

**IN THE COURT OF PRL. CIVIL JUDGE AND JMFC.,
SOMWARPET**

Present: Sri K GOPALA KRISHNA, B.A.L., L.L.B.,
Prl. Civil Judge & JMFC., Somwarpet.

Dated 15th day of December, 2022

Cr.M.C.No.106/2022

Petitioners : 1. M.J.Somaiah,
S/o late.M.K.Joyappa,
Aged 48 years,
Koothy village, Somwarpet Taluk,
Kodagu district.

2. M.J.Erappa,
S/o late.M.K.Joyappa,
Aged 53 years,
Koothy village, Somwarpet Taluk,
Kodagu district.

4. M.J.Sureha,
S/o late.M.K.Joyappa,
Aged 45 years,
Koothy village, Somwarpet Taluk,
Kodagu district.

(By Sri.B.E.J, Advocate)

-Vs-

Respondent : The Tahasildar,
Somwarpet, Kodagu district.

(Respondent placed Exparte)

~:: ORDERS ::~

This petition is filed by the petitioners under section 13(3) of the Registration of the Births and Deaths Act, seeking direction from this court to direct the respondent to enter the date of death of great grand father of the petitioners by name Annaiah, S/o Melamane Subbaiah as on 20-09-1938 at Koothy village, Somwarpet Taluk, Kodagu district in the register maintained by the respondent.

2. Background of the facts of petition in a nutshell as under:

The great grand father of the petitioners by name Annaiah, S/o Melamane Subbaiah as on 20-09-1938 at Koothy village, Somwarpet Taluk, Kodagu district. That the petitioner No.1 forwarded an application to the respondent to get death certificate of their great grand father, but the respondent issued non-availability Certificate stating that there is no entry of regarding date of death in the concerned register maintained by the respondent. The petitioners required the Death Certificate of their great grand father for the purpose of property mutation. Hence, the petitioners have filed present petition.

3. In spite of service of summons, the respondent has failed to appear before the court. Hence, he placed ex parte.

4. In order to prove the averments of the petition, the petitioner No.1 examined himself as Pw.1 and has reiterated

the contents of the petition averments by filing his affidavit in lieu of examination-in-chief and got marked Ex.P1 to 4 documents.

5. Heard and perused the materials on record.
6. The following points arise for the determination.
 1. Whether the petitioner has made out sufficient grounds for allowing the petition?
 2. What order?
7. My answer to the above points are under

Point No.1 : In the ***Affirmative***

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

::REASONS::

8. It is contended by the petitioners that their great grand father of the petitioners by name Annaiah, S/o Melamane Subbaiah as on 20-09-1938 at Koothy village, Somwarpet Taluk, Kodagu district. In this regard, they have forwarded an application before the respondent to get the death certificate, but the respondent has issued non-availability certificate. In order to prove their contention, the petitioners have produced document at Ex.P1, non availability certificate, Ex.P.2 genealogical tree and Ex.P.3 is two paper publications.

9. It is also trite in a proceedings under section 13(3)

of registration of births and deaths Act, court is concerned with the factum of birth or death and date of birth or deaths not relevant. This proposition finds support from the ratio laid down by Hon'ble High Court of Karnataka in **2000(4) KCCR 2674**, *State of Karnataka V/s Smt Annakka*, which reads thus,

“Registration of Births and Deaths Act, 1969-section 13(3)-direction to make an entry in the Birth register by the Magistrate-Challenged on the ground that except the statement of applicant on oath, there is no other materials.

Held. The Magistrate in a proceeding under section 13(3) only ascertains the Birth of the child and date is not the material consideration, as such directions bind only the registration office under the Act to make an entry and does not carry higher probative value”

10. Reverting to the factual matrix of the present case, on perusal of Ex.P1, it appears that the date of death of great grand father of the petitioners is not entered in the death register. Further, the petitioners have averred that the death certificate is required for the purpose of property mutation. The case of the petitioners remain unchallenged. I do not find any reasons to disbelieve the case of the petitioners. Hence, I am of the opinion that there are no grounds to reject the petition. Further, in the event of allowing the petition, no other persons will be put into loss or injustice. On the other hand, in the event of rejecting the petition, the petitioners will be put into great hardship and injustice. Under the circumstances, the petition is liable to be allowed.

Hence, I proceed to pass the following:

::ORDER::

The petition filed by the petitioners under section 13(3) of the Registration of Births and Deaths Act, is hereby allowed.

The respondent is hereby directed to enter the date of death of great grand father of the petitioners by name Annaiah, S/o Melamane Subbaiah as on 20-09-1938 at Koothy Village, Somwarpet Taluk, Kodagu District in the concerned records and issue Death Certificate to the petitioners after collecting the required fee and fine.

The said entry shall not be a conclusive proof of death and if in case of any dispute there exists on date of death, the entries shall be subjected to proof.

No order as to costs.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the **15th day of December 2022**]

sd/-

(K.Gopalakrishna)
Prl.Civil Judge & JMFC.,
Somwarpet

::ANNEXURE::**List of witnesses examined for the petitioner:**

PW1 : M.J.Somaiah

List of documents exhibited for the petitioner:

Ex.P1 : Non availability certificate

Ex.P2 : Generalogical tree.

Ex.P3 : 2 Paper Publications.

List of witnesses examined for the respondent:

- NIL -

List of documents exhibited for the respondent:

- NIL -

sd/-

(K.Gopalakrishna)
Prl.Civil Judge & JMFC.,
Somwarpet