-10-2025, the Hon'ble High Court, in the said W.P, while finding no infirmity in the order of this Court, nevertheless in the interest of justice and equity, granted indulgence to the Plaintiffs. The Plaintiffs further cross-examined DW-1 for the eighth time. When such indulgence has been extended to the Plaintiffs in the matter of cross-examination, the Defendants, on the same principle of equity, fairness, and



parity of opportunity, are equally entitled to recall and further cross-examine PW-1, particularly in light of the new exhibits marked during the course of cross-examination of PW-1 and also on uncovered facts of the case. No prejudice or harm will be caused to the Plaintiffs if PW-1 is recalled for further cross-examination, as the process is necessary for ensuring a fair trial and for testing the veracity of the witness with respect to the documents subsequently marked. If the Present application is not allowed, the Defendants will be put to irreparable loss and hardship, as they will be denied a fair opportunity to cross-examine PW-1 on material aspects concerning the new exhibits relied upon by the Plaintiffs and uncovered facts. Therefore, he pray that this Hon'ble Court be pleased to pass the order reopen the case for defendans evidence, to Recall PW-1 for the purpose of further cross-examination by the Defendants 1 & 2, in the interest of justice and equity.

**3.** The counsel for plaintiffs have filed objection to I.A. No.60. The plaintiffs counsel has filed memo submitting that they have filed objection to I.A.No.60 and same is to be treated as objection to I.A.No.59. They contended that the application is false, frivolous, vexatious and same is neither tenable in law nor on the



facts of the case. They denied the entire averments of the affidavits. They contended that PW-1 again cannot be recalled for further cross-examination by the Defendant No. 1 and 2 on the confronted documents. The documents relied by the Plaintiffs during the course of cross-examination of DW-1 are the documents of defendant no.1 only. They are trying to fill up the lacunas in their pleadings. Hence, they pray to reject the applications with cost.

4. Heard defendant no.1 and 2 counsel. The plaintiff counsel filed written arguments on I.A.No.59 and 60. Perused the applications and the objections.

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

#### **POINTS**

1. **Whether the defendant no.1 and 2 have made out sufficient grounds to allow the I.A.No-LIX and LX ?**

2. **What order?**

6. My findings are as follows,

**Point No-1 : Partly in the affirmative.**

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

#### **REASONS**

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 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.

**8.** The defendants No.1 and 2 contended that while the matter was at the stage of cross-examination of DW-1, certain documents have been marked as exhibits on behalf of the plaintiffs, which were admittedly not produced earlier during chief-examination of PW-1. It is therefore contended that the defendants did not have opportunity to confront PW-1 regarding those documents on the earlier occasion. It is further submitted that defendants no.1 and 2 were constrained to conclude the cross-examination of PW-1 on one date only (11-04-2023) and request for continuation was not considered. The defendants also point out that plaintiffs were granted repeated indulgence for cross-examination of DW-1 including by virtue of the order of the Hon'ble High Court and on parity and principles of fair trial, defendants are entitled to further cross-examination of PW-1. It is further stated that if PW-1 is not recalled further cross examination and the case is not reopened, serious injustice will be caused to the defendants, whereas no prejudice will be caused to the plaintiffs.



**9.** The plaintiffs opposes the applications contending that the attempt is only to fill up lacuna. It is also contended that the documents confronted to DW-1 are defendants own documents and do not require recall of PW-1. Henc prays to reject the application.

**10.** I have carefully considered the submissions of both sides and perused the records. It is not in dispute that certain documents have been marked as exhibits during the course of cross-examination of DW-1 and that such documents were not produced when the plaintiff was examined in chief-examination. The question is whether, in the facts and circumstances of the case, limited recall of PW-1 is necessary for a just and proper decision of the matter. The power of recall under Order XVII Rule 17 CPC and the inherent powers under Section 151 CPC are discretionary powers to be exercised to meet the ends of justice and to ensure a fair opportunity to both sides. Courts have consistently held that when documents come on record subsequent to the examination of a witness, recall of such witness for a limited purpose can be permitted so long as such recall is not intended to fill up lacuna but is necessary for elucidation of material facts.



**11.** In the case on hand, the main grievance of the defendants no.1 and 2 is that certain documents which are now relied upon were not available for confrontation when PW-1 was examined. The defendants therefore cannot be said to be seeking recall merely to fill up lacuna but to enable proper confrontation on material documents that subsequently entered the record. 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 repeated interlocutory applications at this stage would undoubtedly result in further delay and frustrate the directions issued by the Hon'ble High Court. However, at the same time, the Court is equally duty bound to ensure that the parties are afforded adequate opportunity to prove their case and that no party suffers prejudice which may ultimately affect the merits of the case. Therefore, a limited recall strictly confined to the documents subsequently marked, and subject to stringent conditions including restriction of scope, payment of costs would meet the ends of justice without causing avoidable delay.



**12.** The apprehension expressed by the plaintiffs that the defendants are attempting to fill up lacuna can be sufficiently addressed by restricting the scope of further cross-examination only to the documents marked subsequently and by making it clear that no further questions shall be permitted beyond that scope. In view of the above discussion, this Court is of the opinion that a limited recall, subject to conditions, would serve the cause of justice without granting an unregulated opportunity or further prolonging the proceedings. In view of the aforesaid reasoning and discussions, it is clear that the applications filed by the defendants no.1 and 2 deserves to be allowed with conditions. Accordingly, I answered ***Point No.1 in the partly affirmative.***

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

### **ORDER**

The I.A.No.LIX (I.A. No.59) under Section 151 CPC and I.A.No.LX (I.A.No.60) under Order XVIII Rule 17 read with Section 151 CPC, by the defendant no.1 and 2, are hereby allowed on cost of Rs.750/- each, subject to the following conditions that:

(a) PW-1 shall be recalled only for the limited purpose of cross-examination in respect of the



documents which were marked subsequently during the cross-examination of DW-1.

(b) The further cross-examination of PW-1 shall be completed on the next date of hearing and no adjournment shall be sought by the defendants no.1 and 2 for any reason whatsoever.

(c) The defendants no.1 and 2 shall pay costs of Rs.1500/- to the plaintiffs on or before commencement of such further cross-examination.

(d) Since the matter is of 2010, plaintiffs are hereby directed to keep PW-1 present on the next date of hearing without fail for further cross-examination.

*(Dictated to the stenographer on computer, corrected, signed and then pronounced by me in the Open Court on this the 8<sup>th</sup> day of December, 2025)*

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