

IN THE COURT OF THE I ADDITIONAL CIVIL JUDGE

AND J.M.F.C. AT MANGALURU, D.K.

PRESENT: Smt. Nikita S. Akki,

B.A., LL.B., LL.M.,

**III A.C.J. & JMFC., C/c. I A.C.J.
& JMFC., Mangaluru, D.K.**

DATED THIS 16TH DAY OF NOVEMBER 2022

O.S. No.1063/2022

PLAINTIFF :

KHATHEEJATHUL ZAIMA
D/o Ullal Abdul Khader
Aged about 11 years,
Rep. by her legal guardian and mother
of minor Khathijath Bushra
W/o Ullal Abdul Khader
R/at D.No.13-96/13,
Nafisa Manzil, Near Madani Junior College,
Alekal, Ullal, Mangaluru,
D.K. District-575 020.

(By Sri. Asif Baikady Adv.)

- Vs -

DEFENDANT :

The Registrar of Birth and Death,
City Municipal Council, Ullal.

(Exparte)

Date of institution of Suit	: 25.10.2022
Nature of Suit	: For Declaration and Mandatory Injunction
Date on which commencement of recording of evidence.	: 10.11.2022
Date of pronouncing of Judgment.	: 16.11.2022
Total duration.	: <u>Years</u> <u>Months</u> <u>Days</u> 00 00 22

**III Addl. Civil Judge & J.M.F.C.,
C/c. I A.C.J. & JMFC.,
Mangaluru, D.K.**

J U D G E M E N T

This suit is filed by the plaintiff against the defendant for the relief of declaration by declaring that, the correct name of the plaintiff's father is 'ULLAL ABDUL KHADER' and the correct name of the plaintiff's mother is 'KHATHIJATH BUSHRA' and mandatory injunction by directing the defendant to rectify name of the plaintiff's father as 'ULLAL ABDUL KHADER'

instead of 'ABDUL KHADER' and name of the plaintiff's mother as 'KHATHIJATH BUSHRA' instead of 'BUSHRA' in the birth certificate of the plaintiff.

2. The brief facts of the plaintiff's case as follows-

The plaintiff was born on 27-04-2011 at Government Hospital, Ullal, Mangaluru. After her birth, in the birth certificate issued by the defendant, plaintiff's father name is wrongly entered as 'ABDUL KHADER' instead of correct name as 'ULLAL ABDUL KHADER' and plaintiff's mother name is wrongly entered as 'BUSHRA' instead of 'KHATHIJATH BUSHRA'. The plaintiff requires her father correct name as 'ULLAL ABDUL KHADER' and her mother correct name as 'KHATHIJATH BUSHRA' in the birth certificate and hence the plaintiff's mother has approached the defendant and requested to rectify the error occurred in the birth certificate of the plaintiff. But the defendant

has refused to rectify the mistake and informed to get the court order to rectify the mistakes found in the birth certificate of plaintiff. Hence, the plaintiff has constrained to file this suit for declaration and consequential relief of mandatory injunction. Prayed to decree the suit.

3. Upon issuance of the suit summons, the defendant has not appeared before the court, consequently it has been placed *exparte*.
4. In order to prove her case, the plaintiff's mother got examined as P.W.1 and produced 5 documents as per Ex.P.1 to Ex.P.5 and closed the evidence. On the other hand, the defendant neither appeared nor contested the suit.
5. Heard learned counsel for the plaintiff and perused the materials available on record.

6. Now the points that would arise for my consideration are as follows-

1. Whether the plaintiff proves that, her father correct name is 'ULLAL ABDUL KHADER' and her mother correct name is 'KHATHIJATH BUSHRA'?
2. Whether the plaintiff is entitled for the relief of declaration and mandatory injunction as prayed for?
3. What Order or Decree?

7. My finding to the above points as follows –

- Point No.1 : In the Affirmative.
Point No.2 : In the Affirmative.
Point No.3 : As per the final order,
for the following –

REASONS

8. **POINT NOS.1 AND 2** : Both these points are interconnected to each other, hence I have taken these points together for common discussion to avoid the repetition of facts.

9. The plaintiff has filed this suit against the defendant for the relief of declaration by declaring that, the correct name of the plaintiff's father is 'ULLAL ABDUL KHADER' and the correct name of the plaintiff's mother is 'KHATHIJATH BUSHRA' and mandatory injunction by directing the defendant to rectify name of the plaintiff's father as 'ULLAL ABDUL KHADER' instead of 'ABDUL KHADER' and plaintiff's mother name as 'KHATHIJATH BUSHRA' instead of 'BUSHRA' in the birth certificate of the plaintiff. It is the case of the plaintiff that, the plaintiff was born on 27.04.2011. The information of birth was entered in the record of defendant. The plaintiff's father correct name is 'ULLAL ABDUL KHADER' and his mother correct name is 'KHATHIJATH BUSHRA' at the time of registration of birth of plaintiff, the particulars i.e. name, date of birth etc. is rightly given in the records. But defendant has wrongly mentioned the name of plaintiff's father

through oversight as 'ABDUL KHADER' and mother name as 'BUSHRA' and said wrong names of the plaintiff's parents is continued as 'ABDUL KHADER' and 'BUSHRA'. The correct name of plaintiff's father is 'ULLAL ABDUL KHADER' and mother correct name is 'KHATHIJATH BUSHRA'. Thereafter the plaintiff's mother has approached the defendant to correct the mistake in the birth certificate of plaintiff. But the defendant did not heed to the request of plaintiff.

10. Per contra, the defendant neither appeared nor contested the suit of the plaintiff.

11. In order to substantiate the case of the plaintiff, the plaintiff's mother got examined as PW.1 and got marked 5 documents as per Ex.P1 to P5. PW.1 has reiterated the contents of plaint averments in her examination-in-chief. Ex.P.1 is the birth certificate of plaintiff, Ex.P.2 is the endorsement issued by the

defendant, Ex.P3 and P4 are the notarized copies of Aadhar cards of plaintiff's parents and Ex.P5 is the notarized copy of passport of plaintiff's father.

12. Ex.P1 is the birth certificate of plaintiff discloses the plaintiff name as 'KHATHEEJATHUL ZAIMA', her father name discloses as 'ABDUL KHADER' and her mother name discloses as 'BUSHRA'. Further, Ex.P2 Endorsement issued by the defendant to the plaintiff's mother, which goes to show that defendant has refused to rectify the name of plaintiff's parents in her birth certificate.

13. The Ex.P.3 and P4 Aadhar cards of plaintiff's parents go to show that, the names of the plaintiff's parents mentioned in these documents as 'ULLAL ABDUL KHADER' and 'KHATHIJATH BUSHRA'. The Ex.P.5 passport of plaintiff's father goes to show that, the name of the plaintiff's father is mentioned as 'ULLAL

ABDUL KHADER'. On perusal of Ex.P.5 document confirms that, 'ULLAL ABDUL KHADER' and 'KHATHIJATH BUSHRA' are the parents of the plaintiff. Therefore, it is considered opinion of this court that, the error crept in the birth certificate Ex.P.1 is a pure typographical error.

14. Further, it is to be considered that, the version of PW-1 remained unchallenged as the defendant remained exparte and has not rebutted the contention of the plaintiff. Moreover, there is nothing on record to disbelieve or discard the oral and documentary evidence of the plaintiff. Ex.P.3 to P5 documents are public documents and those are admissible in evidence. If the said mistake is continued, the plaintiff will be put to great loss or hardship to her future. Mere changing the name of the person, she will not get any benefit from the Government. Therefore, based on

Ex.P3 to P5, I am of the opinion that, the correct name of the plaintiff's father is 'ULLAL ABDUL KHADER' and mother correct name is 'KHATHIJATH BUSHRA'. Therefore, it is proper to give direction to change the name of plaintiff's father in the birth certificate of the plaintiff as 'ULLAL ABDUL KHADER' instead of 'ABDUL KHADER' and name of plaintiff's mother in the birth certificate of the plaintiff as 'KHATHIJATH BUSHRA' instead of 'BUSHRA'. Hence, I answered **point No.1 and 2 are in the Affirmative.**

15. **POINT NO.3** :- In view of the finding given on above points, facts and circumstances of the case, I proceed to pass the following -

ORDER

The suit of the plaintiff is hereby decreed.

It is hereby declared that, the correct name of the plaintiff's father is 'ULLAL ABDUL KHADER' and mother name is 'KHATHIJATH BUSHRA'.

The defendant is hereby directed to rectify the name of plaintiff's father as 'ULLAL ABDUL KHADER' instead of 'ABDUL KHADER' and mother name as 'KHATHIJATH BUSHRA' instead of 'BUSHRA' in birth certificate of the plaintiff.

No order as to costs.

Draw decree accordingly.

(Dictated to the stenographer directly on computer, typed by her, corrected by me, signed & then pronounced by me in open Court on this **16th day of November, 2022.**)

(Nikita S. Akki)
III Addl. Civil Judge & JMFC.,
C/c. I A.C.J. & JMFC.,
Mangaluru, D.K.

- **ANNEXURES** -

LIST OF WITNESSES EXAMINED ON BEHALF OF PLAINTIFF:

P.W.1 – Mrs.Khathijath Bushra

LIST OF DOCUMENTS MARKED ON BEHALF OF PLAINTIFF:

Ex.P1 : Birth certificate of plaintiff

Ex.P2 : Endorsement issued by the defendant

Ex.P3 : Notarized copy of Aadhar card of plaintiff's
mother

Ex.P4 : Notarized copy of Aadhar card of plaintiff's father

Ex.P5 : Notarized copy of passport of plaintiff's father.

LIST OF WITNESSES EXAMINED ON BEHALF OF DEFENDANT/S:

- N I L -

LIST OF DOCUMENTS MARKED ON BEHALF OF DEFENDANT/S:

- N I L -

**Mangaluru
16.11.2022.**

**III Addl. Civil Judge &
JMFC., C/c. I A.C.J. &
JMFC., Mangaluru, D.K.**