

KAUP030063572022



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC, UDUPI

**PRESENT: SMT.DEEPA, M.A., LL.B.,
PRL.CIVIL JUDGE & JMFC, UDUPI**

Dated: This the 15th day of March 2023

OS No.908/2022

1. Gurudath B.H,
aged about 38 years,
S/o Halappa.
2. Taapsee Gurudath,
Aged about 03 years,
Rep., by her father, 1st plaintiff

Both are residing at C/o.Halappa,
#8-1-91E,
"SURAMYA APARTMENT",
Sharada Kalyana Manthapa Road,
Shivalli Village,
Kunjibettu, Udupi-576101.

....PLAINTIFFS

(Rep. by Sri A.K.G., Advocate,)

- versus -

1. The Commissioner,
Udupi City Municipality,
The Birth and Death Registrar,
Udupi.
2. The State of Karnataka,
Rep., by the Deputy Commissioner,
Udupi District,
Rajatadri, Manipal.

....DEFENDANTS

(D1 to D2 : Rep.by DGP)

Date of institution of the suit : 04-11-2022

Nature of the Suit : Declaration

Date of the commencement
of the recording of the evidence : 14-02-2023

Date on which the Judgment
Was pronounced : 15-03-2023

Total Duration : Years Months Days
00 04 11

(DEEPA)

PRL.CIVIL JUDGE & JMFC, UDUPI

JUDGMENT

The plaintiffs have filed this suit seeking for the declaratory decree to declare name of plaintiff No.2 as **“TAAPSEE GURUDATH”**, and her father’s name/plaintiff

No.1 as **“GURUDATH B.H”** and her mother’s name as **“VIJAYALAXMI”** for consequential decree of Mandatory Injunction to direct the defendant No.1 to rectify the entries made in the Register of Births and Deaths relating to plaintiff No.2, maintained by the defendant No.1.

2. The case of the plaintiffs is as follows:-

The 1st Plaintiff’s daughter/2nd plaintiff’s by name **“TAAPSEE GURUDATH”** was born on 01-01-2019 at Lalith Hospital, K.M. Marg, Udupi Taluk and District and the same was intimated to the defendant No.1 and was entered in the records maintained by it. Recently, 1st plaintiff found that, in his daughter’s birth certificate issued by the 1st defendant, her name is wrongly entered as **“RISHIKA G”** instead of **“TAAPSEE GURUDATH”**, her father’s/plaintiff No.1 name is wrongly entered as **“GURUDATH”** instead of **“GURUDATH B.H”** and her mother’s name is wrongly entered as **“VIJAYALAKSHMI”**, instead of **“VIJAYALAXMI”**. Hence, he has approached the defendant No.1 for rectification of the same, but same went futile. Thereafter, the plaintiff got issued a legal notice to the defendant No.1 calling upon to rectify the said mistake. In spite of receipt of notice the defendants failed to comply the same. Hence, this suit.

3. In response to the summons defendants appeared through D.G.P. The 1st defendant has filed its written statement and same has been adopted by the 2nd defendant.

4. The case of the defendants is as follows:

The defendants have denied the case of the plaintiffs as false and frivolous. It is averred that based on the information given by the plaintiff No.1 the entries in the Register of Births and Deaths relating to his daughter had been entered into. There is no negligence on the part of the defendants. Further, it is specifically contended that the suit of the plaintiff is barred by limitation. On these grounds sought for dismissal of the suit.

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

ISSUES

1. Whether the plaintiffs prove that, name of the 2nd plaintiff as "Taapsee Gurudath", her father's name as "Gurudath B.H.", and her mother's name is "Vijayalaxmi"?
2. Whether the plaintiffs further prove that, in the birth certificate of plaintiff No.2, her name is wrongly entered as "Rishika G", her father's name is wrongly entered as

“GURUDATH” and his mother’s name is wrongly entered as “Vijayalakshmi”?

3. Whether the suit is barred by the limitation?
4. Whether the plaintiffs are entitled for the relief of declaration as prayed for?
5. Whether the plaintiffs are entitled for the decree of Mandatory Injunction as sought?
6. What order or decree?

6. In order to substantiate the case, the plaintiff No.1 got examined himself as PW1 and got exhibited 4 documents as Ex.P1 to P4 and closed his side of evidence. The defendants except filing the written statement have not choose to contest the case by cross examining the witness and leading the evidence.

7. Heard arguments from both sides.

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

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|------------|---|
| 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. ISSUE NOS. 1 AND 2 : Since these issues required common discussion, to avoid repetition, they are taken together.

It is the case of the plaintiff that, 1st Plaintiff's daughter/ 2nd plaintiff by name "**TAAPSEE GURUDATH**" was born on 01-01-2019 at Lalith Hospital, K.M. Marg, Udupi Taluk and District and the same was intimated to the defendant No.1 and was entered in the records maintained by it. Recently, 1st plaintiff found that, in his daughter's birth certificate issued by the 1st defendant, her name is wrongly entered as "RISHIKA G" instead of "TAAPSEE GURUDATH", her father's/plaintiff No.1 name is wrongly entered as "GURUDATH" instead of "GURUDATH B.H" and her mother's name is wrongly entered as "VIJAYALAKSHMI", instead of "VIJAYALAXMI". The defendants have asserted that based on the information given by the plaintiff, said entries have been made and there is no fault by the defendants. To prove his name, his daughter's/2nd plaintiff's name and his wife/mother of 2nd plaintiff's name, he himself got examined as P.W.1 and produced documents as Ex.P1 to P4. P.W.1 has produced Ex.P3 and P4 are the Notarized copy of Adhar card of PW-1 and his wife issued by the competent authority. These documents being the base documents forms more evidentiary value and it has to be believed that the names found in the said documents are true.

In the absence of any contrary documents to that effect, it has to be believed that name of the 2nd plaintiff as **“TAAPSEE GURUDATH”, her father’s/1st plaintiff’s name as “GURUDATH B.H” and her mother’s name as “VIJAYALAXMI”**. Thus, it is stood establish that name of the 2nd plaintiff as **“TAAPSEE GURUDATH”, her father’s/1st plaintiff’s name as “GURUDATH B.H” and her mother’s/wife of 1st plaintiff name as “VIJAYALAXMI”**.

10. P.W.1 has produced Ex.P1 the birth certificate relating to plaintiff’s daughter. In the name of 2nd plaintiff, her name is wrongly entered as “RISHIKA G”, in the name of father column, her father’s name has been wrongly entered as “GURUDATH” and in the name of mother column, her mother’s name has been wrongly entered as “VIJAYALAKSHMI” and by the 1st defendant. It is the specific contention of the defendants that based on the information given by the plaintiff, the entry in Ex.P2 had been made. Section 11 of the Registration of Births and Deaths Act 1969 mandates that every informant giving information regarding birth or death has to sign the Register of Births and Deaths in the presence of the Registrar. It is mandatory. If at all, the case of the defendants is that entries with regard to the plaintiff’s daughter made correctly, they could have produced relevant entries to that effect. In the absence of such document, the preponderance of probabilities lies in favour of the plaintiffs. Thus, it is stood

established that the name of the 2nd plaintiff as **“TAAPSEE GURUDATH”, her father’s/1st plaintiff’s name as “GURUDATH B.H” and her mother’s/wife of 1st plaintiff name as “VIJAYALAXMI”**. Accordingly, the issues under consideration are answered in the **Affirmative**.

11. ISSUE NO.3-: This suit is for the relief of declaration. The period of limitation starts to commence from the date when the right to sue accrues. In the present suit the endorsement as per Ex.P2 was issued by the 2nd defendant on 13-09-2022. The present suit is presented on 04-11-2022. Except the defence that the present suit is barred by limitation, the defendants have not chosen to contest the case. There is nothing on record to hold that the present suit is barred by limitation. Therefore, this suit is well within the time. **Hence, the issue under consideration is answered in the Negative.**

12. ISSUE NO.4 & 5: In view of my findings on the foregoing issues, plaintiffs are entitled for the relief as claimed in the suit. At this stage, it is just to consider the aspect of the jurisdiction of this Court for entertaining this suit. The plaintiffs have sought for the rectification in the entries made in the Register of Births and Deaths maintained by the 1st defendant. The remedy is available for the plaintiff under the provisions of The Registration of Births and Deaths Act 1969. The perusal of

Ex.P2, endorsement goes to show that the 1st defendant inspite of requisition has not corrected the entries. Even nothing is stated by the 2nd defendant with regard to the any action taken to that effect. Before approaching this Court the plaintiffs have exhausted all the remedies available under The Registration of Births and Deaths Act 1969. There is no express or implied bar under the Act, excluding the jurisdiction of this Court. It is worth to note that the plaintiff's daughter is three year old baby and the mistakes in the records has to be rectified at this stage itself to avoid any future complications. **Accordingly, the issues under considerations are answered in the Affirmative.**

13. Issue No.6: In view of the findings above, the following :

ORDER

Suit of the plaintiffs is decreed.

It is declared that, name of the 2nd plaintiff as **"TAAPSEE GURUDATH"**, her father's name as **"GURUDATH B.H"** and her mother's name as **"VIJAYALAXMI"**.

The defendants are hereby directed to rectify the name of the 2nd plaintiff as **"TAAPSEE GURUDATH"**, her father's name as **"GURUDATH B.H"** and her mother's name as **"VIJAYALAXMI"** in the

birth certificate of 2nd plaintiff and issue Birth certificate to that effect by collecting necessary fees.

No order as to costs.

Draw decree accordingly.

(Dictated to the Stenographer directly on the computer, corrected by me and then pronounced in the open Court on this the **15th day of March, 2023.**)

(DEEPA)

PRL.CIVIL JUDGE & JMFC, UDUPI.

ANNEXURE

List of witnesses examined for plaintiffs:-

PW1 - Sri Gurudath B.H

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&4 : Notarized Adhar card of P.W.1 and his wife

List of documents marked for defendants :- -NIL-

(DEEPA)

PRL.CIVIL JUDGE & JMFC, UDUPI