



IN THE COURT OF THE I ADDL. CIVIL JUDGE AND
J.M.F.C.,
AT GOKAK

-.Present:-

Smt. Surya Prabha H.D.
M.A., LL.M.
I Addl. Civil Judge & JMFC,
Gokak

O.S.No.548/2022

Dated this the 24th day of March 2023

PLAINTIFF/S:

1. Kumar Abhishek S/o Mallikarjun Patil
Age: 9 years, Occ: Student
R/o: Melavanki, Tq: Gokak
Dist: Belagavi
Since minor R/by natural father Shri. Mallikarjun S/o
Bheemagouda Patil.

(By Sri. VSD Advocate)

..Plaintiff

//Versus//

DEFENDANT/S:

1. The State of Karnataka
R/by Deputy Commissioner Belagavi.
2. The Commissioner
Registrar of Birth and Deaths
City Municipal Council, Gokak.

3. D.D.P.I.
Chikkodi.

4.B.E.O.
Gokak.

5. The Principal
G.E.S.Modern English Medium School, Gokak.
..Defendants

**(Defendant No.1,3, 4 by the learned AGP,
Defendant No.2 by Shri. BSK Adv, defendant No.5 Ex-
parte)**

Date of institution of suit : 13/10/2022.

Nature of the suit : Declaration and
Consequential relief of
direction.

Date of commencement of
evidence : 06/03/2023.

Date of judgement pronounced : **24/03/2023**

Total Duration : Year/s Month/s Day/s
01 07 11

(Smt. Surya Prabha H.D.)
I Addl.Civil Judge & JMFC.,
Gokak

: J U D G M E N T :

This is a suit for Declaration and Consequential relief of Mandatory Injunction.

2) The facts of the plaintiff's case in nut shell are as follows:

It is the case of the plaintiff that the plaintiff is the permanent resident of Melavanki village, Tq: Gokak, Dist: Belagavi. It is submitted that the plaintiff was born on 01/11/2013 at Navjeevan Nursing Home Hospital, Gokak. After the birth of the plaintiff, relatives of plaintiff intimated the name of plaintiff to defendant No.2 authority as Abhishek but defendant No.2 authority through oversight inadvertently entered the plaintiff's name as Abhishek @ Abay instead of Abhishek. When the father of the plaintiff obtained the birth certificate of his son, the father of the plaintiff came to know about the wrong entry in the birth certificate. The father of the plaintiff requested the defendant No.2 to correct the said mistake but of no avail. Thus, the plaintiff was constrained to

file this suit for Declaration and Consequential relief of rectification. Thus, prayed the court to decree the suit.

3) In response to suit summons, the defendant No. 1, 3 and 4 appeared through the learned AGP. Defendant No.4 filed written statement and the defendant No.1 and 3 adopted the written statement of defendant No.4. Despite due service of summons the defendant No.5 did not appear before the court. As such, defendant No.5 was placed ex.parte. Though learned counsel Shri. BSK filed memo of undertaking for defendant No.2 but has not filed written statement. As such, the written statement of defendant No.2 was taken as not filed.

4) It is contended in the written statement that, suit of the plaintiff is not maintainable either in law or facts. As such, liable to be dismissed. It is denied that the name of the plaintiff is Abhishek. It is further denied that, there is a mistake crept in the birth certificate of the plaintiff. It is further submitted that after the birth of the plaintiff the

concerned details pertaining to the birth of the minor plaintiff, his address, residence and others were given by the relative of the minor plaintiff. As such, there is no mistake on the part of the defendants to enter the name of the minor plaintiff in his birth certificate. Thus, prayed the court to dismiss the suit.

5) On the basis of the pleadings and documents placed on record at initial stage, this court framed the following issues.

ISSUES

1. Whether the minor plaintiff proves that his correct name is Abhishek?
2. Whether the minor plaintiff further proves that his name is wrongly entered as Abhishek @ Abay instead of Abhishek in the birth certificate at column No.1?
3. Whether the minor plaintiff is entitled to the relief prayed in the plaint?
4. What order or decree?

6) Heard the learned counsels appearing for the plaintiff and defendants. Perused the oral and documentary evidence placed on record and my answer to the above issues is as under:

Issue No.1: In the Affirmative.

Issue No.2: In the Affirmative.

Issue No.3: In the Affirmative.

**Issue No.4: As per final order
for the following:**

REASONS

7) Issue No.1 and 2: These issues are related to the correct name of the minor plaintiff and mistake crept in the birth certificate of the minor plaintiff. As such, I have taken them for common discussion to avoid repetition of discussion.

So as to prove his case, the father of the minor plaintiff examined himself as PW1. In support of oral evidence got marked Ex.P1 to Ex.P5. Ex.P1 is the letter issued by the

registrar birth and death, Gokak dated 15/09/2022, Ex.P2 is the bonafied certificate issued by GES Modern English Medium School, Gokak, Ex.P3 is the Original birth certificate of the plaintiff, Ex.P4 is the original Aadhar card of the minor plaintiff, Ex.P5 is the Original Aadhar card of the father of the minor plaintiff.

8) It is the specific case of the plaintiff that the correct name of the minor plaintiff is Abhishek. So as to prove his case, the father of the minor plaintiff has examined himself as PW1 and filed affidavit in lieu of his examination in chief and reiterated the contents of the plaint. PW1 has categorically deposed that correct name of the minor plaintiff is Abhishek which is wrongly mentioned as Abhishek @ Abay in the birth certificate of the minor plaintiff. Though PW1 has been cross examined at length but nothing is elicited to disbelieve his evidence with respect to the correct name of minor plaintiff as claimed in the plaint. Thus, the evidence of PW1 with respect to the correct name of the minor plaintiff has remained unchallenged.

9) This court has also perused the documentary evidence produced by the plaintiff. This court has perused Ex.P1 which is the letter issued by the registrar birth and death, Gokak dated 15/09/2022 which discloses that the registrar birth and death Gokak had refused to make the necessary correction in the birth certificate of the minor plaintiff, Ex.P2 is the bonafied certificate issued by GES Modern English Medium School, Gokak wherein the name of minor plaintiff is wrongly entered as Abhishek @ Abay due to the wrong entry in the birth certificate of the minor plaintiff, Ex.P3 is the Original birth certificate of the minor plaintiff wherein it discloses that the name of minor plaintiff is wrongly entered as Abhishek @ Abay, Ex.P4 is the original Aadhar card of the minor plaintiff, wherein his name is mentioned as Abhishek, Ex.P5 is the Original Aadhar card of the father of the minor plaintiff.

10) On perusal of the documents produced by the minor plaintiff it appears that the correct name of the minor plaintiff

is Abhishek and the same is entered incorrectly in the birth certificate.

11) Though PW1 has been cross examined at length, the entry in Ex.P4 has not been denied. As such, the entry in the Ex.P4 has remained unrebutted. Further, this court also perused Ex.P2 and Ex.P3 wherein it appears that the name of the minor plaintiff is incorrectly mentioned as Abhishek instead of Abhishek @ Abay. It is worthwhile to state that the incorrect entry in Ex.P3 is made on 19/11/2013. As such, the mistake in wrongly mentioning the name of the minor plaintiff cannot be attributed to the plaintiff. Albeit, PW1 has been cross examined at length, Ex.P4 has not been denied. As such, the said document has remained unchallenged.

12) On cumulative reading of the evidence of PW1 and Ex.P1 to 5 it appears, that there is a mistake in the birth certificate pertaining to the name of the minor plaintiff. It is also evident that, the name of the minor plaintiff is wrongly entered in the

birth certificate of the minor plaintiff. There is every possibility of occurrence of such mistake at the time of making entries in the birth certificate. Though, defendants may not be at fault but the mistake which occurred was even beyond the control of minor plaintiff. Further the defendants have not produced Iota of material to show that, the relief sought in the plaint cannot be granted. As such, the claim of minor plaintiff that the correct name of the minor plaintiff is Abhishek and the same is wrongly entered in the birth certificate of the minor plaintiff appears to be probable. Accordingly, this court answers issue No.1 and 2 in the ***Affirmative***.

13) Issue No.3: This issue is framed with respect to the entitlement of the relief claimed by plaintiff. The plaintiff in this case has sought for the relief of Declaration and Consequential relief of rectification to correct the mistake crept in the birth certificate. While answering issue No.1 and 2 this court concluded that the correct name of the minor plaintiff is Abhishek and the same is wrongly mentioned as Abhishek @

Abay in the birth certificate of the plaintiff. As such, the minor plaintiff is entitled for the relief claimed in this suit. Apart from this, defendants have not produced Iota of material to show the relief sought in the plaint cannot be granted and there is no impediment under any law to grant relief claimed by the plaintiff. This being the case, the claim of the plaintiff appears to be probable. Accordingly, this court answers Issue No.3 in the ***Affirmative***.

14) Issue No.4: In view of discussion and conclusion arrived at issue No.1 to 3, the suit of the plaintiff deserves to be decreed. The defendants are government servants and are not at fault. As such, in my view it may not be proper to impose cost on defendants. Hence, this court proceeds to pass the following:

:: ORDER ::

The suit of the plaintiff is decreed.

It is ordered and declared that the correct name of the plaintiff is Abhishek but not Abhishek @ Abay.

It is further ordered and decreed that the concerned defendant is directed by way of Mandatory Injunction to correct the name of plaintiff as Abhishek in the birth certificate of the plaintiff.

Parties to bear their own costs.

Draw decree accordingly.

(Dictated to Stenographer, directly on the computer, typed by her, correct, signed and then pronounced by me in the open Court on this the 24th day of March 2023)

**(Smt. Surya Prabha H.D.)
I Addl. Civil Judge & JMFC,
Gokak.**

ANNEXURE

1. List of witnesses examined for the plaintiff/s side.

PW-1 : Mallikarjun S/o Bhimagouda Patil.

2. List of documents exhibited for the plaintiff/s side.

Ex.P-1: Letter issued by the Registrar Birth and Death Gokak dated 15/09/2022.

Ex.P2: Bonafied certificate issued by GES
Modern English Medium School, Gokak.

- Ex.P3: Original Birth Certificate of the plaintiff.
Ex.P4: Original Adhar card of the minor plaintiff
Ex.P5: Original Adhar card of the father of the
minor plaintiff.

3. **List of witnesses examined for the defendant/s side.**

-Nil-

4. **List of documents exhibited for the defendant/s side.**

-Nil

(Smt. Surya Prabha H.D.)
I Addl. Civil Judge & JMFC,
Gokak.

