

KAUP030065542022



IN THE COURT OF THE IV ADDL. CIVIL JUDGE , UDUPI

**Present: Sri Jeethu R.S., B.A.L., LL.M.
IV Addl. Civil Judge, Udupi.**

Dated: This the 28th day of February, 2023

OS No. 845/2022

1. T.S. Farhan,
Aged about 15 years,
S/o. Tonse Shaikh Mohammed Rafiq,
Represented by his mother,
Natural Guardian
2. Mrs. Naseem,
Aged about 39 years,
W/o. Tonse Shaikh Mohammed Rafiq,
R/at Door NO.9-251,
Gujjarbettu, Paduthonse,
Kemmannu Post,
Udupi Taluk and District.

(Rep. by Sri M.S. Advocate,)

-versus -

1. The Deputy Commissioner,
Udupi District,
'Rajathadri', Manipal,
Udupi District.
2. The Birth and Death Registrar,
Udupi City Municipality,
Udupi

.....DEFENDANTS

(Rep. by A.D.G.P)

Date of institution of the suit : 01-10-2022
Nature of the Suit : Declaration
Date of the commencement
of the recording of the evidence : 27-01-2023
Date on which the
Judgment was Pronounced : 28-02-2023
Total Duration : Years Months Days
00 04 27

**(Sri Jeethu R.S.)
IV A. C. J. Udupi.**

JUDGMENT

The plaintiffs have filed this suit for declaration. It is sought to declare that the name of 1st plaintiff's father as "**Tonse Shaikh Mohammed Rafiq**" and further sought for consequential relief of rectification of 1st plaintiff name as mentioned above in the Birth Certificate dated 06-09-2022 issued by the defendant No.2.

Brief facts of the case

2. The brief facts of the case of the plaintiffs in a nutshell is as follows: It is pleaded in the plaint that the 1st plaintiff born on 03-07-2007 at Gandhi Hospital Near City Bus stand, Udupi Taluk and District, the same was informed to defendant No.2, accordingly, the incident of birth was entered in the birth register maintained by the 2nd defendant.

It is further pleaded that in the birth certificate of 1st plaintiff, issued by the 2nd defendant, the name of 1st plaintiff is wrongly

entered as "T S Rafeek" instead of "**Tonse Shaikh Mohammed Rafiq**". Therefore, the plaintiffs approached the defendants for carrying out the necessary corrections of 1st plaintiff's father name in the birth certificate dated 06-09-2022, but in vain. The defendants issued an endorsement dated 15-09-2022. Further plaintiff has filed the application under Sec.80(2) of C.P.C., along with the plaint has prayed to dispense the issuance of notice, same was considered and the issuance of statutory notice was dispensed. Hence 2nd plaintiff is constrained to file this suit.

3. In response to the summons issued by this Court, the learned A.D.G.P. filed Memo of appearance for defendant No.1 and No.2. The learned A.D.G.P has filed written statement for defendant No.2. Further, the learned A.D.G.P has also filed a memo dated 10-01-2023 for adoption of written statement of defendant No.2 for the defendant No.1. The defendants have denied the averments pleaded in the plaint and further contends that the suit is not maintainable either in law or on merits. It is further contended that there are no mistakes to be rectified by the defendants, and further there is no cause of action for the suit. Further contends that the suit is barred for non compliance of Section 80 of CPC and the above suit is barred by limitation.

4. Upon considering the pleadings of the parties, this Court has framed the following issues:

1. Whether the plaintiff proves that, 1st plaintiff's father name is "**Tonse Shaikh Mohammed Rafiq**" ?

2. Whether the plaintiff further proves that, the defendant No.2 has wrongly entered the name of 1st plaintiff's father as " T.S. Rafeek" in the birth certificate of 1st plaintiff, dated 06-09-2022?
3. Whether the suit is barred by limitation?
4. Whether the plaintiff is entitled for the relief as sought in the plaint?
5. What order ?

5. In order to substantiate the plaintiffs case, 2nd plaintiff has examined herself as PW.1 and got marked 7 documents, marked as Ex.P1 to Ex.P7. On the other hand, the defendants have not adduced any evidence in support of their pleadings in the written statement.

6. Heard arguments of both the counsels.

7. 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 : As per the final order

REASONS

8. **ISSUES No. 1, 2 and 4 :-** As the issue No.1, 2 and 4 are inter-linked to each other, to avoid repetition of facts, they are taken together for discussion. In order to prove the case of the plaintiffs, the plaintiff No.2 has examined herself as PW.1 and has filed affidavit in lieu of Examination in Chief and got marked the

documents as Ex.P1 to P7, Ex.P1 is the birth certificate of 2nd plaintiff dated 06-09-2022, Ex.P2 is the endorsement dated 15-09-2022, issued by defendant No.2, Ex.P3 is notarised copy of Aadhar card of plaintiff No.1, Ex.P4 is notarised copy of Ration card of plaintiffs, Ex.P5 is the notarised copy of Aadhar card of husband of plaintiff NO.2, Ex.P6 is the notarised copy of PAN card of 2nd plaintiff's husband, Ex.P7 is the notarised copy of Bank pass book of 2nd plaintiff husband. PW1 has given clear and detailed evidence in respect of the contents of the said documents. Further, during the course of the cross examination of PW.1 by learned A.D.G.P., nothing is elicited to disprove the case of the plaintiffs.

9. On perusal of the records, Ex.P1 is the birth certificate of plaintiff No.1 issued by defendant No.2 which discloses the name of father of 1st plaintiff as "**T S Rafeek**". According to PW.1, her husband's name was wrongly entered in Ex.P1. In order to show the correct name of plaintiff No.2 husband, PW.1 has produced Ex.P3 is notarised copy of Aadhar card of plaintiff No.1, Ex.P4 is notarised copy of Ration card of plaintiffs, Ex.P5 is the notarised copy of Aadhar card of husband of plaintiff NO.2, Ex.P6 is the notarised copy of PAN card of 2nd plaintiff's husband, Ex.P7 is the notarised copy of Bank pass book of 2nd plaintiff husband. The learned counsel for the defendants cross examined the PW.1, wherein she clearly deposed that her husband's correct name is "**Tonse Shaikh Mohammed Rafiq**". In support of her contention PW1 has relied upon the Ex.P3 to 7. These documents are sufficient to believe the contention of the P.W.1, that the 1st plaintiff's father correct name is "**Tonse Shaikh Mohammed Rafiq**". But in the Ex.P.1, 1st plaintiff 's father name is wrongly mentioned as "**T S**

Rafeek". If the correct name of the 1st plaintiff's father is "**Tonse Shaikh Mohammed Rafiq**" and if it is not rectified in the Ex.P1, it would be hardship to the plaintiffs. Therefore, it is necessary to rectify the correct name of plaintiff No.1's father in the Ex.P1.

10. The Court can take judicial notice of the fact that some times, parents/relatives while giving information to the Birth & Death Register Authority give vague information without meticulously knowing the consequences thereof. Moreover, no hardship would be caused to the defendants, if the name of the 1st plaintiff's father is ordered to be corrected in the records maintained by the defendants. **Accordingly, the issues No.1, 2 and 4 are answered in the Affirmative.**

11. **ISSUE No.3:** On perusal of the records and the plaint, it reveals that recently the 2nd plaintiff came to know about the fault and did not have the knowledge of the same earlier. On the other hand, the defendants have only alleged the negligence on the part of plaintiff that even though she had knowledge about the fault, she failed to make it correct at the earlier stage. The defendants merely alleged that the suit is barred by limitation, but have not made any attempts to prove the said allegations and have not chosen to lead evidence on this behalf and nothing prevented this Court from believing the evidence of PW1. **Hence, the issue No.3 is answered in Negative.**

12. **ISSUE No.5:** In view of my findings to the above issues, I proceed to pass the following :

ORDER

Suit of the plaintiffs is decreed.

It is declared that the name of 1st plaintiff's father is **"Tonse Shaikh Mohammed Rafiq"**.

The defendants are directed to rectify the name of 1st plaintiff's father as **"Tonse Shaikh Mohammed Rafiq"** in the Birth Certificate of 1st plaintiff.

Plaintiffs have to bear the costs for themselves and the defendants.

Draw decree accordingly.

(Dictated to the Stenographer directly through computer, typed by her, corrected and then pronounced by me in open Court, this the **28th day of February 2023**.)

**(Sri Jeethu R.S.)
IV A. C. J. Udupi.**

ANNEXURE**List of witnesses examined for plaintiff:-**

PW1 - Mrs. Naseem

List of witnesses examined for defendants :- None

List of documents marked for the Plaintiff-

Ex.P1 - Birth certificate of 2nd plaintiff
Ex.P2 - Endorsement
Ex.P3 - notarised copy of Aadhar card of plaintiff No.1,
Ex.P4 - notarised copy of Ration card of plaintiffs
Ex.P5 - notarised copy of Aadhar card of husband of plaintiff NO.2,

- Ex.P6 - notarised copy of PAN card of 2nd plaintiff's husband,
Ex.P7 - notarised copy of Bank pass book of 2nd plaintiff husband.

List of documents marked for defendants :- NIL

**(Sri Jeethu R.S.)
IV A. C. J. Udupi..**