



IN THE COURT OF THE II ADDL. CIVIL JUDGE & J.M.F.C., UDUPI

Present: Shri. Shyam Prakash.,
B.A.L. LL.B.,
Addl. Civil Judge & JMFC, Udupi

Dated this 14th day of November 2022

O.S.No.832/2022

1. Sri. Manohar Shetty,
Aged about 38 years,
S/o Muddanna Shetty,

2. Master Shamanth M. Shetty,
Aged about 3 years,
S/o Manohar Shetty,

Rep.by his father and
natural guardian, plaintiff No.1
Both are R/at Yellampalli,
Neelavara Village & Post,
Brahmavara Taluk, Udupi District.

...Plaintiffs

(Rep.by Sri. H.G.S., Advocate)

Vs

1. The Commissioner cum Registrar of Births,
Udupi City Municipality,
Udupi.

2. The Deputy Commissioner,
Udupi District,
Rajathadri, Manipal – 576104.

...Defendants

(D1 & 2 Rep.by ADGP)



Date of Institution of suit	10-10-2022
Nature of the suit	Declaration
Date of Commencement of evidence	10-11-2022
Date of pronouncement of judgement	14-11-2022
Total Duration	Year's 00 Month/s 01 Day/s 04

[Shyam Prakash]
Addl. Civil Judge & JMFC, Udupi

JUDGMENT

The plaintiffs sought for a judgment and decree against defendants to declare that, the name of plaintiff No.2 as Shamanth M. Shetty and for direction to effect necessary changes in the Birth certificate of plaintiff No.2 bearing Registration bearing No.803141/T/B/2019/002115 dated 06-05-2019.

2. The plaintiffs' case is that, plaintiffs are the resident of Yellampalli, Neelavara Village & Post, Brahmavara Taluk, Udupi District. The plaintiffs stated that, the plaintiff No.2 was born on 28-04-2019 at Dr. T.M.A. Pai Hospital, Udupi Taluk and District and the same is registered in the office of the 1st defendant vide Reg.No. 803141/T/B/2019/002115 dated 06-05-2019 and issued the birth certificate. The plaintiffs recently came to know that, the name of plaintiff No.2 is wrongly entered as Manvith M. Shetty instead of Shamanth M. Shetty in the birth



certificate of plaintiff No.2. Thereafter, they have approached the defendants for rectification. But, defendants have advised the plaintiffs to obtain the decree from the competent court. Hence, the plaintiffs have constrained to file this suit.

3. On due service of summons, the defendants No.1 & 2 appeared through A.D.G.P., and the defendant No.1 filed written statement and the defendant No.2 has adopted the same. In the written statement it is admitted that the defendant No.1 had issued endorsement as mentioned in the plaint and contended that there was no mistakes or wrong entries in the Birth certificate of 2nd plaintiff to be rectified. Further, it is alleged that, according to the information given by the parents of the plaintiff No.2, concerned authorities have recorded the details of the plaintiffs. The suit is bad for non-compliance of the notice as required under section 80 of CPC and the suit is barred by law of limitation and there is no cause of action for the suit. Hence, the plaintiffs are not entitled for the relief claimed in the plaint and prays to dismiss the suit.

4. On the basis of pleadings of both parties, the following issues are framed by my predecessor:

ISSUES

1. Whether the plaintiffs prove that, 2nd plaintiff's name is Shamanth M. Shetty and same has been erroneously entered in the birth certificate of plaintiff No.2 issued by the defendant No.1?



2. Whether plaintiffs are entitled to the relief sought?

3. What order or decree?

5. To substantiate their case, the plaintiff No.1 has been examined as P.W.1 and got marked 07 documents as Ex.P1 to Ex.P7. On behalf of Defendants, except filing the written statement, the defendants have not lead evidence and no documents have been marked on their behalf.

6. My findings to the above point is as under:

Issues No.1 & 2 - In the Affirmative.

Issues No.3 - As per final order below for the following

REASONS

7. **Issue No.1:-** Admittedly, the plaintiffs have filed this suit against defendants to declare that, the name of plaintiff No.2 as Shamanth M. Shetty and for direction to effect necessary changes in the Birth certificate of plaintiff No.2 bearing Registration bearing No.803141/T/B/2019/002115 dated 06-05-2019. According to plaintiffs case, the plaintiff No.2 was born on 28-04-2019 at Dr. T.M.A. Pai Hospital, Udupi Taluk and District and the same is registered in the office of the 1st defendant vide Reg.No. 803141/T/B/2019/002115 dated 06-05-2019 and issued the birth certificate. The plaintiffs recently came to know that, the name of plaintiff No.2 is wrongly entered as Manvith M. Shetty instead of Shamanth M. Shetty in the birth certificate of plaintiff No.2. Thereafter, they



have approached the defendants for rectification. But, defendants have advised the plaintiffs to obtain the decree from the competent court. The version of the defendants is that, there was no mistakes or wrong entries in the Birth certificate of 2nd plaintiff to be rectified. Further, it is alleged that, according to the information given by the parents of the plaintiff No.2, concerned authorities have recorded the details of the plaintiffs. The suit is bad for non-compliance of the notice as required under section 80 of CPC and the suit is barred by law of limitation and there is no cause of action for the suit. Hence, the plaintiffs are not entitled for the relief claimed in the plaint.

8. The burden to prove the framed issues lies on the plaintiffs. Hence, in order to prove their case, the plaintiffs have contended that, the name of plaintiff No.2 is wrongly entered as Manvith M. Shetty instead of Shamanth M. Shetty in the birth certificate of plaintiff No.2 and in addition to presumption, the plaintiff No.1 has adduced oral evidence so that, he himself is examined as Pw.1 by filing affidavit evidence and he has reiterated the entire plaint averments in his evidence before this Court and also produced as many as Ex.P1 to Ex.P7 documents. Therefore, there is no necessity to repeat those facts again. I have gone through the documents produced by Pw.1, Ex.P1 is the birth certificate of plaintiff No.2, issued by the defendant No.1/Registrar of births and deaths, wherein it shows that, the name of plaintiff No.2 is entered as Manvith M. Shetty. Ex.P2 is the endorsement dated 10-06-2022 issued by defendant No.1, Ex.P3 is the legal notice dated 14-06-2022, issued to defendants by the plaintiffs, on



going though the same it is seen that the plaintiffs have issued the mandatory notice u/s 80 of CPC to the defendants before instituting the present suit. Hence, plaintiffs have made the compliance of serving statutory notice u/s 80 of CPC. Ex.P4 & Ex.P5 are the postal receipts and Ex.P6 & Ex.P7 are the postal acknowledgments and produced copy of the aadhaar card of plaintiff No.1. On perusal of the above said documents, it is seen that, the name of plaintiff No.2 is Shamanth M. Shetty. The plaintiffs have produced the alleged birth certificate, in which the name of plaintiff No.2 has been wrongly entered. All these documents clearly establishes the fact of the mistake in 2nd plaintiff's birth certificate is crept by the defendant No.1. During the cross examination Pw.1 has consistently deposed on the lines of the plaint, he has made those versions, which could not be shattered in cross examination.

9. On going through the pleadings, evidence and material on records, it is seen that the documents available on records corroborates the testimony of Pw.1. Erroneous entry in Ex.P1/birth certificate is apparent. The defendants except by filing the written statement, they have not adduced any evidence to deny that the correct name of plaintiff No.2 has been wrongly entered as Manvith M. Shetty instead of Shamanth M. Shetty in the Ex.P1/birth certificate of plaintiff No.2. Since, the mistake is occurred, the same is required to be rectified. No deliberate circumstances found in approaching the plaintiffs to this Court. Hence, it appears the apprehension of the plaintiffs is bona-fide and hence, they are entitled for decree. The defendants by filing written statement have not



shown any reason to discard all these documents produced by the plaintiffs. On the other hand, the plaintiffs by producing the documents proved their contention to show that, the name of plaintiff No.2 is wrongly entered as Manvith M. Shetty instead of Shamanth M. Shetty in the Ex.P1/birth certificate of plaintiff No.2. Hence, I answer Issue No.1 in the Affirmative.

10. **Issue No.2:-** Apparently, the name of plaintiff No.1 is wrongly entered as Manvith M. Shetty instead of Shamanth M. Shetty in the Ex.P1/birth certificate of plaintiff No.2. The mistake is apparent and hence, the same is required to be rectified. The Pw.1 upon oath stated that, his son's correct name is Shamanth M. Shetty and to prove his version, it is confirmed that the documents produced by her is authentic. The defendants have not denied the version of plaintiffs. Approach of the plaintiffs is appeared to be bona-fide one and hence, they are entitled for decree as sought for. Hence, I answer Issue No.2 in the Affirmative.

11. **Issue No.3:-** In view of my findings on Issues No.1 and 2, I proceed to pass the following:

ORDER

The suit of the plaintiffs is hereby decreed.

It is hereby declared that, the name of plaintiff
No.2 is Shamanth M. Shetty.

The defendant No.1 is hereby directed to effect
necessary changes in the Birth certificate Registration



bearing No. 803141/T/B/2019/002115 dated 06-05-2019 as the name of plaintiff No.2 is Shamanth M. Shetty.

Draw decree accordingly.

No order as to costs.

[Dictated to the stenographer directly to the Computer, transcribed by him in computer, corrected by me and then, pronounced by me in the open Court this the 14th day of November 2022].

Place: Udupi.
Dated: 14-11-2022

[Shyam Prakash]
Addl. Civil Judge & JMFC, Udupi.

APPENDIX

List of witnesses examined for plaintiff's side:

Pw.1 : Sri. Manohar Shetty.

List of documents marked for plaintiff's side:

Ex.P1 : Birth Certificate.
Ex.P2 : Endorsement.
Ex.P3 : Legal Notice.
Ex.P4 & 5 : Postal receipts.
Ex.P6 & 7 : Postal acknowledgments.

List of witnesses examined on behalf of defendant: NIL.

List of documents marked for defendant's side: NIL.

Place: Udupi.
Dated: 14-11-2022

[Shyam Prakash]
Addl. Civil Judge & JMFC, Udupi.