



**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 23rd day of January, 2026

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

V/s

Defendants : Smt. Shahajadbegum M Biradar & others

PARTIES IN IA- LXI (IA-61) and IA-LXII (IA-62)

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>IA-61:- U/s.151 of CPC</p> <p>IA-62:- U/O. XVI Rule 1 and 2 read with Section 151 of CPC</p>
ii	Relief sought for :-	<p>IIA-61:- To reopen the case for leading further plaintiff's evidence</p> <p>IA-62:- To issue witness summons to the Deputy Commissioner, Dharwad District, In-charge of Court of Wards, Savanur, to examine</p>



		him as a witness.
ii	The date on which the application is filed :-	IA-61:- 20-11-2025 IA-62:- 20-11-2025
i	The date on which the objection is filed by different opponents:-	IA-61:- 17-01-2026 IA-62:- 17-01-2026
v	The date on which the order was passed on the said applications :-	23-01-2026

ORDER ON I.A.No.LXI (I.A. No.61) and I.A.No.LXII (I.A.No.62)

The plaintiffs have filed I.A.No.LXI under Section 151 of CPC seeking to reopen the case for leading further plaintiff evidence and I.A.No.LXII is filed under Order XVI Rule 1 and 2 read with Section 151 of CPC seeking to issue witness summons to the Deputy Commissioner, Dharwad District, In-charge of Court of Wards, Savanur, to examine him as a witness, in the interest of justice and equity.

2. In the accompanying affidavit of the applications, the plaintiff no.10 has stated that the Defendant No.1 is claiming to have taken possession of certain suit properties and has also alienated some of them, whereas Defendants No.4 and 5 in their written statement have contended that possession of the suit schedule properties was not delivered to Defendant No.1. It is



further stated that the plaintiffs were under the impression that Defendant No.5 would enter the witness box and they could elicit admissions, but since he has not entered the witness box, it has become necessary to summon the Deputy Commissioner, Dharwad, In-charge of Court of Wards, Savanur, to bring on record material facts relating to possession. Hence, reopening of the case and summoning of the said witness is sought. Hence, it is just and necessary to issue witness summons to the proposed witness to give his evidence in the above case, as otherwise the plaintiffs will be put too much loss and injustice. On the contrary no loss or prejudice will be caused to the defendant no. 1 and 2. Hence prays to allow the applications.

3. The counsel for defendant no.1 and 2 have filed objection to I.A.No.61 and 62. He contended that the applications are filed only to delay the proceedings. The proposed evidence is wholly irrelevant to the pleadings and issues in the suit. There is no issue relates to delivery of possession by the Court of Wards. The suit is essentially and primarily for declaration of legal heirship and declaration of fraud in earlier decree. It is further contended that the plaintiffs themselves earlier approached the Hon'ble High Court of Karnataka in W.P. No.82837/2013 and W.A.



No.100371/2014 seeking recovery of possession and the same were dismissed holding that possession had already been delivered to Defendant No.1. This Hon'ble Court, in its order under I.A. No. 45, has already held and recorded that Defendants No.1 and 2 are in actual possession of the suit properties and that no injunction can be issued against them with regard to alienation of the suit properties. Therefore summoning the Court of Wards authority is unnecessary, impermissible and an abuse of process. Hence prays to reject the applications with costs.

4. Heard the arguments of plaintiffs and defendants counsel. The plaintiffs and the defendant no.1 and 2 counsels filed their respective written arguments on I.A.No.61 and 62. Perused the applications and the objections.

5. 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-LXI and LXII ?**

2. **What order?**

6. My findings are as follows,

Point No-1 : In the Negative.

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 final arguments.

8. The present suit is primarily for declaratory reliefs and there is no prayer for recovery of possession of suit properties nor any relief sought against Defendants No.4 and 5 regarding delivery or non-delivery of possession.

9. The issues framed in the suit are confined to legal heirship, alleged fraud in obtaining decree in O.S. No.171/1984, and) consequential relief restraining Defendant No.1 from claiming to be legal heir of deceased Nawazkhatu, along with other ancillary reliefs. None of the issues pertains to delivery of possession by the Court of Wards.

10. It is a settled principle of law that evidence can be permitted only on facts which are in issue arising from pleadings. The scope of the trial cannot be enlarged beyond the pleadings and framed



issues by permitting parties to adduce evidence on collateral or extraneous matters. Reopening of evidence and summoning of witnesses cannot be allowed to enable a party to build up a new case or to travel beyond the scope of the suit.

11. In the present case, the entire foundation of the applications is based on the question whether possession of suit properties was delivered by the Court of Wards to Defendant No.1. However, such fact is not determine the controversies involved in this suit. Even otherwise, records disclose that the plaintiffs had earlier approached the Hon'ble High Court in W.P. No.82837/2013 and W.A. No.100371/2014 and the Hon'ble High Court has recorded findings that possession had been delivered to Defendant No.1 pursuant to withdrawal of superintendence under the Bombay Court of Wards Act. The said proceedings are already part of the evidence, and therefore summoning the Deputy Commissioner to depose on the same aspect would be unnecessary and repetitive.

12. Reopening of evidence is not a matter of right. Such discretion can be exercised only when the Court is satisfied that additional evidence is essential for a just decision. The plaintiffs were aware of the pleadings of Defendants No.4 and 5 from the beginning, yet they closed their evidence without summoning any



official from the Court of Wards. The explanation that they expected Defendant No.5 to enter the witness box cannot be accepted as sufficient cause to reopen the case.

13. It is observed that the suit is of the year 2010 and after closure of evidence, the matter is posted for final arguments. Repeated filing of interlocutory applications are delaying the proceedings. Having regard to the nature of the suit, the issues framed, and the stage of the proceedings, this Court is of the considered view that the proposed evidence is neither relevant nor necessary for effective adjudication of the real controversies involved in the suit. Hence, both the applications are deserved to be rejected. Accordingly, this court answered ***Point No.1 in the Negative.***

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

ORDER

The I.A.No.LXI (I.A.No.61) filed under Section 151 of CPC and I.A.No.LXII (I.A.No.62) filed under Order XVI Rule 1 and 2 read with Section 151 of CPC are hereby rejected with



cost of Rs.500/- each. Said cost is to be paid
to the TLSC, Savanur.

*(Dictated to the stenographer directly on computer, corrected, signed and then pronounced by me
in the Open Court on this the 23rd day of January, 2026)*

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