



**IN THE COURT OF THE II ADDITIONAL CIVIL JUDGE AND
J.M.F.C. AT UDUPI.**

PRESENT: Smt. NIRMALA S., B.A.L, LL.M.
II Additional Civil Judge & JMFC, Udupi.

Dated: This the 21st day of January 2023

O.S./828/2022

1. Sushma
Aged About 39 Years,
D/o Ramesh Rao,
R/At. No.1-265(6a), Nagakannike Temple Road,
7th Cross, Gandhi Nagar Baikady,
Brahmavara Taluk,
Udupi District - 576 213.

2: Swasthik R Rao (Minor),
(Now Represented by plaintiff No.1)
Aged About 8 Years,
Son Of Praveen Naik R/At. No.1-265(6a), Nagakannike
Temple Road,
7th Cross, Gandhi Nagar Baikady,
Brahmavara Taluk,
Udupi District - 576 213.

PLAINTIFFS

(Reptd by advocate Sri S.K.S)

Versus

1. The Deputy Commissioner,
Udupi District.
Rajathadri, Manipal - 576 104,
Udupi Taluk.

2:The State of Karnataka,
Represented by City Municipality,
Udupi Taluk.

DEFENDANTS

**(Represented by District
Government Pleader)**



Date of Institution of suit	21/09/2022
Nature of the suit	Declaration and Mandatory Injunction
Date of Commencement of evidence	07/12/2022
Date of pronouncement of judgment	21/01/2023
Total Duration	Year/s 00 Month/s 04 Day/s 00

(NIRMALA S.),
II Additional Civil Judge & JMFC, Udupi.

JUDGMENT

This is a suit filed by the plaintiffs to declare the 2nd plaintiff's name i.e. son of 1st plaintiff as '**Swasthik R. Rao**' and for consequential relief of mandatory injunction to rectify the same in the birth certificate of 2nd plaintiff.

2. In the plaint it is stated as below :-

The 2nd plaintiff's name is 'Swasthik R. Rao', he was born on 16-11-2013 at Dr.T.M.A. Pai Hospital Udupi. The same was registered before 2nd defendant. In the birth certificate of 2nd plaintiff, the 2nd plaintiff's name is wrongly entered as Swasthik P. Naik by clerical mistake.



3. There is a difference in the name of 2nd plaintiff in the Birth Certificate of 2nd plaintiff and other records. It is very much necessary to make corrections in the Birth Certificate of 2nd plaintiff as the name of 2nd plaintiff as 'Swasthik R. Rao' instead of 'Swasthik P. Naik'. The 1st plaintiff approached the 2nd defendant for necessary corrections of the said name in the birth records, but, he has endorsed and expressed his inability to correct the same. Hence the suit. The plaintiffs along with the suit filed I.A. No.1 under Sec.80(2) of C.P.C., praying to dispense the issuance of notice under section 80(2) of CPC. Same was considered and the issuance of statutory notice was dispensed and suit was registered.

4. In response to the suit summons, defendants appeared through learned DGP and defendant No.2 filed his written statement, whereas defendant No.1 filed memo praying to adopt the written statement filed by defendant No.2. In the written statement, the defendants denied the averments of the plaintiffs put forth in the plaint and contended that the suit is barred by Law of Limitation and the entries made in the Birth Certificate of the 2nd plaintiff are as per the information furnished by the plaintiffs only. Hence prays to dismiss the suit.

5. Upon considering the pleadings of the parties, this court has framed the following issues:



1. Whether the plaintiffs prove that the 2nd plaintiff's name is 'Swasthik R. Rao'?
2. Whether the plaintiffs further prove that the 2nd plaintiff's name is wrongly entered as 'Swasthik P. Naik' in his birth certificate?
3. Whether the suit is barred by limitation?
4. Whether the plaintiffs are entitled for the relief of mandatory injunction as sought in the plaint?
5. Whether the plaintiffs are entitled for the reliefs as sought in the plaint?
6. What order or decree?

6. In order to substantiate the case, the 1st plaintiff got examined as PW1 and got exhibited 4 documents as Ex.P1 to P4 and closed her side of evidence. On the other hand, the learned DGP for defendants submitted no evidence.

7. Heard arguments from both sides.

8. My findings on the above said issues are as follows:-

Issue No.1	: In the Affirmative
Issue No.2	: In the Affirmative
Issue No.3	: In the Negative
Issue No.4	: In the Affirmative
Issue No.5	: In the Affirmative
Issue No.6	: As per the final order for the following:-

**REASONS**

9. ISSUES NO. 1 AND 2 :- Since both these issues involve common discussion, to avoid repetition of facts, they are taken up together.

10. Avoiding repetition of facts stated in the plaint, which is reiterated in the evidence of P.W.1. Ex.P1 is the birth certificate of 2nd plaintiff, Ex.P2 is the endorsement, Ex.P3 is the aadhar card of P.W.1, Ex.P4 is the horoscope of 2nd plaintiff. Further I note that in Ex.P.1, the birth certificate of 2nd plaintiff, his name discloses as 'Swasthik P. Naik'. Ex.P4 is the horoscope of 2nd plaintiff discloses his name as 'Swasthik R. Rao'. This court has taken the Judicial notice that 2nd plaintiff was born on 16-11-2013 and he is a minor, aged about ten years. The 1st plaintiff being the mother of 2nd plaintiff is the best person to state the name of her son. PW1 in her evidence has reiterated the facts of plaint. Even though P.W.1 is cross-examined, it is evident that her evidence is not challenged by the defendants. Thus, it is stood established that the name of the 2nd plaintiff is 'Swasthik R. Rao'.

11. The plaintiffs have produced Ex.P4 horoscope of 2nd plaintiff. In this regard, I rely upon a **judgment reported in Hon'ble High Court of Karnataka, in RFA No.322/13 between Gunda Naika P.S. Vs. State of Karnataka**, it is observed in



pra No. 13 reads as follows;

“The change of name does not put the respondents or any third party to any prejudice. The change of name may or may not help the plaintiff. The efficacy of the astrological advice cannot be tested in the courts of law. These are the things which depend upon the belief system of the individuals and the communities to which they belong. The objective verification of the correctness of the astrological advice cannot be insisted for”.

12. On perusal of the above decision, it is clear that the courts cannot be tested the efficacy of the astrological advice. Hence the Ex.P4 horoscope document can be admissible in evidence. Nothing is brought on record to disbelieve the contents of this document. The contents of this document and the evidence of PW1 prima facie shows that there is discrepancy in mentioning the name of the 2nd plaintiff in the birth certificate of 2nd plaintiff. As noted above, in Ex.P1, birth certificate, the name of 2nd plaintiff is wrongly mentioned. On oath, P.W.1 has clearly stated that the 2nd plaintiff's name is wrongly entered in Ex.P1. PW1 has deposed that her son's name is 'Swasthik R. Rao' . So, it is evident that, as per the evidence of P.W.1, 2nd plaintiff's name is 'Swasthik R.



Rao'. Now, the plaintiffs have filed this suit to rectify the said name in the birth Certificate of 2nd plaintiff. On oath, P.W.1 has clearly stated that her son's name is wrongly entered as 'Swasthik P. Naik' in the Ex.P1 and in other documents the same is mentioned correctly.

13. Hence there is no reason to disbelieve the version of P.W.1, which is substantiated by production of the original record which is undisputed at the time of cross-examination of PW1. So, believing this document, wherein Ex.P4 is believable document, there is no reason to discard the prayer of the plaintiff/P.W.1 in respect of her son's name. Under these circumstances, there is no technical irregularity in order to reject the reliefs sought for in respect of name.

14. On the other hand, Hon'ble High Court of Karnataka in its decision reported in **ILR 2013 Karnataka 4703 between Smt. Muniyamma and others Vs. Devegowda and others**, in Page No. 12, it is held that " an entry in the register of Births or Deaths is not conclusive evidence of the disputed date of birth or death, so also an entry pursuant to the direction of the Magistrate u/s. 13(3) of The Registration of Births and Deaths Act, 1969.

15. On plain reading of the above reported decision, it is clear that the entry made in the Registrar of Births and Deaths is not conclusive proof and it can



be rectified at any time. Further as per Sec.11 of Registrar of Births and Deaths Act, mandates that every person who has orally given information to the Registrar regarding Birth or Death shall put his signature or thumb mark in the register. On the other hand, if the 2nd defendant has issued Ex.P1 on the basis of the information given by the plaintiffs, then he could have produced the Form or Register documents to show that Ex.P1 issued on the information given by the plaintiffs.

16. In usual course, the parents/relatives while giving information to the Births and Deaths Registrar Authority gives a vague information without meticulously knowing consequence thereof. Therefore, there is no any documents produced by the defendants to disbelieve the case of the plaintiffs. **Hence I answer issue No.1 and 2 in the affirmative.**

17. ISSUE No.3 : As per the averments mentioned in the plaint, the plaintiffs came to know about the mistakes in the Birth Certificate recently on 12.05.2022 when the 1st plaintiff has filed application to rectify the name in Ex.P1 before 2nd defendant. The 2nd defendant subsequently issued an endorsement as per Ex.P2 dt. 19.05.2022, in which he expressed his inability to correct the name in Ex.P1. Further the date of filing the suit is on 08.12.2022. The learned DGP has made efforts to show that the entries are made in



the birth certificate as per the information given by the plaintiffs themselves, but the said suggestion was denied by PW1. As per Article 58 of the Limitation Act, to obtain any other declaration period of limitation starts to commence when the right to sue first accrues and the limitation is three years. In the present suit the right to sue first accrues on 12.05.2022, when the plaintiffs noticed the mistake in the Birth Certificate. Hence the suit is within the time. Hence, **the issue is answered in the Negative.**

18. ISSUES No.4 AND 5: Since these issues involve common discussions, they are taken up together for consideration.

19. The plaintiffs have placed sufficient materials to believe their case in respect of correction of 2nd plaintiff's name and preponderance of probabilities heavily lies in favour of the plaintiffs as the defendants have not produced any oral or documentary evidence in the suit. Hence the plaintiffs are entitled for the relief as claimed in the plaint. Accordingly, **issue No.4 and 5 are answered in Affirmative.**

20. ISSUE No.6 : In view of my findings to the above issues, I proceed to pass the following :

ORDER



The suit of the plaintiffs is hereby decreed.

It is hereby declared that the name of the 2nd plaintiff as **'Swasthik R. Rao'**.

The defendants shall correct the name of the 2nd plaintiff as 'Swasthik R. Rao.' instead of 'Swasthik P. Naik' in the birth certificate of 2nd plaintiff after collecting necessary fees.

Draw decree accordingly.

(Dictated to the Stenographer, typed by her directly through computer, corrected and then pronounced by me in open Court, this the **21st day of January, 2023.**)

(Nirmala S.),
II Additional Civil Judge & JMFC, Udupi.

ANNEXURE

List of witnesses examined for plaintiffs:-

PW1 - Sushma

List of witnesses examined for defendants :- None

List of documents marked for the Plaintiffs:-

Ex.P1 - Birth Certificate of 2nd plaintiff



Ex.P2 - Endorsement
Ex.P3 - Aadhar card of PW1
Ex.P4 - Horoscope

List of documents marked for defendants :- NIL

(Nirmala S.)
II Additional Civil Judge & JMFC,
Udupi.