

**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.,
(C/C) II Addl. Civil Judge and J.M.F.C.,
Puttur, D.K.

Dated this the 27th day of February 2023.

O.S. No.371/2022

Plaintiffs :

- 1. Shri. Sayyad Sheyas,**
S/o. Apsar Pasha,
Aged about 33 years.
- 2. Smt. Zarina,**
W/o. Sayyad Sheyas,
Aged about 28 Years.
- 3. Nehal,**
S/o. Sayyad Sheyas,
Aged about 15 years,
(Minor who is Rep. by next
friend his natural
guardian i.e., father by name
Sayyad Sheyas,
1st plaintiff herein.
All are R/at. 1-73, KEB road, Puttur.

(Rep. by Shri. P.M. Advocate.,)

-AND-

Defendants:

- 1. The State of Karnataka,**
Rep. by the Deputy Commissioner,
Mangalore, D.K.
- 2. Commissioner,**
City Municipal Council,
(Births and Deaths Officer)
Puttur, D.K.

**(D-1 Rep. by Learned A.G.P)
(D-2 Rep. by Shri. U.S.N. Advocate.,)**

Date of institution of the suit : 02-11-2022

Nature of the Suit : Declaration

Date of the commencement of recording of the evidence : 15-02-2023

Date on which the Judgment was pronounced : 27-02-2023

	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>
Total Duration :	00	03	25

(Archana K Unnithan)
II Addl. Civil Judge and J.M.F.C.,
Puttur, D.K.(C/C)

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 3rd plaintiff.

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

It is the case of the plaintiff that the plaintiff No.3 was born on 15-11-2007 at Government Hospital Puttur Taluk, D.K. and the same boy baby named as **Nehal**. The details of the birth has been entered in register of birth as per Reg.

No.4544/2007 of 2nd defendant. But in said register the 1st plaintiff name has entered as **Sayji** instead of **Sayyad Sheyas** and 2nd plaintiff name was entered as **Jareena** instead of **Zarina**. It is case of the plaintiff that, the 1st plaintiff has applied for the birth certificate of 3rd plaintiff, but by clerical error and type mistake the 1st plaintiff's name has entered as Sayji instead of Sayyad Sheyas and 2nd plaintiff's name has entered as Jareena instead of Zarina and in this respect the plaintiffs requested defendant No.2 wherein they gave endorsement that there is no provision to rectify the name. To rectify the mistake the plaintiff has issued legal notice to the defendants there is no use. Thus as a last resort, the plaintiff has approached this Court for necessary relief Therefore, the plaintiffs have filed this suit for the aforesaid reliefs.

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

In the written statement filed by the defendant No.2, it is stated that, the suit is false, frivolous, vexatious and is not maintainable under law or on facts of the case. The suit is not

bonafide also. The suit filed to declare and enter the name of the 1st plaintiff as **Sayyad Pasha** instead of Sasyiji and the 2nd plaintiffs name as **Zarina** instead of **Jareena** as entered in the birth certificate of the 3rd plaintiff is not maintainable under law on the facts of the case. It is case of the defendant 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 2007, the suit now filed after the lapse of 15 years is barred by time and the plaintiff are not entitled to the reliefs sought for. The allegation that the plaintiffs came to know of the mistake only 13-10-2022 is false and plaintiffs are put to strict proof of the same. The plaintiffs are not entitled to the relief of declaration and for the correction sought for. Hence, it is prayed to dismiss the suit with cost.

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

ISSUES

- 1) Whether the plaintiff prove that, the name of plaintiff No.1 as **Sayyad Sheyas** and name of plaintiff No.2 as **Zarina?**.

- 2) Whether the suit is barred by law of limitation?.
- 3) Whether the plaintiffs are entitled for the relief as claimed in the plaint?.
- 4) What decree or order?.

5. In order to prove their case, the 1st plaintiff has examined as P.W.1, and got marked the documents as Ex.P.1 to P6. 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**:- It is case of the plaintiffs that, the correct name of the 1st plaintiff is **Sayyad Sheyas** and the correct name of the 2nd plaintiff is **Zarina**. But, in the birth certificate of

3rd plaintiff, the 1st plaintiff name was wrongly entered as **Sayij**, and the 2nd plaintiff name was wrongly entered as **Jareena**

9. Defendants case is that they have not committed any mistake in entering the particulars of the Plaintiffs in the birth certificate of 3rd plaintiff and they have entered the particulars as per information furnished by the parents of the 3rd 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 his 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 3rd plaintiff, Ex.P.2 is the endorsement issued by 2nd defendant, Ex.P.3 is the Notarized copy of 1st plaintiff's Aadhar card, Ex.P.4 is the Notarized copy of 1st plaintiff's School transfer certificate, Ex.P.5 is the notarized copy of plaintiffs family ration card and Ex.P6 is the notarized copy of 2nd plaintiff's Aadhar card.

13. In Ex.P.1, the 1st plaintiff's name is shown as **Sayij**, and the 2nd plaintiff's name is shown as **Jareena**. But, in Ex.P.3 to P5 the name of the 1st plaintiff is shown as **Sayyad Sheyas**. Ex.P5 and P6 the name of the 2nd plaintiff is shown as **Zarina**.

14. The Plaintiffs contention is that the names of the plaintiffs as entered in the birth certificate of 3rd plaintiff i.e., in Ex.P.1 is wrong and the name of the 1st plaintiff as entered in Ex.P3 to P5 is correct and the name of the 2nd plaintiff as entered in Ex.P5 and P6 is correct.

15. Ex.P3 to P6 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.

17. It is pertinent to note that, if the names of the plaintiffs are rectified in the birth certificate of 3rd plaintiff, it will not cause any harm to the defendants. On the other hand if the names of the plaintiffs are not rectified in the birth certificate of 3rd plaintiff it will cause much hardship to the plaintiff No.3 in future and it will lead to further complications. The relationship between the parties are not disputed by the defendant. Further,

if the said names are continued then there is every possibility of dispute as to the identity of person in future. Furthermore, if the names 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 relation between the parties. Hence, I hold that the plaintiffs have proved their case. Hence, this court proceeds to answer **Issue No.1 in the affirmative.**

18. **ISSUE NO. 2:-** The Defendants have contended in their written statement that, the suit of the plaintiffs is barred by limitation. But defendants have not specifically contended that when the plaintiffs have got cause of action and within what time plaintiffs should have filed this suit. In the cross-examination P.W.1 clearly stated that the mistake crept in the Ex.P1 was recently noticed. i.e., from Ex.P2 it is noticed that the defendant issued endorsement on 03-10-2022. Hence, plaintiffs filed this suit. From the said documents it is clearly noticed that within 3 years from the date of denial of the defendants to rectify the records of the plaintiffs, the suit is filed. Hence, this court hold that the suit of the plaintiffs is filed

within time. Hence, this court hold that the defendants have failed to prove that the suit of the plaintiffs is barred by limitation. Hence, this court proceeds to answer **Issue No.2 in the negative.**

19. 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.**

20. 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 1st plaintiff is **SAYYAD SHEYAS** and the correct name of the 2nd plaintiff is **ZARINA.**

Consequently, defendants are hereby directed to rectify the names of

the plaintiffs in the Birth Certificate of 3rd 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 27th day of February 2023.)

(Archana K Unnithan)
II Addl. Civil Judge and J.M.F.C.,
Puttur, D.K. (C/C)

:: A N N E X U R E ::

1. The list of witnesses examined on behalf of the plaintiffs : -

P.W.1 : Shri. Sayyad Sheyas

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

-Nil -

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

Ex.P.1 : Birth certificate of 3rd plaintiff
Ex.P.2 : Endorsement issued by the defendant No.2
Ex.P.3 : Notarized copy of 1st plaintiff's Aadhar Card
Ex.P.4 : Notarized copy of 1st plaintiff's School
transfer certificate

Ex.P.5 : Notarized copy of plaintiffs family ration card

Ex.P.6 : Notarized copy of 2nd plaintiff's Aadhar Card

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

-NIL -

**II Addl. Civil Judge and J.M.F.C.,
Puttur, D.K. (C/C)**