

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

PRESENT : **Sri. Shreyansh Doddamani,**
B.Com., LL.B.,(spl)
Civil Judge and JMFC.,
Savanur.

ORIGINAL SUIT NO. 118/2010
Dated this 23rd day of May, 2023

PLAINTIFFS: Dilerkhan S/o Abdulkarimkhan Biradar,
Age : 25 years, Occ : Agriculture,
R/o : Old Bungalow, Savanur,
Tq : Savanur, Dist : Haveri and others.

Vs

DEFENDANTS: Shahazad Begum @ Rahamatkhatib
W/o Mustaqkhan Biradar, Age : 60 years,
Occ : Household work, R/o : Kamalabangadi
Street, Savanur, Tq :Savanur, Dist : Haveri
and others.

IA No.29

Applicants: Dilerkhan S/o Abdulkarimkhan Biradar
(Plaintiffs) and others.

Vs

Opponents: Shahazad Begum @ Rahamatkhatib
(Defendants) W/o Mustaqkhan Biradar and another.

ORDER ON IA NO.29

The plaintiffs have filed this application U/o 6 Rule 17 of Civil Procedure Code for seeking permission to carry out the amendment of plaint as per proposed amendment.

2. The plaintiff No.7 by name Majidkhan S/o Dilerkhan Biradar has sworn in an affidavit accompanying to the IA No.29. Wherein he stated that after his cross-examination he had perused the genealogy annexed to the plaint and after verification he came to know that in the genealogy the name of daughter of Husenkhatu was wrongly appeared and the name of the mother of defendant No.1 was not appeared. Due to oversight and typographical error the name of daughter of Husenkhatu was wrongly appeared as Rehamabi instead of Rahimanbi and oversightly name of defendant No.1 not appeared. It was neither intentional nor deliberate. Hence, he prayed to allow the application.

3. The defendants No.1 and 2 have filed objection to IA No.29 by contending that the application is false frivolous and filed for the purpose of dragging the proceedings. The proposed

amendment serial No.2 leads to insertion of new facts in genealogy which is impermissible. The proposed amendment is nothing do with real question in controversy. If the proposed amendment is not permitted no injury or loss will be caused to plaintiffs. On contrary if allow the defendant No.1 and 2 will incurred irreparable loss which cannot be compensated by any manner. The defendant No.1 and 2 have crossed 75 years of age. The suit in OS No.171/1984 reached its finality in the year 2000 after 20 years. The plaintiffs have filed this suit in 2010. The suit is more than 13 years old. To drag the proceedings only the plaintiffs have filed this application. Hence, they prayed to reject the application.

4. Heard both the sides and perused the materials on record.
5. The following points arise for my consideration:

POINTS

- 1) **Whether the proposed amendment is necessary to determination of real controversy between the parties?**
- 2) **Whether the plaintiffs have explained the due diligence?**
- 3) **What order ?**

6. My answers to the above points are as follows:

Point No.1 & 2: In the Affirmative.

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

:-REASONS:-

7. **Point No.1 & 2 :-** They have filed this application when it was posted for defendants evidence.

8. The plaintiffs have filed this suit for declaration of status and to declare that the defendant no.1 and 2 obtained the decree in OS No.171/1984 by misrepresentation and playing fraud to the court.

9. The main prayer of the plaintiffs is that they are also relatives of the deceased Navazkhatu W/o Dilerkhan Nawab of Savanur. But the defendant No.1 and 2 behind their back by suppressing real facts and mis-representation without impleading them as parties obtained decree in OS No.171/1984. The defendant No.1 and 2 seriously disputed the relationship with defendant No.1 and 2 and also disputed the genealogy accompanying with plaint. According to the defendant No.1 and 2 plaintiffs are not relatives of deceased Nawazkhatu W/o

Delerkhan Biradar. The plaintiffs filed this application based on the question raised in the cross-examination of PW.1.

10. The plaintiffs in the affidavit accompanying with this application clearly stated that after cross-examination when they verified the genealogy they came to know that the error committed as per proposed amendment. Seeking permission for the amendment of name of daughter of Husenkhatu which was wrongly appeared as Rehamabi instead of Rehamanbi is appears to be typographical error. Hence, it can be permitted.

11. The plaintiffs wants to adding the name of mother of defendant No.1. In the cross-examination of PW.1 the advocate for defendant No.1 and 2 specifically suggested this question to the PW-1. They have admitted that the name of defendant No.1 appeared in the genealogy but the mother name of defendant No.1 was not appeared, So it is not serious error. It is not considered as new fact. Because the name of defendant No.1 already appeared after the name of his father or grandfather. Therefore, inserted the name of mother of defendant No.1 is not insertion of new fact. If allow the application the nature of the suit will not change. And cause of action also will not change. If

allow the application no loss or hardship will cause to the defendants. The said proposed amendment is only typographical error. Hence, it can be permitted at any stage subject to explaining the due diligence. In the present case the plaintiffs clearly stated that after cross-examination of PW-1 only it came to their knowledge. Hence, it can be accepted. The proposed amendment is necessary. Therefore, this court has answered **point No.1 and 2 in the Affirmative.**

12. Point No.3:- For the foregoing reasons, I proceed to pass the following;

ORDER

**The I.A. No.29 filed by the plaintiff
U/o 6 Rule 17 of Code of Civil
Procedure is here by allowed.**

**The plaintiff has permitted to
amend the plaint as per proposed
amendment as per Rule 18.**

No order as to cost.

(Dictated to the stenographer, transcribed and typed by her, corrected, signed and then pronounced by me in the Open Court on this the 23rd day of May 2023)

CJ & JMFC., Savanur.

