

KADW300031922024



IN THE COURT OF THE CIVIL JUDGE & JMFC,
KALAGHATAGI

PRESENT: Sri.G Sanjeev Kumar, MBA., LLB.,
Civil Judge & JMFC, Kalaghatagi.

DATED THIS THE 28th DAY OF MARCH, 2026

O.S.No.:403/2024

PLAINTIFF/S: Smt. Basavva Age: Basavaraj Bhovi,
Age: 52 years, Occ: House hold work,
R/o. Bhovi Oni, Kalaghatagi,
Tq: Kalaghatagi, Dist: Dharwad.

(By Sri. S.S.C., Advocates)

V/s

DEFENDANT/S: 1. The Chief Executive Officer,
Office of the Pattan Panchayath,
Kalaghatagi, Tq: Kalaghatagi,
Dist: Dharwad.

2. The State of Karnataka, Rep by the
Deputy Commissioner, Dharwad,
D.C.Compound, Dharwad.

(D1 Ex-parte)
(D2 By A.G.P)

Date of Institution of the suit:	17.12.2024
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Nature of the suit:	Suit for Declaration & Mandatory Directions
Date of commencement of recording of the evidence:	05.01.2026
Date of which the Judgment was pronounced:	28.03.2026
Total duration:	<u>Years</u> <u>Months</u> <u>Days</u> 01 03 01

**Civil Judge & JMFC,
Kalaghatagi.**

J U D G M E N T

This suit is filed for the relief of declaration and mandatory injunction against the defendants.

.PART- A

1. Factual Matrix of the Plaintiff's case:

The case of the Plaintiff is encapsulated as per below:

(I) It is the case of the plaintiff that the Government had allotted a residential site in favour of his mother under the Ashraya Yojana scheme by issuing a Niveshana Hakku Patra. However, in the said Hakku Patra, the name of the plaintiff's mother was erroneously recorded as "*Shantavva Maleshappa Hunasimarada*",

whereas her correct and actual name is "*Shantavva Malangappa Bhovi.*"

(ii) It is further submitted that, subsequent to the demise of the plaintiff's mother, the plaintiff approached the concerned revenue authorities seeking rectification of the said error in the Hakku Patra so as to reflect the correct name of his mother. However, the said authorities, instead of effecting the necessary correction, issued an endorsement directing the plaintiff to approach a competent civil court for appropriate relief.

(iii) Under such circumstances, the plaintiff has been constrained to institute the present suit against the defendants, seeking correction of the name of his mother in the said Hakku Patra.

2. Written Statement filed by Defendant No.2:

The contentions raised in the Written Statement are encapsulated as per below:

(I) The defendants, while denying all the averments made in the plaint, have specifically contended that the name appearing in the Hakku Patra, namely "*Shantavva Malleshappa Hunasimarada,*" and the name asserted by the plaintiff, namely "*Shantavva Mallangappa Bhovi,*" pertain to two distinct and different individuals.

(ii) It is further contended that the plaintiff has not undertaken any lawful steps for effecting change of name, such as publication in the official gazette or any other mode prescribed under law. The defendants have also raised a preliminary objection that the plaintiff has failed to comply with the mandatory requirements of Section 80 of the Code of Civil Procedure, 1908, prior to instituting the present suit.

(iii) The defendants have additionally alleged that the present suit has been instituted with a mala fide intention to usurp the property standing in the

name of one “*Shantavva Malleshappa Hunasimarada,*” by falsely claiming that the said person is the plaintiff’s mother. On these and other grounds, the defendants pray that the suit be dismissed with costs.

3. Plaintiff’s Evidence :-

The plaintiff No.1 had examined herself as PW1 and had filed an affidavit in lieu of her examination-in-chief and got marked Ex.P1 to P3. The detailed description of the documents are as per below:

Sl.No.	Description of Document	Exhibits
1.	Original Hakku Patra	Ex.P1
2.	Original death certificate	Ex.P2
3.	Living Member Certificate	Ex.P3

4. Defendant's Evidence :-

The defendants have not led their evidence and they have not produced any documents.:

5. Issues framed. :-

Heard the arguments of the plaintiffs and the defendants and perused the materials on record. The following issues arise for the consideration of this court:-

ISSUES

Issue No.1: Whether the plaintiffs prove that her correct name of deceased plaintiff's mother is "Smt. Shantavva W/o. Malangapa Bhovi"?

Issue No.2: Whether the plaintiffs are entitled for the relief of declaration as sought for?

Issue No.3: Whether the plaintiffs are entitled for the relief of mandatory direction as sought for?

Issue No.4: What Order?

6. The findings of this court are as under:-

Issue No.1 : In the **Negative**

Issue No.2 : In the **Negative**

Issue No.3 : In the **Negative**

Issue No.4 : As per final order

PART -B**REASONS**

7. Issue No.1: This issue is raised, casting burden upon the plaintiff to prove that the correct name of the deceased plaintiff's mother is Smt. Shantava, wife of Malangappa, Bhovi.

8. In order to discharge the said burden, the plaintiff has examined himself as PW1 and got marked as Exhibits P1 to P3 by filing an Affidavit in lieu of his chief examination. It is pertinent to analyse and appreciate cross examination of PW1.

9. The testimony of PW-1, being the sole witness examined on behalf of the plaintiff, assumes considerable significance and is required to be appreciated in the light of the principles embodied in the Indian Evidence Act, 1872, particularly Sections 101 to 103 relating to burden of proof, Section 114 concerning presumptions, and Sections 145 and 155

pertaining to contradictions and impeachment of credit. A careful and holistic reading of the cross-examination reveals that the defence has been successful in eliciting material admissions which go to the root of the plaintiff's case. The foundational plea of the plaintiff is that the name "Shantavva Mahadevappa Hunasimarada" found in Ex.P-1 is erroneous and that it in fact refers to her mother "Shantavva Mallangappa Bhovi." However, PW-1 has categorically admitted in her cross-examination that the persons named in Ex.P-1 are not related to her . This admission is fatal, as it completely destroys the theory of misdescription or clerical error and renders the plaintiff's case inherently inconsistent and self-contradictory. In terms of Sections 101 and 102 of the Evidence Act, the burden to establish identity squarely lies on the plaintiff, and such burden has remained wholly undischarged.

10. Further, the cross-examination discloses that PW-1 has failed to produce any of the

foundational documents such as the application for allotment under the Ashraya Scheme, the Panchayat resolution of allotment, or the extract of the relevant register maintained by the Panchayat, nor has she sought correction of the name in such primary records . These documents constitute the best possible evidence in a matter involving correction of entries in public records, and their non-production gives rise to an adverse inference under Section 114 illustration (g) of the Evidence Act. The testimony of PW-1 is further marred by material inconsistencies, as she simultaneously questions the correctness of certain entries in Ex.P-2 while affirming the truthfulness of its contents, and admits lack of knowledge regarding essential aspects such as ownership, boundaries, and particulars of the property. Such contradictions materially affect her credibility and are relevant under Sections 145 and 155 of the Evidence Act.

11. Moreover, PW-1 has made significant admissions which probabalise the defence version. She admits that if a house already exists in the name of her mother, no site would be allotted under the Ashraya Scheme, thereby casting serious doubt on the very allotment itself . She further admits that her mother had never taken any steps during her lifetime to correct her name, which permits the Court to draw a presumption under Section 114 that, had such a right existed, it would have been asserted. Additionally, PW-1 acknowledges the existence of other legal heirs, including her siblings, and admits that they have not been impleaded in the present suit despite there being no impediment , which raises serious doubts about the bona fides of the claim. Her admission that a document (Ex.P-3) was obtained by furnishing false information further undermines her credibility and attracts the provisions of Section 155 relating to impeachment of the credit of a witness.

. **12.** Moreover, PW-1 has made significant admissions which probabalise the defence version. She admits that if a house already exists in the name of her mother, no site would be allotted under the Ashraya Scheme, thereby casting serious doubt on the very allotment itself . She further admits that her mother had never taken any steps during her lifetime to correct her name, which permits the Court to draw a presumption under Section 114 that, had such a right existed, it would have been asserted. Additionally, PW-1 acknowledges the existence of other legal heirs, including her siblings, and admits that they have not been impleaded in the present suit despite there being no impediment , which raises serious doubts about the bona fides of the claim. Her admission that a document (Ex.P-3) was obtained by furnishing false information further undermines her credibility and attracts the provisions of Section 155 relating to impeachment of the credit of a witness.

13. Thus, the cumulative effect of the cross-examination is that the plaintiff has failed to establish the identity of the person named in Ex.P-1, has withheld the best available evidence, and has presented a case riddled with inconsistencies and improbabilities. The defence, on the other hand, has succeeded in probalising its contention that the person named in the Hakku Patra is distinct and unconnected with the plaintiff's mother. Even on the standard of preponderance of probabilities applicable to civil cases, the evidence of PW-1 does not inspire confidence and falls short of the requisite standard. Accordingly, the testimony of PW-1 cannot be relied upon, and the plaintiff has failed to discharge the burden cast upon her under the law.

14. In view of the foregoing discussion and appreciation of evidence, this Court is of the considered opinion that the plaintiff has utterly failed to discharge the burden cast upon him under Sections 101 to 103 of the Indian Evidence Act, 1872.

The admissions elicited in the cross-examination of PW-1 go to the very root of the matter and completely demolish the case of the plaintiff, particularly with regard to the identity of the person whose name appears in Ex.P-1. The plaintiff has not only failed to establish that "*Shantavva Mahadevappa Hunasimarada*" and "*Shantavva Mallangappa Bhovi*" are one and the same person, but has, on the contrary, taken a self-destructive stand by denying any relationship with the person named in the Hakku Patra. Coupled with the non-production of primary and best evidence, material inconsistencies in testimony, and admissions affecting credibility, an adverse inference is liable to be drawn against the plaintiff under Section 114 of the Evidence Act. The evidence placed on record does not satisfy even the test of preponderance of probabilities. Accordingly, this Court holds that the plaintiff has failed to prove that the correct name of his deceased mother is Smt. Shantavva W/o

Mallangappa Bhovi. Hence, **Issue No.1 is answered in the Negative.**

15. Issue Nos.2 and 3 : These issues are taken up cumulatively as they are intrinsically related to each other. They pertain to the entitlement of the plaintiff to seek a declaration of name and the consequential relief of mandatory injunction.

16. At the outset, it is well settled that a relief of declaration under Section 34 of the Specific Relief Act, 1963 can be granted only when the plaintiff establishes a clear legal right and the denial of such right by the defendants. The burden squarely lies upon the plaintiff to prove his entitlement by cogent, consistent, and reliable evidence. Further, the relief of mandatory injunction being consequential in nature, can be granted only when the foundational relief of declaration is duly established.

17. In the present case, as discussed in detail while answering Issue No.1, the plaintiff has failed to establish that the name appearing in the Hakku Patra, namely “Shantavva Malleshappa Hunasimarada,” and the name asserted by him, namely “Shantavva Mallangappa Bhovi,” refer to one and the same individual. The very foundation of the plaintiff’s claim thus stands unproved. When the identity of the person itself is not established, no declaration as sought can be granted.

18. Further, the plaintiff has not produced any convincing documentary evidence such as contemporaneous public records, revenue entries, Panchayat records, or any legally recognized documents demonstrating that both names pertain to the same person. On the contrary, the admissions elicited in the cross-examination of PW-1, particularly the denial of relationship with the person named in

Ex.P-1, render the plaintiff's case wholly unreliable and self-contradictory.

19. It is also pertinent to note that the plaintiff has not followed the established legal procedure for correction of name in official records, such as initiating appropriate proceedings before the competent authorities or producing proof of any attempt made in accordance with law. The non-compliance with procedural requirements further weakens the plaintiff's case and disentitles him from seeking equitable relief.

20. Additionally, the non-impleadment of other legal heirs of the deceased, despite their admitted existence, renders the suit bad for non-joinder of necessary parties, particularly when the relief sought pertains to property rights and correction of entries affecting succession. This omission raises serious doubts about the bona fides of the plaintiff's claim.

21. Insofar as the relief of mandatory injunction is concerned, it is trite that such relief cannot be granted in the absence of a clear and established legal right. Since the plaintiff has failed to prove his entitlement to the declaratory relief, the consequential relief of mandatory injunction directing the defendants to correct the entries in the Hakku Patra does not arise.

22. Thus, on a comprehensive appreciation of the pleadings and evidence, this Court is of the considered opinion that the plaintiff has failed to establish any legal right warranting declaration, and consequently, is not entitled to the relief of mandatory injunction. The evidence on record falls short even on the standard of preponderance of probabilities. Accordingly, **Issue No.2 and Issue No.3 are answered in the Negative.**

23. Issue No. 4: For the foregoing reasons, this court is inclined to pass the following:

ORDER

This suit filed by the plaintiff for the relief of declaration and Mandatory direction is hereby **dismissed with costs.**

Office is hereby directed to draw decree accordingly.

(Dictated to Adalat Ai, auto transcribed by Adalat Ai formatally corrected by Stenographer and then pronounced by me in the open court on this **28th day of March, 2026.**)

(G Sanjeev Kumar)
Civil Judge & JMFC,
Kalaghatagi.

A N N E X U R E

List of witnesses examined on behalf of plaintiffs :

PW1 : Basavva Basavaraj Bhovi

List of documents marked on behalf of plaintiffs ;

Ex.P1 : Original Hakku Patra

Ex.P2 : Original Death certificate

Ex.P3 : Living Member certificate

List of witnesses examined on behalf of defendants:

- N I L -

List of documents marked on behalf of defendants:

- N I L -

(G Sanjeev Kumar)
Civil Judge & JMFC,
Kalaghatagi.