

KADK320016372022



Presented on : 21-10-2022  
Registered on : 28-10-2022  
Decided on : 05-08-2023  
Duration : 0 years, 9 months, 15 days

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & J.M.F.C., AT  
PUTTUR, D.K.**

**: PRESENT :**

**Smt. Archana K Unnithan B.E, LL.B.,**  
Principal Civil Judge and J.M.F.C.,  
Puttur, D.K.

**Dated this the 05<sup>th</sup> day of August 2023**

**O.S./368/2022**

**Plaintiffs :**

- 1. Moly Dsouza,**  
W/o.Camil Dsouza  
Aged about 38 years.
- 2. Clovin Dsouza,**  
S/o.Camil Dsouza and Moly Dsouza,  
Aged about 18 Years,  
Both are R/o. Garadi Palla House,  
Kairangala Village and Post, Balepuni,  
BantwalTaluk, D.K.

**(Rep. by Sri. M.I.B. Advocate)**

**-AND-**

**Defendants:**

- 1. The Commissioner**  
Registrar of Births and Deaths,  
City Municipal Council  
Puttur D.K.
- 2. The State of Karnataka,**  
Represented by Deputy Commissioner  
D.K. District, Mangalore, D.K.

**(D-1 Rep. by Sri. U.S.N. Advocate)**

**(D-2 Rep. by Learned A.G.P.,)**

|                                                       |   |                                    |                       |                     |
|-------------------------------------------------------|---|------------------------------------|-----------------------|---------------------|
| Date of institution of the suit                       | : | 28-10-2022                         |                       |                     |
| Nature of the Suit                                    | : | Declaration & Mandatory Injunction |                       |                     |
| Date of the commencement of recording of the evidence | : | 24-03-2023                         |                       |                     |
| Date on which the Judgment was pronounced             | : | 05-08-2023                         |                       |                     |
|                                                       |   | <b><u>Year/s</u></b>               | <b><u>Month/s</u></b> | <b><u>Day/s</u></b> |
| Total Duration                                        | : | 00                                 | 09                    | 15                  |

**(Archana K Unnithan )**  
**Prl. Civil Judge and J.M.F.C.,**  
**Puttur, D.K.**

## **JUDGMENT**

The present suit is filed by the plaintiffs against the defendants for the relief of declaration and mandatory injunction directing the defendants to rectify the birth certificate of the 2<sup>nd</sup> plaintiff.

### **2. The brief facts of the plaintiffs case is as follows:**

It is the case of the plaintiff that the 1<sup>st</sup> plaintiff have begotten a baby boy on 17-09-2004 at Dr. B.K.B.M. Hospital, Puttur, D.K. Who subsequently named as Clovin Dsouza . Later the fact of birth of said child was informed to the 1<sup>st</sup> defendant's office and the same was registered. That the plaintiffs obtained the birth certificate of 2<sup>nd</sup> plaintiff from the office of 1<sup>st</sup>

defendant. But on receiving the birth certificate, plaintiff's were surprised to see that in the column No-5 the name of the 1<sup>st</sup> plaintiff was wrongly entered as Melwin Dsouza instead of her correct name Moly Dsouza. In fact the correct name of the 1<sup>st</sup> plaintiff is Moly Dsouza. In the transfer certificate and Aadhar card issued to the 1<sup>st</sup> plaintiff, the name of the 1<sup>st</sup> plaintiff is correctly entered. Therefore, the plaintiffs have filed this suit for the aforesaid reliefs.

3. On service of the suit summons, The defendant No.1 appeared through his counsel and filed the written statement. The defendant No.2 has appeared through learned A.G.P. The learned A.G.P filed memo of adoption adopting the written statement of defendant No.1.

In the written statement filed by the defendant No.1, it is stated that, the suit is false, frivolous, vexatious and is not maintainable under law or on facts of the case. The above suit filed to declare and enter the name of the 1<sup>st</sup> plaintiff as Moly Dsouza instead of Melwin Dsouza as entered in the birth certificate of the 2<sup>nd</sup> plaintiff is not maintainable under law or on the facts of the case. The plaintiffs are put to strict proof with regard the correct name as contended. It is submitted that the 1<sup>st</sup> plaintiff name was wrongly entered in the birth certificate of

2<sup>nd</sup> plaintiff is not maintainable under law or on the facts of the case. No mistake was committed by this defendant while making the entry. Once the name and date of birth is entered in the register this defendant has no powers to correct the same. As the entry was made in year 2004 the suit now filed after the lapse of 18 years is barred by time and the plaintiff are not entitled to the reliefs sought for. The above suit is barred by law limitation. Therefore it is prayed to dismissed the suit with cost.

4. On the basis of the pleadings of both side parties, the following issues were framed:

#### **ISSUES**

1. Whether the plaintiffs prove that, the correct name of 1<sup>st</sup> plaintiff is **Moly Dsouza**?
2. Whether the suit of the plaintiffs is barred by law of limitation?
3. Whether the plaintiffs are entitled for the reliefs as claimed in the plaint?
4. What order or decree?

5. In order to prove their case, the 1<sup>st</sup> plaintiff has examined as P.W.1, and got marked the documents as Ex.P.1 to

6. The defendants have submitted that they have no evidence on their behalf. Hence, case was posted for arguments.

6. I have heard arguments from both the respective counsels and perused entire case file.

7. On the basis of available evidence on the record and arguments advanced from both sides, I have answered the above said issues as follows:

- Issue No.1 : In the **Affirmative**
- Issue No.2 : In the **Negative**
- Issue No.3 : In the **Affirmative**
- Issue No.4 : As per the final order,  
for the following reasons.

**:: REASONS ::**

8. **ISSUE NO.1 & 2**:- Taken together for consideration in order to avoid the repetition on facts. It is case of the plaintiffs that, the correct name of the 1<sup>st</sup> plaintiff is **Moly Dsouza**. But, in the birth certificate of 2<sup>nd</sup> plaintiff, the 1<sup>st</sup> plaintiff name was wrongly entered as **Melvin Dsouza**.

9. Defendants case is that they have not committed any mistake in entering the particulars of the Plaintiffs in the birth certificate of 2<sup>nd</sup> plaintiff and they have entered the particulars as per information furnished by the parents of the 2<sup>nd</sup> plaintiff.

10. In order to prove their case, the plaintiff No.1 has got examined as P.W.1. The said P.W.1 in her deposition has clearly deposed the facts narrated in the plaint.

11. In support of oral evidence of P.W.1, the plaintiffs have relied the documents i.e., Ex.P1 to P6.

12. The Ex.P.1 is the birth certificate of the 2<sup>nd</sup> plaintiff, Ex.P.2 is the endorsement issued by 1<sup>st</sup> defendant, Ex.P.3 is the Notarized copy of Transfer certificate of 1<sup>st</sup> plaintiff, Ex.P.4 is the notarized copy of Aadhar card of 1<sup>st</sup> plaintiff, Ex.P.5 is the notarized copy of Ration card of plaintiffs family and Ex.P.6 is the notarized copy of S.S.L.C. marks card of 2<sup>nd</sup> plaintiff.

13. In Ex.P.1, the 1<sup>st</sup> plaintiff's name is shown as **Melvin Dsouza**. But, in Ex.P3 to 6 the name of the 1<sup>st</sup> plaintiff is shown as **Moly Dsouza**.

14. The Plaintiffs contention is that the name of the 1<sup>st</sup> plaintiff as entered in the birth certificate of 2<sup>nd</sup> plaintiff i.e., in Ex.P.1 is wrong and the name of the 1<sup>st</sup> plaintiff as entered in Ex.P3 to 6 is correct.

15. Ex.P3 to 6 are the public documents maintained and issued by public authorities in discharge of their official duty. The defendants have not raised any objections regarding

genuineness of Ex.P3 to P6. So, the said documents remains undisputed.

16. Though the counsel for defendants have cross-examined the P.W.1, they could not elicit anything worth from the mouth of P.W.1, which could support the case of the defendants. Further, in the cross-examination it was clearly stated that the mistake crept in the birth certificate was recently noticed. From the S.S.L.C. marks card of the 2<sup>nd</sup> plaintiff it is noticed that the mother's name of the 2<sup>nd</sup> plaintiff is mentioned as Moly Dsouza and not Melvin Dsouza. The documents relied by the plaintiffs are public documents. The relationship between the parties are not disputed by the defendants. Though learned counsel for defendant argued that the suit of the plaintiff is barred by limitation. However, it is noticed that the defendant has denied the corrections in the birth certificate on 27-09-2022 from the said date the plaintiff has filed the suit within 3 years. Accordingly, it can be held that the suit filed within the period of 3 years.

17. It is pertinent to note that, if the name of the 1<sup>st</sup> plaintiff is rectified in the birth certificate of 2<sup>nd</sup> plaintiff, it will not cause any harm to the defendants. On the other hand if the name of the 1<sup>st</sup> plaintiff is not rectified in the birth certificate of

2<sup>nd</sup> plaintiff it will cause much hardship to the plaintiff No.2 in future and it will lead to further complications. Further, if the said name is continued then there is every possibility of dispute as to the identity of person in future. Furthermore, if the name as sought for rectification is rectified no hardship will be caused to the defendants and the plaintiffs will not get any undue advantage by allowing the prayer of the plaintiff. The corrections sought for by plaintiff are very small but very important for the future. There is no dispute with regard to the relationship between the parties. Hence, this court proceeds to answer **Issue No.1 in the Affirmative Issue No.2 in the Negative.**

**18. ISSUE NO.3:-** The Plaintiffs have proved issue No.1. Defendants have failed to prove issue No.2. Therefore, there are no impediments to grant reliefs as sought in plaint of the plaintiffs. Therefore, I hold that the plaintiffs are entitled for the reliefs sought by them in their plaint. Hence, this court proceeds to answer **Issue No.3 in the affirmative.**

**19. ISSUE NO.4:-** For the reasons assigned and findings taken on issue No.1 to 3, this court proceed to pass following order:

**:: ORDER ::**

The suit of the plaintiffs is hereby **decreed.**

In the result, it is hereby declared that the correct name of the 1<sup>st</sup> plaintiff is **Moly Dsouza.**

Consequently, defendants are hereby directed to rectify the name of the 1<sup>st</sup> plaintiff in the Birth Certificate of 2<sup>nd</sup> plaintiff as above declared by collecting requisite fee if required.

As the defendants are public servants and by considering the fact and circumstances of the case there is no order as to costs.

Draw decree accordingly.

(Dictated to the Stenographer, typed by him print out taken, corrected by me and then pronounced in open court on this the 05<sup>th</sup> day of August 2023.)

**(Archana K Unnithan)**  
**Prl. Civil Judge and J.M.F.C.,**  
**Puttur, D.K.**

**:: A N N E X U R E ::****1. The list of witnesses examined on behalf of the plaintiffs : -**

P.W.1 : Moly Dsouza

**2. The list of witnesses examined on behalf of the defendants:**

-Nil -

**3. The list of documents exhibited on behalf of the plaintiffs: -**

Ex.P1 : Birth certificate of the 2<sup>nd</sup> plaintiff

Ex.P2 : Endorsement issued by 1<sup>st</sup> defendant

Ex.P3 : Notarized copy of transfer certificate of 1<sup>st</sup> plaintiff

Ex.P4 : Notarized copy of Aadhar card of 1<sup>st</sup> plaintiff

Ex.P5 : Notarized copy of plaintiffs family ration card

Ex.P6 : Notarized copy of S.S.L.C marks card of 2<sup>nd</sup> plaintiff

**4. The list of documents exhibited on behalf of the defendants:**

-NIL -

**Prl. Civil Judge and J.M.F.C.,  
Puttur, D.K.**