

**IN THE COURT OF II ADDL.SENIOR CIVIL JUDGE & JMFC, AT
CHITRADURGA**

DATED THIS THE 26th DAY OF JUNE, 2024

PRESENT: Smt.Ujwala Veeranna Siddannavar, B.Sc., LL.M.,
II Addl.Senior Civil Judge & JMFC,
Chitradurga.

OS.18/2022

Plaintiff : Razak Sabi,
S/o Late Khasim Sab & Fathima Bi,
Aged about 56 years,
Agriculturist,
R/o 2nd Cross, Indira Nagara,
Matadakurubarahatti,
Chitradurga.

(By Sri.G.C, Advocate)

V/S.

Defendant : Buden Sabi,
S/o Late Khasim Sab & Fathima Bi,
Aged about 58 years,
Agriculturist,
R/o Sulthanipura,
Lingadalli village,
Turuvanuru Hobli,
Chitradurga Taluk.

(By Sri.M.S.Advocate)

PARTIES ON IA NO.I

Applicants/defendant : Buden Sabi,S/o Late Khasim Sab &
Fathima Bi,

V/s.,

Opponent/plaintiff : Razak Sabi,S/o Late Khasim Sab
& Fathima Bi,

Provision under which the application is filed	Order 22 Rule 3 R/w Sec.151 CPC and Sec.3 of Limitation
Relief sought for	Rejection of plaint
The date on which the application is filed	25.01.2024
Number of the application	I.A.No.I
The date on which the objections are filed by different opponents	13.02.2024
The date on which the orders were passed on the said application	26.06.2024

(Smt.Ujwala Veeranna Siddannavar)
*II Addl.Senior Civil Judge
and MACT-V, Chitradurga.*

ORDER ON IA NO.I

Plaintiff Legal heir filed application Under Order 22 Rule 3 CPC seeking Permission to come on record to contest the matter. Defendant counsel filed objection for the same.

2. It is the case plaintiff that suit schedule property belong to his mother Late Smt. Fathima Bi W/o Kasim Sab and defendant is his brother. The said Fathima Bi died intestate in the year 2013 leaving behind plaintiff and defendant as her legal heirs. After her death both plaintiff and defendant being her legal heirs where in joint possession of suit schedule property as

tenants in common. Plaintiff demanded for partition and separate possession of suit schedule property, which is denied by defendant, hence he filed this suit seeking his legitimate share in the suit schedule property.

3. Defendant appeared through his counsel and admitted relationship with plaintiff, but denied joint possession over the suit schedule property along with plaintiff. Defendant submitted that during life time of their parents on 23.06.1986 as per the partition deed, plaintiff received his share and relinquished his right in the suit schedule property. He further submitted that about 30 years back partition is held in the family and plaintiff is having no right in the suit schedule property.

4. He further denied relationship of applicant with plaintiff. Plaintiff though married Shahazan but she left him immediately after one month from the date of marriage. She further married Fakkruddin and resided with him till her death. Therefore the applicant Nazamuddin is not the legal heir of plaintiff nor he is related to him. It is further claimed that said applicant is born to Shahajan and Fakkruddin and he is no way related to suit schedule property or plaintiff. Thereby pray for dismissal of the

suit.

5. During the pendency of the suit plaintiff died. Therefore applicant Nazamuddin filed an application Order 22 Rule 3 of CPC to come on record has his legal heir. The said application is objected by defendant and submitted that applicant is not the legal heir of deceased plaintiff and he is born to Shahajan and Fakkruddin. It is further submitted that immediately after one month from the date of marriage Shahajan left plaintiff and resided with Fakuruddin. Therefore applicant cannot be considered as the legal heirs of plaintiff. Thereby pray for rejecting the application.

6. Heard both the counsel for applicant and defendant and perused materials placed on record.

7. Upon hearing the arguments and on perusal of the materials placed on record, following points would arise for my consideration;

- 1. Whether the applicant/Nazamuddin prove that he is the legal heir of deceased plaintiff?*
- 2. What order?*

8. My findings to the above points are as under;

Point No.1 :- In the Affirmative

Point No.2 :- As per order for the following;

REASONS

9. POINT NO.1:- Plaintiff filed suit against defendant seeking his legitimate share in the suit schedule property. Plaintiff and defendant are brothers and suit schedule property is said to been held by their mother Fathima Bi. She died intestate in the year of 2013. The relationship with plaintiff and existence of suit schedule property is not disputed.

10. During the pendency of suit plaintiff died. His death is also not disputed. After death of plaintiff applicant Nazamuddin filed an application under Order 22 Rule 3 claiming to be his son and only legal heir of plaintiff and sought permission to contest the matter. The said application and relationship of plaintiff with applicant is seriously objected by defendant, stating that the applicant is not the son of plaintiff, nor he is having any relationship with him.

11. To establish the said facts applicant has been inquired and he adduced both oral and documentary evidence in support of

his claim. The applicant filed is affidavit in lieu of his examination in chief and examined as PW-1. He reiterated the contents of petition in his affidavit. He has also produced plaintiff's Ration Card as per Ex.P-1, his School Transfer Certificate as per Ex.P-2, his family genealogy tree as per Ex.P-3, Income and caste certificate as per Ex.P-4 and death certificate of his father/plaintiff as per Ex.P-5.

12. PW.1 is cross examined at length by defendant counsel. During the cross examination he dined all the suggestions posed by defendant and his claim. On perusal of Ration Card Ex.P.1 submitted by applicant, it can be gathered that it is issued by Government on 18.01.1988. In the said Ration Card plaintiff is aged about 32 years and his wife Shahanaz is aged 28 years and the applicant is shown as their sons, aged about 5 years. There by as per Ex.P1, applicant claims to be the son of plaintiff and Shahanaz. In the School Transfer Certificate applicant's date of birth is mentioned as 27-02-1990 and his father name is mentioned as K.Razak Sab. Thereby as on the issuance of Ex.P.1 was aged about 5 years.

13. In the genealogy tree applicants parents name are mentioned K.Razak Sab and Shahanaz. In the death certificate of plaintiff his wife name is mentioned as Shahanaz Banu. In the birth certificate of petitioner his parents name is mentioned as Shahanaz and Razak Sab. It is not the case of defendant that plaintiff performed second marriage. Marriage with Shahanaz is also not disputed. Thereby all the documents produced by applicant it can be gathered that plaintiff and Shahanaz are his parents. Ex.P1 is issued in the 1995 whereas applicant is born in the year 1990. As on the date of the issuance of Ex.P1 his age is mentioned as 5 years. There is nothing to disbelieve the said evidence.

14. Defendant not produced any material on record to disbelieve the oral and documentary evidence adduced by applicant. In fact defendant admitted the relationship of plaintiff with Shahanaz. It is vehemently argued by defendant counsel that Shahanaz resided only one month with plaintiff and left his company and resided with Fakruddin. There is no evidence on record to establish the said fact, except self serving evidence of

defendant. Defendant also examined one independent witness DW.2, who is acquainted with plaintiff and his wife. But except his oral evidence, there is no documentary evidence on record to establish that Shahanaz divorced plaintiff and resided with Fakruddin immediately after one month from the date her marriage.

15. Though in the death certificate of Shahanaz her husband name has been mentioned as Fakruddin but there is no material on record to establish that applicant is born to Shahanaz and Fakruddin. Only on the ground that Shahanaz resided with Fakruddin during her life time can not disprove the evidence adduced by applicant.

16. In the birth certificate of applicant his father name is mentioned as Razak Sab. Only on the ground that Shahanaz resided with Fakruddin can not be the ground to deny relationship of applicant with plaintiff. All the documentary evidence adduced by applicant clearly goes to show that he is son of plaintiff as claimed by him. Hence he being the legal heir of deceased plaintiff, is having right to come on record to contest the

matter. Accordingly, I answer **point no.1 in the Affirmative**

17. POINT NO.2: For the reasons stated above point No.1,
I proceed to pass the following:-

O R D E R

Petition filed by applicant Nazmuddin
under Order 22 Rule 3 of CPC as I.A.No.I is
hereby allowed.

He is permitted to come on record and
contest the matter. Further permitted to
carryout necessary amendment to the plaint
and submit amended plaint.

(Dictated to the Stenographer, transcription generated through the computer by her with my verification
and then signed and pronounced by me in the Open Court dated this the 26th day of June, 2024)

**(Smt.Ujwala Veeranna Siddannavar),
II Addl.Sr.Civil Judge and JMFC
Chitradurga.**