

KABG040016752022



IN THE COURT OF IV ADDL. CIVIL JUDGE & JMFC, BELAGAVI

Present: Basavaraja Thulasappa Nayaka,
B.A.L LL.M.,
IV Addl. Civil Judge & JMFC,
Belagavi.

This the day of 14th June, 2023

O.S. NO.1133/2022

Plaintiff / s : 1) Shri. Varad S/o. Sanjay Desai,
Age: 04 years, Occ: Student,
R/o: Chavat Galli, Dardewadi,
At-Post: Pachgaon,
Tq: Karvir, Dist: Kolhapur.

2) Shri. Sanchita S/o. Sanjay Desai,
Age: 10 years, Occ: Student,
At-Post: Pachgaon,
Tq: Karvir, Dist: Kolhapur.

(Represent by Shri. Sanjay S/o. Yashawant
Desai as minor guardian to the present
plaintiffs No.1 and 2)

(By Shri. S.G. Kakatkar, Advocate)

V/s

Defendant /s 1) The City Corportion,
Belagavi.

(Exparte)

Date of institution of the suit	13.09.2022
Nature of suit	Declaration and Mandatory Injunction
Date of commencement of Trial	09.12.2022
Date on which the judgment was pronounced	14.06.2023
Duration of suit	Year/s Months Days -- 09 01

J U D G M E N T

This is a suit for declaration filed by the plaintiffs to declare that the plaintiff's son name is changed as 'Varad S/o. Sanjay Desai' and also for mandatory injunction to change the name in birth certificates issued in favour of plaintiff's son i.e Varad bearing Registration No.803033/U/B/2017/004211 dated 05.12.2017 and daughter Sanchita, bearing Registration No.1691 dated 13.09.2012.

2. The brief facts of the case are as follows:

It is averred that the father of the plaintiffs is having business at Kolhapur. He married to one Deepali D/o Pralhad Halgekar of Vadagaon, Belagavi and out of the said wedlock, two children born namely Sanchita and Varad at Akshay Hospital, Goaves, Belagavi on

07.09.2012 and 06.11.2017 respectively. Thereafter, he shifted to Kolhapur. His surname is Undage which is very difficult to explain public at large in Marathi and he is calling as Desai. Since beginning, he intend to change his surname from Undage to Desai. In order to get change his surname, he filed application before State Government of Maharashtra. Accordingly, his name got changed from Sanjay Yashwant Undage to Sanjay Yashwant Desai by gazette under its No.RNI No. Mah bil-2012-48006 with its Reg No.Petitioner/068/2013-15 dated 04.03.2021. Subsequently, his wife, his daughter and son's name got changed. Accordingly ,he got recorded his name in the ration card, Aadhar card. Further it is stated that he has taken the admission of his daughter in Vasantrao Chougule English Medium School mentioning her name as 'Sanchita Sanjay Desai'. But, at the time of admission of his son, said school authority refused to accept the alleged gazette notification mentioning that the admission will be done on birth certificate of child, not on Gazette. It is stated that he has already changed the name of his daughter in all Government records, but unable to change the name of his daughter in the defendant office. He requested the defendant authority to change the surname of his son as well as daughter from Undage to Desai, but as per the Gazette

published by the State Government of Maharashtra, the defendant authority flatly refused. Hence, this suit.

3. In pursuance of suit summons, the defendant did not appear before the Court and remained absent, hence he was placed *exparte*.

4. On the basis of the pleadings the following points that arise for my determination;

1. Whether the plaintiffs prove that name of plaintiff No.1 changed as 'Varad S/o. Sanjay Desai' and plaintiff No.2's name is changed as 'Sanchita D/o. Sanjay Desai' as per the notification/gazette issued by State Government of Maharashtra under its gazette No. RNI No. Mah bil-2012-48006 with its Reg No. Petitioner/068/2013-15 dated 04.10.2021?

2. Whether the plaintiffs are entitled for the relief of declaration?

3. Whether the plaintiffs are entitled for the relief of mandatory injunction?

4. What order or decree?

5. In order to prove the case of the plaintiffs, father of the plaintiffs has been examined himself as P.W.1 and 17 documents got marked at Ex.P.1 to 17.

6. Heard arguments of the plaintiff and perused the materials placed before the Court.

7. My answer on above Points is as under:-

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

Point No.4 : As per the final order,

for the following:-

REASONS

8. **POINT NO.1:** It is the case of the plaintiff that he intend to change the surname in their children's birth certificate, hence he requested the defendant authority to change the surname of his son as well as daughter from Undage to Desai, as per the Gazette published by the State Government of Maharashtra and delete the surname of undage from the birth certificate of the defendant authority. But the defendant authority flatly refused, due to which he is facing problem.

9. In order to prove the case of the plaintiffs, father of the plaintiffs has been examined himself as P.W.1 and reiterated the averments made in the plaint. The plaintiff in this regard relied on the birth certificates of plaintiff Nos. 1 and 2 i.e Varad and Sanchita i.e Ex.P1 and Ex.P12. On perusal of said birth certificates, it appears that the surname of the plaintiffs' father and mother is mentioned as Undage. The plaintiffs contended that by issuing government Gazette Notificaation, their surname changed to Desai. In this regard relied on Government Notification, Maharashtra as per Ex.P8,9 and 10. On perusal of the said notification, wherein the name of the father of the plaintiffs changed as 'Sanjay Yashwant Desai' from 'Sanjay Yashwant Undage' and mother name as 'Deepali Sanjay Desai' from 'Deepali Sanjay Undage. The plaintiff Nos. 1 and 2's name also changed from 'Varad S/o. Sanjay Desai' and Sanchita D/o. Sanjay Desai. On perusal of the Aadhaar cards of the plaintiffs and their father and mother, it appears that earlier the surname was mentioned as 'Undage'. Thereafter the surname changed as 'Desai' after the Gazette Notification. It is clearly evident from Ex.P2 to 17 Aadhaar cards and PAN Cards. Inspite of service of summons, the defendant placed exparte. The evidence of the plaintiff remained un-challenged. This clearly shows that the name of the plaintiff No.1 and 2 changed as

'Varad S/o. Sanjay Desai' and Sanchita D/o. Sanjay Desai' as per Gazette Notification No.RNI No. Mah bil-2012-48006 with its Reg No.Petitioner/068/2013-15 dated 04.03.2021. Further it is pertinent to note that the Hon'ble High Court of Karnataka in its decision reported in 2013 SCC Online Kar 868 has held that the change of name always for the future and change of name does not put the defendant or third party to any prejudice. Accordingly, I answer the Point No.1 in the ***Affirmative.***

10. **POINTS No.2 AND 3:-** The plaintiffs sought for declaration and mandatory injunction seeking direction to the defendant to effect changes in the birth certificate with respect to their surname from 'Undage' to 'Desai' as per gazette notification No.RNI No. Mah bil-2012-48006 with its Reg No.Petitioner/068/2013-15 dated 04.03.2021. It is pertinent to note that while answering Point No.1, this Court has already held that the plaintiffs have changed their name from 'Varad S/o. Sanjay Desai' and 'Sanchita D/o. Sanjay Desai'. Further on perusal of Ex.P8 to Ex.P10, the gazette notification, it appears that the surname of the plaintiffs, their father and mother changed as 'Undage' to 'Desai' as per gazette notification RNI No. Mah bil-2012-48006 with its Reg No.Petitioner/068/2013-15 dated 04.03.2021. Even the Aadhaar cards

and PAN Card of father and mother of plaintiffs also changed as 'Desai' from 'Undage'. On perusal of Ex.P1 and Ex.P2 birth certificates of plaintiff No.1 and 2 respectively, wherein the surname of father and mother of the plaintiffs is mentioned as 'Undage'. Now, the plaintiffs sought for declaration and direction to change the surname as 'Desai' as per the change of name in the Maharashtra Gazette notification i.e Ex.P8 to 10. Hence, I am of the opinion tht the plaintiffs are entitled for the relief of declaration and mandatory injunction as sought for in the plaint. Accordingly, I answer points No.2 and 3 in the ***Affirmative***.

11. **POINT No.4:-** In view of the above findings, I proceed to pass the following;

ORDER

The suit of the plaintiffs is hereby decreed.

It is declared that the name of plaintiff No.1 and 2 changed as 'Varad S/o. Sanjay Desai' and name of plaintiff No.2 changed as 'Sanchita D/o. Sanjay Desai' as per State of Government of Maharastra under its gazette No.RNI No. Mah bil 2012-48006 with its Rg No.Petitioner/068/2013-15 dated 4-10-2021

The defendant is directed to change the name from Undage to Desai as per notification issued by State of Government of Maharashtra under its gazette No.RNI No. Mah bil 2012-48006 with its Rg No.Petitioner/068/2013-15 dated 4-10-2021 respectively in the birth certificates of the plaintiff Nos.1 and 2.

Considering the above facts and circumstances of the case, no order as to costs.

Draw decree accordingly.

(Dictated to the Judgment Writer directly on the computer and typed by her and corrected by me and then pronounced in the open Court on this 14th June, 2023).

(Basavaraja Thulasappa Nayaka)
IV Addl. Civil Judge & JMFC,
Belagavi.

ANNEXURES

List of witnesses examined for the plaintiff/s :-

P.W.1: Shri. Sanjay D/o. Yashwant Desai

List of documents marked for the plaintiff/s :-

Ex.P.1	:	Birth certificate
Ex.P.2 to 5	:	Aadhaar cards
Ex.P.6 & 7	:	PAN cards
Ex.P.8 to 10	:	Gazette notifications

Ex.P.11 : Ration card
Ex.P.12 : Birth certificate
Ex.P13 to 15 : Adhaar cards
Ex.P16 & 17 : PAN Cards

List of witnesses examined for the Defendant/s :-

-Nil-

List of documents marked for the Defendant/s :-

-Nil-

**IV Addl. Civil Judge & JMFC.,
Belagavi.**