

KABG500015442022



IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE,
GOKAK

Present: K.M.SHANKAR, B.A.L., LL.B.,
I Addl. Senior Civil Judge, Gokak

Dated, this the 01st day of April, 2023

RA 51/2022

Appellant: Sajid S/o. Jalaluddin Hudali,
Age: 22 years, Occ: Student,
R/o: Gokak, Gokak taluk,
Belagavi district.

(By Sri.NSG., Advocate)

V/s

- Respondents:
1. The State of Karnataka,
Represented by Deputy Commissioner,
Belagavi.
 2. The Head Master,
Government Pre-University Collage,
Gokak, Belagavi district.
 3. The Secretary,
Karnataka Secondary Education
Examination Board, Malleshwaram,
Bengaluru.
 4. The Deputy Director of Public
Instructions, Chikkodi,
Chikkodi taluk, Belagavi district.
 5. The Block Education Officer, Gokak,
Gokak taluk, Belagavi district.
 6. The Principal,
Satish Sugars Academy PU. Arts,
Science & Commerce Collage, Gokak,
Belagavi district.



7. The Director, Pre-University Education,
Bengaluru.
8. The Head Master,
Payasagar Primary & High School,
Payasagar nagar, Gokak.

(R1 to 5 & 7 By the Learned AGP.,)
(R6 & 8 Absent)

Date and nature of the Order:	Appeal against the judgment and decree passed in OS. No.165/2022 dated 03.08.2022 by the learned II Additional Civil Judge and JMFC, Gokak		
Date of institution of the appeal	23.11.2022		
Date of Judgment	01.04.2023		
Duration of the appeal	Year/s	Month/s	day/s
	00	04	09

(K.M.SHANKAR)

I Addl. Senior Civil Judge, Gokak

J U D G M E N T

This appeal is preferred questioning the correctness and legality of the judgment and decree dated 03.08.2022 passed in O.S.No.165/2025 on the file of the learned II Additional Civil Judge and JMFC, Gokak.

2. The appellant herein was the plaintiff and the respondents herein were defendants before the trial court. In

the course of this Judgment, they are referred as per their original rank.

3. Brief facts of the case of the plaintiff are that, he is a permanent resident of Gokak and completed his SSLC in the 2nd defendant's school in April 2015. Thereafter, he completed his PUC in the 6th defendant's collage in March 2017. The father of the plaintiff Jalaluddin @ Kareem Abdul Rahaman Hudali was a Head Master in the Government Higher Primary School, Ramapur Tota, Rajapur village, Mudalagi taluk. Due to his ill-health he died on 12.04.2021 at Navami Hospital, Gokak when he was in service. After his death, the plaintiff has applied for a job on compensatory ground before the competent authority. The name of his mother was Ayisha D/o. Balasaheb Tambat. After marriage, her name was changed as Ayisha W/o. Jalaluddin Hudali. In all the school records and identity cards the name of the mother of the plaintiff was entered as Ayisha W/o. Jalaluddin Hudali. But, in the SSLC, TC, and PU marks cards her name is wrongly entered as Bibijan. The wrong entry of the name of the mother of the plaintiff came to his knowledge when The Commissioner, Education Department, Dharawad, replied to his application applied for

job on compensatory ground. Thereafter, the plaintiff approached the defendants 2 and 6 on 22.02.2022 and requested them to change the name of his mother in the records but they declined to make change and asked him to produce a decree from the competent court of law. Except the 6th defendant, other defendants are the government servants. The matter is urgent one. The plaintiff has applied before the competent authority for grant of job on compensatory ground. There is no time to issue notice Under Section 80 of CPC to the defendants. The issuance of notice will not defeat the right of the plaintiff in applying for job on compensatory ground. Therefore, he has filed application under section 80 (2) of CPC seeking leave to file the suit without issuing notice under section 80 of CPC to the defendants. Hence, the suit is filed.

4. The defendants 6 and 8 have been placed *exparte* by the trial court. The defendants 1 to 5 and 7 entered appearance through the learned AGP and the 5th defendant filed written statement. Defendants 1 to 4 and 7 have adapted the same by filing a memo.



5. In the written statement the defendants 1 to 5 and 7 have contended that the averments, which are not specifically admitted are denied as false and the plaintiff has to be put to strict proof of the same. The averments paragraph 3 are denies as false. It is contended that based on the information given in the application by the parents of the plaintiff the name of his mother was entered in the school records as Bibijan and annual progress report, certificates and attendance certificate is being given based on the entry made in the register. The name of the student or his parents will not be entered by the school wrongly. The plaintiff knew about entering of name of his mother since the beginning. Hence, the suit is barred by the law of limitation. The fact that the mentioning of name of the mother of the plaintiff wrongly in the school records came to his knowledge recently, thereafter he requested the school authority for rectification and it was rejected by them is false. The plaintiff never made such request. He has not mentioned the date of his request made to the school authority for rectification and the date when the mistake of mentioning of the name of his mother came to his knowledge. Hence, the suit is not maintainable under Order 7

Rule 6 of CPC. There is no cause of action and accordingly it is prayed for dismissal of the suit.

6. Based on the above pleadings the trial court framed the following issues:

1. Whether the plaintiff proves that the correct name of his mother is Ayisha W/o. Jalaluddin Hudali?
2. Whether the plaintiff further proves that the name of his mother is wrongly recorded as Bibijan in the records of the school and collage?
3. Whether the plaintiff is entitled to the relief prayed for?
4. What order or decree?

7. In order to prove the case of the plaintiff, he has examined himself as PW-1 and got marked documents namely, reply, leaving certificate, aadhar cards, pan card, SSLC marks card, transfer certificate, II PUC marks card, death certificate, kannada medium study certificate and birth

certificate as Ex.P1 to 11. The defendants 1 to 5 and 7 have cross-examined the PW1 but have not adduced evidence.

8. As could be seen from the impugned judgment and decree, after hearing the parties and considering the evidence available on record, the trial court partly decreed the suit holding that the correct name of the mother of the plaintiff is “Ayisha W/o. Jalaluddin Hudali” but has refused to grant mandatory injunction against the defendants and given liberty to the plaintiff to get the relief of direction against the defendants before the competent authority as per the government notification at any time.

9. Being aggrieved by the said Judgment and decree, the plaintiff has preferred the appeal on the grounds that, the observation of the trial court in respect of the relief of declaration made in the operative portion of the judgment is not correct. The trial court has failed to see that the plaintiff approached the court after the defendants refused to rectify the name of the mother of the plaintiff in the school records. Hence, the trial court ought to have decreed the suit of the plaintiff in entirety. The trial court erred in deciding the suit

partly. Hence, the plaintiff is constrained to prefer the appeal. Accordingly, it is prayed for setting aside the impugned judgment and decree and decree the suit as prayed for.

10. In spite of service of notice the defendants 6 and 8 have not chosen to appear in the appeal. The defendants 1 to 5 and 7 appeared through the Learned AGP and the record of the trial court has been secured.

11. I have heard the arguments of the learned counsel appearing for the parties and perused the material available on record.

12. Points that arise for determination of this court are:

1. Whether the trial court is justified in holding that it has no jurisdiction to issue a direction to the defendants to enter the correct name of the mother of the plaintiff in his educational records?
2. Whether the impugned judgment and decree is perverse, arbitrary, capricious, opposed to law, facts and circumstances



of the case and needs interference by this court?

3. What order or decree?

13. Findings of the court on the above points are:

Point No.1: in the negative

Point No.2: partly in the affirmative and

Point No.3: as per the final order for the following:

R E A S O N S

14. Point No.1 and 2: these points are taken up together for common discussion in order to avoid repetition in discussion.

15. The material on record goes to show that though the defence of lack of jurisdiction of civil court to entertain and try the suit filed for declaration of name of the mother of the plaintiff and it's rectification in the records of the school and collage of the plaintiff was not raised before the trial court by the defendants, the learned AGP appearing for the respondents 1 to 5 and 7 in the appeal has argued that the civil court has no jurisdiction to declare the name of a person and issue directions to the concerned authorities to rectify the

name in the records of the school or collage. That apart, the impugned judgment and decree reveal that the trial court has refused to grant the relief of direction to the defendants to enter the correct name of the mother of the plaintiff in his records of school and collage holding that it has no jurisdiction to grant such relief by relying upon the decision in view of the law laid down in the decision reported in 2016 SCC Online KAR 8398, in the case of (P.S. Venugopal @ P.S. Venu Vs. Chief Secretary, Government of Karnataka and others).

16. As could be seen from the said decision, for correction or any change of name in the school records, the competent authority is somebody else and not the civil court, which can correct the said school records. But, in the subsequent decision of RFA.No.170/2013, in the case of Rajashekhar H.G. @ Rajesh H.G. Vs. State of Karnataka and others, the Hon'ble High Court of Karnataka has mentioned about the government order dated 06.03.1998 passed in No.5(1) JA-BA-2-95-96 regarding change of name before the commissioner for education department of public instructions government of Karnataka. According to the said order, any person seeking any change in his name, father's name,

adopted father's name, date of birth or caste in the educational records should obtain a decree in a competent court of law only to effect his prayer. In the said judgment change of name and it's correction in the school records has been allowed by the Hon'ble High Court. Apart from this, in RSA.No.5214/2011, in the case of Kumar. Kallappa Mallappa Mali Vs. State of Karnataka and others, the Hon'ble High Court of Karnataka has upheld the judgment of the civil court made in respect of declaration of the surname. Further, in civil appeal No.3905/2011, in the case of Jigya Yadav Vs. CBSE and others, the Hon'ble Supreme Court has observed that where the change is to be effected on the basis of new acquired name without any supporting school record or public document, that request may be entertained upon insisting for prior permission/ declaration by a court of law in that regard. In view of the above observations and also the order of the government for change or rectification of name in the school records, a decree of civil court is necessary and accordingly the civil court gets jurisdiction to entertain and try the suits like at hand. In the circumstances, the reliance cannot be placed on the said decision relied by the trial court and the said arguments of the learned AGP do not hold water.

17. The PW1 has deposed in his examination-in-chief by reiterating the averments of the plaint and has placed reliance upon the Ex.P1 to 11 in support of his oral evidence. He was subjected for cross-examination by the learned AGP. During cross-examination, he was suggested that the name of his mother was written in the school records as per the information given by his father, for which the PW1 has deposed that his father gave name of his mother as Ayisha. He has denied the suggestion that all the documents are created by him and no mistake is made by the defendants in the school records. In the cross-examination, the defendants 1 to 5 and 7 have admitted through suggestion that name of the mother of the plaintiff is mentioned in the school records as Bibijan. Nothing was elicited by them to disbelieve the oral evidence of the PW1 and hold that the name of his mother is Bibijan and it was entered in the school records on the information given by the father of the plaintiff.

18. As could be seen from the Ex.P2, 3, 9 and 11-school leaving certificate, aadhar card, pan card, school certificate, death certificate and birth certificate, the name of the mother of the plaintiff is mentioned as Ayisha. These documents are

not disputed by the defendants and it is not their case that plaintiff is not the son of Ayisha and no contra evidence is produced by them to disbelieve the said documents. Therefore, this court has no hesitation to hold that the name of the mother of the plaintiff is Ayisha. The Ex.P2, 3, 9 and 11 reveal that the name of her husband is Jalaluddin Hudali, and this is not disputed by the defendants and no contra evidence is produced to disbelieve the same. Hence, there is no hesitation to hold that the name of the mother of the plaintiff is Ayisha W/o. Jalaluddin Hudali.

19. Now, the point that arises for consideration of the court is whether or not the authority of school and collage has mentioned the name of the mother of the plaintiff in his school and collage records as Bibijan. At the out set, nothing was elicited by the defendants in the cross-examination of the PW1 in this regard. Further, as could be seen from the Ex.P5 to 7-SSLC and PU marks cards and TC of the plaintiff, the name of his mother is mentioned as Bibijan. This fact is not disputed by the defendants and no evidence is forthcoming from their side to show that based on the information given by the father of the plaintiff the name of his mother was

mentioned in the school records as Bibijan. Therefore, the assertion of the plaintiff that the name of his mother is mentioned in his school and collage records wrongly cannot be ruled out. Moreover, the fact that the name of the mother of the plaintiff is Ayisha W/o. Jalaluddin Hudali is not disputed by the defendants. When the name of the mother of the plaintiff is Ayisha W/o. Jalaluddin Hudali, in all his school records his mother's name must be Ayisha W/o. Jalaluddin Hudali only. In the circumstances, the said mistake is to be rectified by the concerned authority, for which necessary mandatory injunction needs to be given by this court.

20. As could be seen from the impugned judgment and decree the trial court has rightly declared the name of the mother of the plaintiff as Ayisha W/o Jalaluddin Hudali and observed that her name is wrongly mentioned but has not granted mandatory injunction for rectification of the name of the mother of the plaintiff in the educational records of the plaintiff holding that the civil court has no jurisdiction to grant such relief. But, as observed hereinafter, the civil court has jurisdiction to grant such relief and the alleged mistake was committed by the school authority. Hence, it needs to be

rectified by a decree of the civil court. Further, no order is passed in respect of imposition of costs in the suit. In the circumstances, the impugned judgment and decree needs to be modified by decreeing the suit of the plaintiff in toto. Accordingly, the point No.1 is answered in the negative and the point No.2 is answered partly in the affirmative.

21. Point No.3: in view of the findings arrived on the point No.1 and 2, I proceed to pass the following:

O R D E R

The appeal filed U/O 41 Rule 1 R/w/s 96 of CPC, is hereby allowed.

The impugned judgment and decree dated 03.08.2022 passed in OS.No.165/2022, on the file of the II Additional Civil Judge and JMFC, Gokak is hereby modified and the suit is decreed as under;

The name of the mother of the plaintiff is declared as Ayisha W/o. Jalaluddin Hudali.

Defendants are directed to enter the name of the mother of the plaintiff in his



educational records as Ayisha W/o.

Jalaluddin Hudali in the place of Bibijan.

There shall be no order as to costs.

By considering the nature of the suit,
both parties are directed to bear their own
costs throughout.

Office to draw decree accordingly and
send a true copy of this judgment along
with decree and TCR to the trial court
forthwith and consign the records to the
CRR as per the rules.

(Dictated to the stenographer on computer, typed by
him, revised, corrected and then pronounced by me in the
open Court on this the 01st April, 2023)

(K.M.SHANKAR)
I Addl. Senior Civil Judge, Gokak