



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO.106223 OF 2025 (GM-CPC)

BETWEEN:

SRI MAJIDKHAN
S/O. AHMEDKHAN BIRADAR,
AGED ABOUT 58 YEARS
R/O. SAVANUR, TALUK SAVANUR
HAVERI DISTRICT-581118.

...PETITIONER

(BY SRI. SHARATH P.HANAMARADDI, ADVOCATE)

AND:

1. SMT. SHAHJADBEGUM
W/O MUSTAQKHAN BIRADAR
AGED ABOUT 75 YEARS
R/AT KAMALBANGADI ONI
SAVANUR, TALUK SAVANUR
HAVERI DISTRICT-581118.

2. SRI. MUSTAQKHAN
S/O FIROZKHAN BIRADAR
AGED ABOUT 80 YEARS
R/AT KAMAL BANGADI ONI
SAVANUR, TALUK SAVANUR
HAVERI DISTRICT-581118.

3. THE STATE OF KARNATAKA
REP BY DEPUTY COMMISSIONER,
HAVERI, DISTRICT HAVERI-581110.





4. THE ASSISTANT COMMISSIONER
SAVANUR, SUB DIVISION,
TALUK SAVANUR, DISTRICT HAVERI-581118.

5. THE DEPUTY COMMISSIONER,
DHARWAD, (INCHARGE OF COURT OF WARDS)
DIST. DHARWAD-580001.

6. THE UPPER DEPUTY COMMISSIONER
DHARWAD, DIST. DHARWAD-580001.

7. THE TAHASILDAR
SAVANUR, TALUK SAVANUR,
DISTRICT HAVERI-581118.

8. SMT. ZAKIRA BEGUM
W/O REHMANKHAN AFRIDI
AGED ABOUT 61 YEARS
R/AT HONNALLI, TALUK DAVANGERI,
DIST DEVANGERI-577217.

9. SMT. MAZIRA BEGUM
W/O ABDULKARIM BIRADAR
AGED ABOUT 59 YEARS
R/AT SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

10. SMT. HAZIRA BEGUM
W/O ABDULKARIM BIRADAR
AGED ABOUT 59 YEARS
R/AT SAVANUR, SAVANUR TALUK
HAVERI DISTRICT- 581118.

11. SMT. KUBRA BEGUM
W/O TABREZKHAN BIRADAR,
AGE ABOUT 50 YEARS
R/AT SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

12. SMT. SOGRA BEGUM
W/O AFZALKHAN BIRADAR,



AGED ABOUT 47 YEARS
R/AT BELAGAVI, DIST BELAGAVI-590001.

13. AMADI BIDI
S/O MOHAMMED MUNIRKHA KITTUR
AGED ABOUT 45 YEARS
R/AT DHARWAD, DIST DHARWAD-580001.

14. AMIRABI BARKATHAN
AGED ABOUT 40 YEARS
R/AT RANEBENNUR, DIST HAVERI-581115.

15. SMT. SALEHA BEGUM
W/O FAYAZKHAN BIRADAR
AGED ABOUT 56 YEARS
R/AT HUBBALLI, DIST DHARWAD-580020.

16. SMT. SALMA BEGUM
W/O BARKAT FARUQI
AGED ABOUT 53 YEARS
R/AT SAVANUR, TALUK SAVANUR
DIST HAVERI- 581118.

SMT. SABERA BEGUM
W/O BARKAT FARUQI
(SINCE DECEASED BY HER L.RS)

17. SRI NADEEM
S/O BARKATALI FARUQI
AGED ABOUT 52 YEARS
R/AT NADAF BUILDING,
OPP KHADI GRAMODYOG,
BENGERI ROAD, KESHWAPUR,
HUBBALLI-580023.

18. SRI PARAVEZ
S/O BARKATALI FARUQI
AGED ABOUT 50 YEARS
R/AT NADAF BUILDING,
OPP KHADI GRAMODYOG,
BENGERI ROAD, KESHWAPUR,



HUBBALLI-580023.

19. SMT. NEELOOFAR
W/O ASLAM BIJAPURI
AGED ABOUT 48 YEARS
R/AT SHIVABASAVA NAGAR,
BELAGAVI-590010.

20. SMT. FARIDA BEGUM
W/O MOHAMMEDKHAN BIRADAR
AGED ABOUT 58 YEARS
R/AT HUBBALLI-580001.

21. SMT. ASIYA BEGUM
W/O MAINODDIN MANSABADAR
AGED ABOUT 65 YEARS
R/AT HUBBALLI-580001.

22. SMT. RAZIYA BEGUM
W/O MOHEMMEDGOUS SOUDAGAR
AGED ABOUT 65 YEARS
R/AT BELAGAVI-590001.

23. SMT. TEHARA BEGUM
W/O AHMEDKHAN PATHAN
AGED ABOUT 61 YEARS
R/AT SAVANUR, TALUK SAVANUR,
DIST HAVERI-581118.

24. SMT. ZIA SULTANA BEGUM
W/O FAQRUDDIN SAYED
AGED ABOUT 57 YEARS
R/AT BELAGAVI-590001.

25. SMT. SAHEDA BEGUM
W/O SHERKHAN SOUDAGHAR
AGED ABOUT 56 YEARS
R/AT BELAGAVI-590001.

26. SMT. SALMA BEGUM
W/O IBRAHIM QUADRI



AGED ABOUT 54 YEARS
R/AT BELAGAVI-590001.

27. SRI JAGADEESH
S/O MAHARUDRAPPA SAIBANNAVAR
AGED ABOUT 49 YEARS
R/AT KORIPETH, SAVANUR,
TALUK SAVANUR, DIST HAVERI-581118.

28. SRI BASAVARAJ
S/O MAHARUDRAPPA SAIBANNAVAR
AGED ABOUT 53 YEARS
R/AT KORIPETH, SAVANUR,
TALUK SAVANUR, DIST HAVERI-581118.

29. SRI RAVISHANKAR
S/O LATE PUNDALIKASA HABIB
AGED ABOUT 53 YEARS
R/AT J.C. NAGAR, NEAR
TOWN HALL, 4TH CROSS,
HUBBALLI-580020.

30. SRI GOVARDHAN
S/O LATE PUNDALIKASA HABIB
AGED ABOUT 53 YEARS
R/AT J.C. NAGAR, NEAR
TOWN HALL, 4TH CROSS,
HUBBALLI-580020.

31. SMT. PATMAVADI @ PADMAVATIBAI
W/O ANANTARAJ HARARE
AGED ABOUT 86 YEARS
R/AT 'C' 5346, MAVEER GALLI,
HUBBALLI-580020.

32. SRI. DILERKHAN
S/O ABDUL KARIM KHAN BIRADAR
AGED ABOUT 40 YEARS
R/AT OLD BUNGALOW,
SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.



33. SRI. FAZAL MOHAMMEDKHAN
S/O ABDUL KARIM KHAN BIRADAR
AGED ABOUT 38 YEARS
R/AT OLD BUNGALOW,
SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

34. SRI ABDUL RAHEEMKHAN
S/O ABDUL RASHID KHAN BIRADAR
AGED ABOUT 65 YEARS
R/AT OLD BUNGALOW,
SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

35. SRI MAHABOOBALIKHAN
S/O DILER KHAN BIRADAR
AGED ABOUT 80 YEARS
R/AT OLD BUNGALOW,
SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

SRI VALI MOHAMMEDKHAN
S/O DILER KHAN BIRADAR
(SINCE DECEASED BY HIS L.RS)

36. SMT. REHANABEGUM
W/O WALI MOHAMMED KHAN BIRADAR
AGED ABOUT 73 YEARS
R/AT MAVUR CROSS,
SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

37. SMT. FARHAT BEGUM
W/O MAQSOOD AHMED BIJAPUR
AGE ABOUT 52 YEARS
R/AT H.NO.67, 5TH CROSS ROAD,
SIMLA NAGAR, GUDIHAL ROAD,
HUBBALLI- 580024.

38. SRI FIRAJKHAN
S/O WALI MOHAMMED KHAN BIRADAR



AGE ABOUT 53 YEARS
R/AT MAVUR CROSS,
SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

39. SRI ATAMOHAMMED KHAN
S/O WALI MOHAMMED KHAN BIRADAR
AGE ABOUT 51 YEARS
R/AT MAVUR CROSS,
SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

40. SMT. FAIZANA BEGUM
W/O SAJEED AHMED BIJAPUR
AGE ABOUT 53 YEARS
R/AT H.NO.67, 5TH CROSS ROAD,
SIMLA NAGAR, GUDIHALL ROAD,
HUBBALLI-580024.

41. SRI NIYAZ MOHAMMEDKHAN
S/O DILER KHAN BIRADAR
AGED ABOUT 69 YEARS
R/AT OLD BUNGALOW,
SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

42. SRI MAJIDKHAN
S/O DILERKHAN BIRADAR
AGED ABOUT 65 YEARS
R/AT OLD BUNGALOW,
SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

43. SRI TABREZKHAN
S/O KHASAMKHAN BIRADAR
AGED ABOUT 71 YEARS
R/AT OLD MAHAL, COURT ROAD,
SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

SRI VALIMOHAMMEDKHAN



S/O KHASAMKHAN BIRADAR
(SINCE DECEASED BY HIS L.RS)

44. SRI ABDULRAHIMAN
S/O VALIMOHAMEDKHAN BIRADAR
AGED ABOUT 45 YEARS
R/AT SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

45. SRI AMJADKHAN
S/O KHASAMKHAN BIRADAR
AGED ABOUT 63 YEARS
R/AT COURT ROAD,
SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

SRI HAMIDKHAN
S/O KHASAMKHAN BIRADAR
(SINCE DECEASED BY HIS L.RS)

46. SMT. SALMABEGUM
W/O HAMIDKHAN BIRADAR
AGED ABOUT 64 YEARS
R/AT SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

47. SRI KHASIM-FAISAKHAN
S/O HAMIDKHAN BIRADAR
AGED ABOUT 41 YEARS
R/AT SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

48. NAJIYABEGUM
D/O HAMIDKHAN BIRADAR
AGED ABOUT 39 YEARS
R/AT SAVANUR, SAVANUR TALUK
HAVERI DISTRICT-581118.

SRI RIYAZKHAN
S/O RAUFKHAN BIRADAR



(SINCE DECEASED BY HIS L.RS)

49. SMT. REHANBEGUM
W/O RIYAZKHAN BIRADAR
AGED ABOUT 85 YEARS
R/AT SAVANUR, TALUK SAVANUR
HAVERI DISTRICT-581118.

50. SMT. ALMASBEGUM
W/O VAHIDKHAN HAKIM
AGED ABOUT 65 YEARS
R/AT BAAR IMAM KARVIR
APARTMENT, PLOT NO.F-1,
KOLHAPUR, DIST KOLHAPUR,
MAHARASTRA-416003.

51. SMT. AQDASBEGUM
W/O RASIDKHAN BIRADAR
AGED ABOUT 63 YEARS
R/AT BADKI, KAMAL
HYDRA MASJID, M.G. ROAD,
HUBBALLI, DIST DHARWAD-580020.

52. SRI ULFHATKHAN
S/O RAYAZKHAN BIRADAR
AGED ABOUT 59 YEARS
R/AT MANJUNATH NAGAR,
GOKUL ROAD, HUBBALLI,
DIST DHARWAD-580030.

53. SRI ISHRATKHAN
S/O RAYAZKHAN BIRADAR
AGED ABOUT 57 YEARS
R/AT KAMALA BANGADI STREET,
SAVANUR, TALUK SAVANUR,
DIST HAVERI-581118.

54. SMT. MAZHARABEGUM
W/O IMRANKHAN KITTUR
AGED ABOUT 55 YEARS
R/AT MALAMADDI,



NEAR SHUSHRUTA HOSPITAL,
DHARWAD- 580007.

55. SRI ALTAFKHAN
S/O RAUFKHAN BIRADAR
AGED ABOUT 77 YEARS
R/AT SAVANUR, TALUK SAVANUR
HAVERI DISTRICT-581118.

56. SRI AQALAEKHAN
S/O RAUFKHAN BIRADAR
AGED ABOUT 74 YEARS
R/AT KAMAL BANGADI ONI,
SAVANUR, TALUK SAVANUR
HAVERI DISTRICT-581118.

57. SRI ATEQKHAN
S/O RAUFKHAN BIRADAR
AGED ABOUT 74 YEARS
R/AT KAMAL BANGADI ONI
SAVANUR, TALUK SAVANUR
HAVERI DISTRICT-581118.

SRI TABREZKHAN
S/O AHMEDKHAN BIRADAR
(SINCE DECEASED BY HIS L.RS)

58. SMT. KAMARTAJ
W/O TABAREZKHAN BIRADAR
AGED ABOUT 78 YEARS
R/AT SAVANUR, TALUK SAVANUR
HAVERI DISTRICT-581118.

59. SRI NAVEED AHAMMADKHAN
S/O TABAREZKHAN BIRADAR
R/AT SAVANUR, TALUK SAVANUR,
HAVERI DISTRICT-581118.

60. SMT. TANZILJAHAN
W/O HASSAN SHAIKH
R/AT SAVANUR, TALUK SAVANUR,



HAVERI DISTRICT-581118.

61. SRI JUNEDKHAN
S/O TABAREZKHAN BIRADAR
R/AT SAVANUR, TALUK SAVANUR,
HAVERI DISTRICT-581118.

62. SRI AFZALKHAN
S/O AHMEDKHAN BIRADAR
AGED ABOUT 73 YEARS
R/AT AZAD NAGAR
BELAGAVI, TALUK BELAGAVI
BELAGAVI DISTRICT-590016.

SRI ABDULWAHIDKHAN
S/O HAKIMKHAN BIRADAR
(SINCE DECEASED BY HIS L.RS)

63. SMT. SHAHERABEGUM
W/O ABDULWAHIDKHAN BIRADAR
AGED ABOUT 74 YEARS
R/AT SAVANUR, TALUK SAVANUR,
HAVERI DISTRICT-581118.

64. SMT. SHABEERA
W/O JAVEEDAHAMMAD JAGIRADAR
AGED 50 YEARS
R/AT SAVANUR, TALUK SAVANUR,
HAVERI DISTRICT-581118.

65. SRI RASHEEDKHAN
S/O ABDULWAHIDKHAN BIRADAR
AGED ABOUT 49 YEARS
R/AT SAVANUR, TALUK SAVANUR,
HAVERI DISTRICT-581118.

66. SRI MAJEEDKHAN
S/O ABDULWAHIDKHAN BIRADAR
AGED ABOUT 49 YEARS
R/AT SAVANUR, TALUK SAVANUR,
HAVERI DISTRICT-581118.



67. SMT. FATIMA
W/O AKABARKHAN PATHAN
AGED ABOUT 42 YEARS
R/AT SAVANUR, TALUK SAVANUR,
HAVERI DISTRICT-581118.

...RESPONDENTS

(BY SRI. SADIK KANAVI, ADVOCATE FOR R1 AND R2;
SRI. T. HANUMAREDDY, ADDL. GOVT. ADVOCATE FOR R3 TO R7;
SERVICE OF NOTICE TO R8 TO R67 IS DEFERRED (V/O/DATED
29.08.2025))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO I. TO ISSUE WRIT OF CERTIORARI TO SET-ASIDE THE IMPUGNED ORDER DATED 31.07.2025 ON I.A.NO.LII (I.A.NO. 52) IN O.S. NO. 118 OF 2010 ON THE FILE OF THE CIVIL JUDGE, AND J.M.F.C SAVANUR, AS PER ANNEXURE-A. AND CONSEQUENTLY, ALLOW THE L.A.NO.LII (I.A.NO.52) AS PER ANNEXURE - F. II. PASS SUCH OTHER WRIT OR DIRECTIONS OR ORDERS, AS THIS HON'BLE COURT DEEMS FIT TO GRANT IN THE FACTS AND CIRCUMSTANCES OF THE CASE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 12.02.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



CAV ORDER

Aggrieved by the order passed in I.A.No.52 in O.S.No.118/2010 dated 31.07.2025 by the Civil Judge and JMFC, Savanur, the petitioner/plaintiff No.18 is before this Court.

2. The plaintiffs had filed O.S.No.118/2010 seeking declaration that the plaintiffs are the legal heirs of the deceased Smt. Nawazkhatu and to declare that the judgment and decree obtained by defendant No.1 in O.S.No.171/84 on 30.10.1994 through misrepresentation and playing fraud upon the Court, consequently, the defendant No.1 be restrained from claiming the Schedule 'A' properties as legal heirs of the deceased Nawazkhatu and also sought to reserve the right to amend the plaint whenever deemed expedient under the circumstances. On 23.08.2010, defendant Nos.1 and 2 filed the written statement denying the claim of the plaintiffs including plaintiff No.18 i.e., the petitioner herein. Based on the pleadings, the issues were framed on 07.12.2022. One of the issues is "***whether the plaintiffs prove that the defendant No.1 obtained decree in OS No.171/1984 through misrepresentation and playing fraud?***"



DW-1 was cross examined on various dates from 21.09.2024 to 04.02.2025.

3. It is the case that during the cross examination of DW-1/respondent No.2, certain crucial facts and admissions were elicited from DW-1/respondent No.2 which are in consonance with the prayer in the plaint and issue No.2 i.e., proving fraud and misrepresentation committed by defendant No.1 and her Power of Attorney, defendant No.2 which were clearly brought to the knowledge of the plaintiffs only after cross examination of DW-1, through which the plaintiffs got clear detailed knowledge of how the fraud was committed by defendant No.1 and her Power of Attorney holder. Hence, the petitioner/plaintiff No.18 wanted to amend the pleadings and accordingly, he had filed I.A.No.52. The trial Court by order impugned had dismissed the application. Aggrieved thereby, the petitioner is before this Court.

4. While dismissing I.A.No.52, the trial Court had observed that the suit is 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. The trial Court had 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 the trial, the strict test under the proviso to Order VI Rule 17 of CPC must be satisfied. The party must prove that despite due diligence, the matter could not have been raised earlier. Hence, the trial Court had come to the conclusion that the plaintiffs have failed to demonstrate due diligence as required under the proviso to Order VI Rule 17 of CPC. The proposed amendment, if allowed, would cause prejudice to the defendants and prolong the already long pending litigation. Accordingly, the trial Court had dismissed I.A.No.52.

5. Learned counsel appearing for the petitioner submits that the Hon'ble Apex Court in case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd. and***



another¹ had observed that the amendment can be allowed post commencement of the trial. It is submitted that the plaintiffs along with plaintiff No.18/petitioner herein wanted to include the same in the Pleadings and thus sought for Amendment of Plaint by filing I.A.No.52 under Order VI Rule 17 on 01.04.2025 as per Annexure-F. The reason being they were trying to add additional facts to what they had already pleaded about misrepresentation and fraud as they had no prior knowledge as to how the fraud had been committed and the same was brought to their knowledge only during cross-examination of Dw-1 as per Annexure-E. In **Life Insurance Corporation of India's** case referred supra, the petitioner has relied on the following paragraphs:

"(i) if the amendment is required for effective and proper adjudication of the controversy between the parties.

(ii) to avoid multiplicity of proceedings, provided:

(a) the amendment does not result in injustice to the other side.

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

¹ 2022 AIR (SC) 4256



(vi) Where the amendment would enable the court to pin- pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed."

6. It is submitted that just because it is not filed at an appropriate point of time and due diligence was not pleaded, the trial Court had dismissed the petition. It is submitted that while allowing the amendment of pleadings, the Court has to look at the substantial interest and justice to the parties. It is submitted that they have come to know about these facts on 04.02.2025. Hence, there is no question of due diligence. It is submitted that the second amendment to the pleadings is sought with regard to



the misrepresentation of fraud at paragraph No.9(a) in the plaint is that the defendant did not make her mother a party despite her mother being alive until 2007 which will clearly prove the issue of misrepresentation and fraud played by respondent Nos.1 and 2 i.e., defendant Nos.1 & 2 in OS.No.118/2010 in order to defraud the plaintiff and to engulf the property. This act of respondent Nos.1 and 2 herein came to light only when defendant No.2 who is power of attorney of defendant No.1 was cross examined on 21.09.2024 and on 01.10.2024. It is submitted that the third amendment to the pleading sought is that the defendant herein has not shown proper genealogy tree and suppressed the material facts. This also came to light only on 01.10.2024 during the course of cross-examination of the Power of Attorney of defendant No.1.

7. The fourth amendment sought is that defendant No.1 after obtaining a fraudulent decree had filed execution petition for execution of the decree but defendant No.1 has withdrawn the same for the reasons best known to her and she had filed WP.No.33190/2001 before the High Court of Karnataka for delivery of possession of the property which are under the



custody of Court of Wards, but they were dismissed holding that she must approach the Civil Court. Against that, a writ appeal was filed and that also came to be dismissed. In spite of knowing all these and the decree is barred by time, she had filed the execution petition.

8. Learned counsel submits that even though the amendment sought is after the trial stage, when the case was placed for final argument, such amendment is necessary because only during the cross-examination of defendant No.2 they could elicit the same from 21.09.2024 to 04.02.2025. There is no opportunity for the plaintiffs to bring all these facts on record at an earliest point of time. It is submitted that already there are pleadings regarding misrepresentation and fraud in paragraph No.9 in the plaint and prayer No.2 in the plaint and they want to elaborate the same. This amendment is very much required for proper adjudication of the controversy between the parties and to avoid multiplicity of proceedings.

9. Learned counsel had relied on the judgment of Co-ordinate Bench of this Court in the case of ***Shri.Mohammadrafi and Anr Vs. Bandenawaz and Ors*** arising out of



WP.No.108512/2025 dated 16.12.2025 and he relied on paragraph Nos.16, 17, 25, 26, 29 to 32, 34, 62, 63, 65 which reads as follows:

"16. The obvious question would be, if the party does not demonstrate "due diligence" to the satisfaction of the Court, should the application seeking amendment "post-commencement of trial" compulsorily suffer an order of dismissal? The answer is no. The reasons are as follows.

17. Whether the application seeking amendment, post-commencement of trial, is to be allowed or not has to be decided on the "nature of amendment sought" and not necessarily on the "due diligence test" at least in respect of applications seeking certain types of amendment, if not all. It does not mean that the "due diligence" test has no application under proviso to Order VI Rule 17 of the Code. The relevance of "due diligence test" is dependent on the nature of the amendment sought and other attending circumstances, and not just dependent on the sole factor as to whether trial has commenced or not at the time of filing application seeking amendment.

25. The Court is of the considered view that in the following instances (illustratively and not exhaustively), applications seeking amendment of pleadings can be allowed without the "due diligence test," even if such applications are filed "post-commencement of trial."

Applications to:

(a) correct typographical errors in the dates of events, documents, etc.;

(b) correct property number, extent, location, or discrepancies in the boundary or any other misdescription of the property;



(c) insert events and developments that have taken place post-filing of the suit and which have a bearing on the final decision;

(d) incorporate a prayer owing to a subsequent event that has taken place during the pendency of the suit, keeping open the question of limitation;

(e) add a few additional facts or furnish better particulars to the facts already pleaded;

(f) add facts in support of the relief already claimed;

(g) seek relief in the alternative, which is in the nature of a lesser relief than the one already claimed. Example: In a suit for declaration of exclusive title and injunction, an application seeking the alternative relief of partition.

(h) Seek additional relief or relief ancillary to the main relief when the relief sought by way of amendment is available based on the pleadings already made.

26. In the aforementioned situations (broadly or generally speaking, excluding exceptional cases), in case the application seeking amendment of pleading is rejected on the premise that the applicant has not passed the "due diligence" test, it would cause injustice and would defeat the object of the first (main) part of Order VI Rule 17 of the Code, which aims at minimizing or avoiding multiplicity of litigation and provides for determining real questions in controversy between the parties.

29. There is one more angle to hold that every application under Order VI Rule 17 of the Code "post commencement of the trial" need not undergo the due diligence test as contemplated in the proviso. Order VI Rule 17 of the Code was omitted in 1999. It was re-introduced in 2002, albeit with a restrictive proviso. However, reintroduced part still contains the expression "at any stage of the proceedings". Said expression is not replaced by the expression "before commencement of the trial" or



any other suitable expression of giving similar meaning.

30. If the parliament really intended to create two different categories of applications seeking amendment of pleadings, one before commencement of trial, and one after commencement of trial, with two different yardsticks for deciding such applications, and rigid test in all applications post commencement of trial, then the Parliament probably would not have retained the expression "at any stage of the proceedings" in main part of Order VI Rule 17 of the Code. However, it is not so done. The expression which enables the Court to permit the amendment of the pleadings "at any stage of the proceedings" is still retained in 2002 amendment. This is one of the reasons to hold that proviso to Order VI Rule 17 of the Code cannot be applied with same rigour to sail through "due diligence" test in every application seeking amendment, post commencement of trial.

31. Thus, the Court is of the view that a plain, grammatical interpretation and strict application of the proviso defeats the very object of the main provision which aims at avoiding multiplicity of litigation. Such an interpretation cannot be adhered to in interpreting the proviso when the proviso has a limited role to play considering the object behind the proviso and the purpose of the main provision.

32. Moreover, Order VI Rule 17 of the Code is procedural law. It is a settled principle that procedural law has to be applied to serve the cause of justice, and that applies more rigorously to Order VI Rule 17 given the intent behind the first part of Order VI Rule 17, which still retains the expression "at any stage of the proceedings."

34. Assuming that the proviso comes in the way of permitting amendment on account of a party failing to pass the "due diligence test," in a situation contemplated above in paragraphs No.25(a) to (h),



the Court can certainly invoke its inherent power recognized and saved under Section 151 of the Code. The language of the provision— "Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court"— enables the Court to pass such orders in the interest of justice.

62. The Court sitting in this jurisdiction has noticed that many times, Trial Courts have been dismissing applications as if the Courts hardly have any power to permit amendments after the commencement of trial. Sometimes the amendments are not allowed when such applications are filed at the stage of final arguments, probably for the reason that the case may not be available for early disposal if amendments are permitted. Such an approach is not desirable.

63. If a proposed amendment requires to be permitted keeping in mind the law governing amendment, the same should be permitted notwithstanding the shortterm consequence of a little delay or inconvenience to the opposing party. Such aspects can be taken care of by passing suitable orders on costs and putting the party seeking amendment on other suitable terms.

65. CONCLUSION:

(a) The due diligence test contemplated in proviso to Order VI Rule 17 of the Code, cannot have universal application on every application seeking amendment of pleadings, filed after commencement of trial. In appropriate cases, (broadly illustrated in paragraph No.25 supra) even if due diligence test is not satisfied, the Court's power to permit amendment of pleadings is not taken away.

(b) In deserving cases, the Court may even resort to its inherent power (though not expressly invoked by



the party) to permit amendment on such terms to do complete justice."

10. Relying on the above judgment, it is submitted that amendment ought to have been allowed by the trial Court.

11. Learned counsel appearing for the respondents/defendants has filed the objections before this Court. It is submitted that through proposed amendment, the plaintiffs seek to plead about the Misc. Petition No.369/1981 and its subsequent dismissal for default and subsequent compromise decree in RA.No.73/1994 between defendant No.1 and Mutawalli of Kumbarwadd Masjid arising out of the decree in OS.No.177/1984. It is stated that any of the proceedings arising out of the aforesaid cases were neither relied upon nor referred to in any manner and there were no pleadings or material particulars. The petitioner knew about the Misc. Petition No.369/1981 since from inception of the suit. It is submitted that the petitioners have previously instituted Misc.Petition No.43/2018 before the District Judge, Dharwad, challenging the letter of administration obtained by Kumbarwada Masjid. Despite being aware of Misc. Petition No.369/1981 since 2010 and more



particularly in 2018, they failed to act upon such knowledge by making amendment to the pleadings. After more than 13 years from the inception of the suit till commencement of the trial, after an unexplained delay of 15 years, plaintiffs have belatedly filed the present amendment only to fill up the gaps uncovered during the trial.

12. It is submitted that the plaintiffs have failed to disclose any bonafide efforts and have failed to demonstrate due diligence between the year 2010-2023, to incorporate the proposed amendment at an earliest stage prior to commencement of the trial. The subject matter of Misc. Petition No.369/1981 pertains to the probate and letter of administration obtained by the Mutawalli of Kumbarwadd Masjid in the P&SC 8/79 before the District and Session judge, Dharwad. As per Part IX of the Indian Succession Act, the grant and revocation of probate and letters of administration fall within the exclusive jurisdiction of the District Court, as provided under Chapter IV, Section 264 of the Act. The attempt to introduce the proposed amendment in para 9-a, which seeks to plead alleged fraud in the dismissal of Misc.No.369/1981 before the trial Court would



be a futile exercise, as the Civil Court lacks the jurisdiction to adjudicate upon matters exclusively governed by Part IX of the Indian Succession Act. It is submitted that the proposed amendment is wholly irrelevant and it is not necessary to determine the real question in controversy. It is submitted that permitting such an amendment would serve no practical purpose and that would amount to a futile exercise as a decree passed by a Court lacking jurisdiction is a nullity in the eye of law.

13. It is submitted that the proposed amendment is a clear instance of malafide conduct, aimed to rectify the omissions, fill the lacunae and absence of pleadings that were exposed by the defendants. It is admitted that the ulterior motive of the amendment is to delay and to protract the proceedings, anticipating the outcome of the suit. The trial Court denied I.A.No.44, rejected the petitioner's request to call for records in the Misc. Petition No.369/1981. While rejecting the prayer, the trial Court observed the absence of necessary pleadings and held that any evidence introduced without the proper pleadings is liable to be disregarded. The petitioners challenged the order by filing WP.No.101933/2025 and the High Court, concurring with



the findings of the trial Court, was pleased to dismiss the said writ petition on similar grounds. It is submitted that the proposed amendment is designed to cause prejudice and injustice to the defendants by unduly delaying the proceedings. It is submitted that as a probate proceedings in P&SC No.8/1979 operate as judgment and are binding on the plaintiffs. Misc. Petition No.43/2018, wherein the plaintiffs had already challenged the probate order in P&SC No.8/1979 has been dismissed and the probate order having attained finality, any attempt to introduce allegations of fraud in Misc. No.369/1981 already dismissed for default is legally untenable and serves no purpose.

14. It is argued that the plaintiff seek to amend the plaint under para 9-b, by asserting that Smt.Sahebbi, the mother of defendant No.1 was alive at the time of Mehaboob Ali Khan's death. They alleged that defendant No.1, while instituting the suit in OS.No.171/84 failed to include her mother as a party and claimed sole legal heirship to Nawazkhatu. It is submitted that the plaintiffs were aware that Smt. Sahebbi passed away in 2007 and yet they failed to propose this amendment prior to the



commencement of the trial. It is submitted that there is no due diligence. It is submitted that the Court of Wards has already withdrawn its superintendents over the suit properties in favour of defendant No.1 and has effectuated the transfer of certain properties accordingly. The High Court in WP No.82837/2013 and in WA.No.100371/2014 has upheld the Gazette notification and the subsequent transfer of properties, affirming their variability and ruling that no informality exists in the said transfer. In the light of the High Court's conclusive findings, the proposed amendment which seeks to introduce contentions regarding an earlier withdrawn execution petition is wholly irrelevant to the present dispute. Withdrawal of execution petition had no relevance for adjudication of OS.No.171/84 and its reaching finality. It is submitted that the plaintiffs are aware of the facts before the institution of the suit. The proposed amendments are totally misconceptions and filed by presenting blatant false statements to misguide the Court's understanding of the matter at hand.

15. It is submitted that the petitioners have filed WP.No.104426/2023 before this Court. Considering the age of



the matter and submissions of respondent Nos.1 and 2 regarding the petitioner's conduct, the Court had disposed of the petition on 20.07.2023. It is observed that the proceedings were complete and evidence had been recorded in the suit of the year 2010. Directions were issued for the expeditious disposal of the suit within 6 months. However, despite these directions, the proceedings have been delayed further extending the timeline for three or four times. It is now more than 2 years since the original direction was issued.

16. In another petition arising out of I.A.No.51 i.e., WP.No.103941/2025, the Court was pleased to request the trial Court to proceed and dispose of the matter as early as possible. It is submitted that only with an intention to protract the proceedings the present application is filed and the trial Court had rightly dismissed the application. He had relied on the judgment of the Co-ordinate bench of this Court in the case of ***Smt. Venkatamma Namasivayam Vs. Sri. K. Anil Kumar*** arising out of **WP.No.16411/2025**. He relied on paragraph No.2 which reads as follows:



"2. The Apex Court holds that it is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such condition is fulfilled, the amendment is to be allowed. The proviso restricts the power of the Court and puts an embargo on the exercise of its jurisdiction. Therefore, the Court's jurisdiction is now limited. Unless there is jurisdictional fact in any amendment, the Court will have no jurisdiction to allow the amendment to the plaint."

17. Then he has relied on the judgment of the Hon'ble Apex Court in the case of ***M.Revanna Vs. Anjanamma***² at paragraph No.5 which reads as follows:

"5. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order VI Rule 17 of the CPC virtually prevents an application for amendment of pleadings from being 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 the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money."

² (2019) 4 SCC 332



18. Learned counsel also relied on the judgment of the Hon'ble Apex Court in the case of **Vidyabai and others Vs. Padmalathan and another**³ relied at paragraph Nos.19 and 20 which reads as follows:

"19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.

20. In Salem Advocate Bar Assn (supra), this Court has upheld the validity of the said proviso. In any event, the constitutionality of the said provision is not in question before us nor we in this appeal are required to go into the said question. Furthermore, the judgment of the High Court does not satisfy the test of judicial review. It has not been found that the learned Trial Judge exceeded its jurisdiction in passing the order impugned before it. It has also not been found that any error of law has been committed by it. The High Court did not deal with the contentions raised before it. It has not applied its mind on the jurisdictional issue. The impugned judgment, therefore, cannot be sustained, which is set aside accordingly."

19. He has also relied on the judgment of the Hon'ble Apex Court in the case of **J. Samuel and others Vs. Gattu Mahesh**

³ (2009) 2 SCC 409



and others⁴ in paragraph No.17 to 20, 22 and 23 which reads thus:

"17. An argument was advanced that since in the legal notice sent before filing of the suit, there is reference to readiness and willingness and the plaintiff has also led in evidence, nothing precluded the court from entertaining the said application with which we are unable to accept in the light of Section 16(c) of the Specific Relief Act as well as proviso to Order VI Rule 17. The only reason stated so in the form of an affidavit is omission by "type mistake". Admittedly, it is not an omission to mention a word or an arithmetical number. The omission is with reference to specific plea which is mandated in terms of Section 16(c) of the Specific Relief Act.

18. The primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their pleadings. The Court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states 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."

19. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term 'Due diligence' is specifically used in the Code so as to provide a test for determining whether

⁴ (2012) 2 SCC 300



to exercise the discretion in situations of requested amendment after the commencement of trial.

20. A party requesting a relief stemming out of a claim is required to exercise due diligence and is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit.

22. The claim of typographical error/mistake is baseless and cannot be accepted. In fact, had the person who prepared the plaint, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to and in any event, omission of mandatory requirement running into 3 to 4 sentences cannot be a typographical error as claimed by the plaintiffs. All these aspects have been rightly considered and concluded by the trial court and the High Court has committed an error in accepting the explanation that it was a typographical error to mention and it was an accidental slip.

23. Though the counsel for the appellants have cited many decisions, on perusal, we are of the view that some of those cases have been decided prior to the insertion of Order VI Rule 17 with proviso or on the peculiar facts of that case. This Court in various decisions upheld the power that in deserving cases, the Court can allow delayed amendment by compensating the other side by awarding costs. The entire object of the amendment to Order VI Rule 17 as introduced in 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient knowledge of other's case. It also helps checking the delays in filing the applications. [vide Aniglase Yohannan vs. Ramlatha and Others, (2005) 7 SCC 534, Ajendraprasadji N. Pandey and Another vs. Swami Keshavprakeshdasji N. and Others, Chander Kanta Bansal vs. Rajinder Singh Anand, (2008) 5 SCC 117, Rajkumar Guraward (dead) through LRS. vs. S.K.Sarwagi and Company Private Limited and Another, (2008) 14 SCC 364, Vidyabai and Others vs. Padmalatha and Another, (2009) 2 SCC 409, Man Kaur (dead) By LRS vs. Hartar Singh Sangha, (2010) 10 SCC 512.]

20. Learned counsel has also relied on the judgment of the Hon'ble Apex Court in the case of **Basavaraj Vs. Indira and**



others⁵ by relying on the paragraph Nos.10 and 11 which reads as under:

"10. The Proviso to Order VI Rule 17 CPC provides 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. In the case in hand, this is not even the pleaded case of respondents No. 1 and 2 before the Trial Court in the application for amendment that due diligence was there at the time of filing of the suit in not seeking relief prayed for by way of amendment. All what was pleaded was oversight. The same cannot be accepted as a ground to allow any amendment in the pleadings at the fag end of the trial especially when admittedly the facts were in knowledge of the respondents No. 1 and 2/plaintiffs.

11. The relevant paragraphs of the application seeking amendment of the plaint are reproduced hereunder:

"2. That, due to over sight and by mistake the Plaintiff was unable to sought relief declaration of decree as null and void and unable to pay required court fee some unavoidable circumstances and the proposed amendment is very essential for deciding the matter in dispute.

3. xxx

4. That, if the proposed amendment is allowed no prejudice will be cause to the other side, on the other hand if it is not allowed then the deponent will be put to great loss and will also leads multiplicity of litigation's. Hence it is just and proper to allow the proposed amendment to meet the ends of justice."(sic)"

21. Relying on these judgments, learned counsel for the respondents submits that the trial Court had rightly dismissed

⁵ (2024) 3 SCC 705



the application and there are no grounds to interfere with the well considered order passed by the trial Court and there may be a direction to the trial Court to dispose of the matter as expeditiously as possible.

22. Having heard the learned counsels on either side, perused the material on record. The undisputed facts in this case are that the suit is filed in the year 2010. I.A.No.52 is filed seeking amendment of the pleadings. It is appropriate to look at the amendment that is sought by the petitioner. It is stated that they have filed a suit for declaration. Very recently they have noticed that at paragraph No.9 of the plaint, at line No.2, due to oversight and typographical error, the number of the suit is wrongly appearing as OS.No.174/1984 instead of O.S.No.171/1984 and there are series of fraudulent acts and misrepresentation by defendant No.1 and Kumbarwad masjid. For want of all necessary documents and information have not been elaborately stated in the plaint at the earliest point of time. They have challenged the decree on the ground of fraud and misrepresentation. As they are questioning the fraud, misrepresentation and collusion, it requires to be stated in the



plaint in detail. It is stated that though the amendment is sought after commencement of the trial, the amendment sought for is very much necessary and essential to decide the lis between the parties effectively. It is stated that the proposed amendment will not change the nature of the suit and not mutually destructive existing reliefs and they will not cause prejudice to the other side. The amendment they are seeking is not barred by limitation. As such, the amendment may be allowed. The proposed amendment in paragraph No.9 reads as follows:

"PROPOSED AMENDMENT

1. That after para 9 of the plaint the following para permitted to be inserted as

9.a. That the defendant No.1 That the defendant no. 1 after obtaining the decree in O.S No. 171/1984 by plying fraud and misrepresentation had filed misc 369/1981 on the file of the Hon'ble II Additional District and Sessions Judge Court at: Dharwad for revocation of letters of administration obtained by the kumbarwad masjid, wherein the defendant no. 1 had filed application for seeking expert opinion in respect of the signatures alleged to have been appearing on the so called Will said to have been executed by deceased Nawajkatu and after hearing the Hon'ble court was pleased to allow the said application and the so called Will was sent for expert opinion and the expert after examination of the signatures appearing in the said Will has submitted the report that the signatures which are appearing on the said Will not of the late Nawajkhatu. Thereafter the defendant no.1 and Kumbarwad masjid colluded with each other and the defendant no.1 to assist the Kumbarwad masjid and to affirm the order of letters of administration issued in P & Sc 8/1979 on the file of the Hon'ble II Additional District and Sessions Judge Court at: Dharwad remained absent from proceeding with the Misc No. 369/1981 with the malafide intension to defeate the legitimate rights of the plaintiffs



and also to get make profit for themselves. Thereafter the Kumbarwad masjid colluding with the defendant no. 1 had preferred R.A No. 73/1994 on the file of the Hon'ble Senior Civil Judge Court at: Haveri, wherein the defendant no. 1 again colluding with the Kumbarwad masjid got entered in to compromise in respect of the property comprised in CTS ward No. II CTS No. 184 measuring 476 Sq yrds situated at Hubballi. It is to be respectfully submitted that in the said proceedings these plaintiffs were not arrayed as parties and the said decree is obtained behind the back of the plaintiffs with the further malafied intenstion to defeat the legitimate rights of the plaintiffs. Therefore these are all series of fraudulent acts of the defendant no.1 and also Kumbarwad masjid. Further as on the date of entering in to so called compromise by and between the defendant no. 1 and Kumbarwad masjid possession of the above said property was and still is with the court of wards as such the so called compromise decree is again without therebeing any title by the defendant no. 1 as scuh the so called compromise decree alleged to have been secured by Kumbarwad masjid colluding with the defendant no. 1 is illegal, ab-initio, null and void and not binding up on the plaintiffs.

2. That in para 9 of the plaint at line no. 2 after the words O.S No. the digit "174" ordered to be deleted and in it's place "171" permitted to be inserted.

3. That after para 9 of the plaint the following para permitted to be inserted as

9.a. That Sahebkatu and Shahajadkatu who were the step sisters of deceased Sardar Mehaboobalikhan are died on 15.11.1913 and 1916 respectively prior to the death of Sardar Mehaboobalikhan. That as on the date of death of Sardar Mehaboobalikhan the mother of the defendant no.1 viz. Smt. Sahebbi w/o Mayojiddinkhan was alive and she died in the year 2007 but the defendant no. 1 by suppressing this material fact had filed the above said suit and obtained a decree alleging that she is the only legal heir of the deceased sardar Mehaboobalikhan. Therefore, this is also evident that the defendant no. 1 while getting the decree in question has suppressed the material fact, made misrepresentation to the Hon'ble court and by playing fraud has obtained the decree in question.

4. That after the above said para the following para permitted to be inserted as

9.b. That the defendant no. 1 also suppressed and also not shown all the details of the sharers, i.e., ascendants and



descendents and also not shown in the geneology annexed to the plaint in O.S No. 171/1984 and not only this even she has suppressed the material facts that late Mohammed Akbarkhan S/o Mubariskhan Biradar Nawab had married earlier Smt. Dowlatkhat and out of their said wedlock Smt.Sahebkathu and Smt. Shahajadkathu were born and after the death of his 1st wife he had married Smt. Dulhanabi and out of his second marriage Munawarkathu w/o Jabbarkhan Biradar Nawab, Nawazkhatu w/o Dilerkhan Biradar Nawab and Saradar Mehaboobalikhan Biradar Nawab were born. Therefore, the Sahebkathu and Shahajadkathu were the half blood sisters to Saradar Mehaboobalikhan Biradar but the defendant no. 1 intentionally and with further malafied intention to play fraud upon the court and to engulf the properties of Saradar Mehaboobalikhan Biradar Nawab alone and without therebeing any right of inheritance to her has shown in her geneolgy that Smt. Sahebkathu, Shahajadkathu, Munawarkatu, Nawajkathu and Saradar Menaboobalikhan were born from Mahammedakbarkhan without showing the names of two wives of Mahammedakbarkhan. Therefore, the geneolgy annexed to the plaint in O.S No. 171/1984 is created for the purpose of engulfing the legitimate share of the other heirs. Therefore, this is also another fradulant act of the defendant no. 1 in obtaining a fradulant decree in question.

5. That after the above said para the following para permitted to be inserted as para

9.c. That the defendant no. 1 after obtaining fradulant decree had filed Ex.Petition No. 52/1999 on the file of the Hon'ble Civil Judge and J.M.F.C Savanur for execution of the said decree, but the defendant no. 1 has withdrawn the same for the reasons best known to her, thereafter she had filed W.P No. 33190/2001 (KLR-Res) before the Hon'ble High Court of Karnataka Dharwad for delivery of Possession of the properties which are under the custody of Court of Wards, but the said writ petition came to be dismissed holding that she has to approach the Civil Court. Again the defendant no.1 had filed W.A No. 295/2002(KLR-Res) but the said W.A also came to be dismissed. Despite giving such directions by the Hon'ble High Court and knowing the fact that her decree is time barred to execute before the Civil Court again colluded with the Government and got passed gazzette Notification and now alleging that on the basis of the gazzette notification the defendant no. 5 has delivered the possession of the properties which were under his custody but in fact the dedefendant no. 5 has not delivered possession of the properties which are under his custody. Further it is to be



respectfully submitted that though the defendant no. 5 was party to all the proceedings but the defendant no. 5 instead of raising all necessary objection has assisted the defendant no. 1 in creating documents for her benefits. Therefore, all these acts of the defendant no. 1 and 5 are again fraudulent, misrepresentation and collusion with the various authorities.

6. That after the above said para the following para permitted to be inserted as

9.d. That the plaintiffs in the above suit had filed IA No. II restraining the defendant no. 3 and 4 from delivering the possession of the suit properties in favour of the defendant no. 1 for which the defendant no. 4 has filed his writtern statement wherein he has pleaded that movable properties have been already delivered to the defendant no. 1 and possession of the immovable properties yet to be delivered. The said writtern statement is adopted by the defendant no.1 as her objections to I.A No. II, but after hearing the same the Hon'ble was allow the said application and thereby restrained the defendant no. 3 and 4 from handing over of the possession of the immovable properties to the defendant no. 1. As against the same the defendant no. 3 and 4 have preferred M.A no. 7/2011 on the file of the Hon'ble Senior Civil judge and JMFC Haveri, but the said appeal came to be dismissed on 21.04.2014. Therefore, the order passed on I.A No. II is reached it's finality. This fact is well within the knowledge of the defendant no. 1, but the defendant no.1 despite knowing the fact that she has not been handed over the possession of the immovable properties by the defendant no. 3 and 4, but has illegally sold suit property comprised in CTS ward No. II CTS No. 479 measuring 426 Sq. Mtrs situated at Hubballi in favour of Sri.Mohammed Ismail S/o Abduraheem Byahatti for total sale consedaratio of Rs. 80,00,000/- without obtaining any permission from this Hon'ble court on 03.06.2024 under the registered sale deedwithout therebeing any possession. As such the above said sale deed is illegal, ab-initio, null and void and not binding upon the plaintiffs.

7. That in para 14 of the plaint after "c" coloum the following para permitted to be inserted as para

c.i. That the sale deed said to have been executed by the defendant no. 1 in favour of Sri. Mohammed Ismail S/o Abduraheem Byahatti in respect of the property comprised in CTS ward No. II CTS No. 479 measuring 426 Sq. Mtrs situated at Hubballi on 03.06.2024 for total sale consederation of Rs. 80,00,000/- is illegal, ab-initio, null and void and not binding upon the plaintiffs.



8. That in plainit para 12 of the plaint at line No. 2 the word declaration ordered to be deleted and in it's place declarations permitted to be inserted and in the same para at line no. 4 the digit Rs. 1,000/- ordered to be deleted and in it's place Rs. 2,000/- ordered to be inserted."

23. It is the contention of the petitioner that no prejudice would be caused to the defendants by making this amendment. It is also an undisputed fact that during the course of cross examination, based on what has been elicited from the defendant, he wants to amend the pleadings. No party shall be permitted to cover up the latches and for that purpose, they cannot be permitted to amend the pleadings. The suit is of the year 2010 and in spite of an order passed by this Court, even after 2 years, the same could not be disposed of in view of several applications being filed. Both the learned counsels for the petitioner and the respondents relied on several judgments of this Court and the Hon'ble Apex Court.

24. The settled law on amendment of pleadings is that the Courts on a hyper technical approach cannot dismiss the application. The whole endeavor of the Court should be to give substantial justice to the parties. The Courts will allow amendment of pleadings if it is necessary for determining the



real question in controversy and it does not cause injustice or prejudice to the other side, which cannot be compensated by way of costs. It is an admitted fact that the plaintiffs are aware about the Misc Petition No.369/1981 from the inception of the same. They have filed Misc petition No.43/2018 before the District Judge, Dharwad, challenging the letter of administration obtained by Kumbarwada masjid.

25. Right from the year 2010 and particularly from 2018, the plaintiffs have failed to amend the pleadings. Now it is not open for the plaintiffs to amend the pleadings on the ground that they have elicited the facts in the cross examination. The suit is filed in the year 2010 and this application is the 52nd application. Paragraph No.9-a and 9-b was very much within the knowledge of the plaintiff. This attempt to amend the pleadings is aimed at rectifying the omissions to fill the lacunae and absence of pleadings that were exposed by the defendants during the course of evidence. Earlier, the Court had rejected I.A.No.44 filed by the plaintiff to call for the records in Misc. Petition No.369/1981 observing that without necessary pleadings, any amount of evidence adduced is inconsequential. That order was challenged



before this Court by filing writ petition and the same was confirmed.

26. The plaintiff has questioned the probate proceedings in P&SC No.8/1979 in Misc. Petition No.43/2018 and the same has been dismissed. Misc. Petition No.369/1981 was dismissed for default. The plaintiff wants to amend the pleadings basing on these litigation stating that he came to know about these during the cross examination which is not tenable and the trial Court had rightly dismissed the application seeking amendment. The suit is of the year 2010. In spite of repeated directions by this Court, the trial Court could not dispose of the matter in view of the several applications filed. It appears that the petitioner only with an intention to drag on the proceedings and to cover up the latches has filed this application. It is stated that they have already made the factual basis alleging fraud and now they want to elaborate the same. According to the petitioner, if the respondents/defendants had stated several facts which support petitioner's case, he can make use of the same. In the light of the above discussions, this Court is of the view that the trial Court had rightly dismissed the application and this Court do not



find any reasons to interfere. Hence, this Court is passing the following:

ORDER

- i. Accordingly, the writ petition is ***dismissed***.
- ii. All I.As. in this petition shall stand closed.

SD/-
JUSTICE LALITHA KANNEGANTI

MEG
CT: UMD/CNB
List No.: 1 Sl No.: 1