



IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 09TH DAY OF JANUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

AND

THE HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

MISCELLANEOUS FIRST APPEAL NO.202666 OF 2019 (FC)

BETWEEN:

RENUKAMMA D/O GOVINDA,
AGE: 26 YEARS, OCC: HOUSEHOLD
& ASHA WORKER,
IN JAYAMMA ANGANAWADI SCHOOL,
R/O. NEAR ANJANEYA & NARASAPPA TEMPLES,
OPP. RAICHUR VANI PRESS,
TIMMAPURPET, RAICHUR – 584 101.

...APPELLANT

(BY SRI. SACHIN M. MAHAJAN, ADVOCATE)

AND:

1. SMT. MAHADEVAMMA @ GATTU MAHADEVI
W/O LATE BASAVARAJ, AGE: 28 YEARS,
OCC: HOUSEHOLD, R/O. H.NO.6-5-78,
TIMMAPURPET, BEHIND HANUMAN TEMPLE
NEAR RAICHUR VANI OFFICE,
RAICHUR – 584 101.
2. THE COMMISSIONER
CITY MUNICIPAL COUNCIL,
RAICHUR – 584 101.

...RESPONDENTS

(BY SRI. HARSHAVARDHAN R. MALIPATIL, ADV. FOR R1;
SRI. GOURISH S. KHASHAMPUR, ADV. FOR R2)



THIS MFA IS FILED UNDER SECTION 19(1) OF THE FAMILY COURT ACT 1984, PRAYING TO 1) SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 11.10.2019 IN OS NO.5/2019 PASSED BY THE PRINCIPAL JUDGE, FAMILY COURT AT RAICHUR AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17.11.2025 AND COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT' THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD
AND
HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY)

This appeal filed under Section 19(1) of Family Court Act, 1984 is filed by the appellant, praying for an order to set aside the impugned judgment dated 11.10.2018 of the learned Principal Judge, Family Court, Raichur (for short 'Family Court') in OS No.5/2019, wherein, the suit filed by the respondent No.1 is decreed and it is declared that she is legally wedded wife of the deceased Basavaraj. Consequently, respondent No.2 is directed to make necessary changes in the death certificate of the deceased



Basavaraj in column No.7 and enter the name of the respondent No.1 by deleting the name of appellant.

2. The appellant is defendant No.1 and the respondent No.1 and 2 are plaintiff and defendant No.2 respectively in the suit before the Family Court and for the sake of convenience, the parties to this appeal are hereinafter referred in their rank before the Family Court in the suit.

3. The plaintiff filed the suit in OS No.5/2019 against the defendant No.1 and 2 before the Family Court for the relief of declaration that she is the legally wedded wife of the deceased Basavaraj and also for direction to the defendant No.2 for issuing death certificate in her favour by mentioning her name as wife in column No.7 of the death certificate by deleting the name of defendant No.1.

4. The brief facts of the case of the plaintiff are that the plaintiff is legally wedded wife of the deceased



Basavaraj. Their marriage was solemnized on 20.05.2009 at Anjaneya Swami Temple, Chatnapalli village as per the customs prevailing in their Hindu community. The deceased Basavaraj is none other than the younger brother of the mother of plaintiff. Their engagement was performed on 05.10.2008. After their engagement, as the plaintiff and the deceased Basavaraj were relatives, at the time of marriage the plaintiff was pregnant of about 4 to 5 months. The plaintiff led marital life with Basavaraj at Raichur and in their marriage a female child by name Pooja was born on 19.09.2009 and a son by name Shivaji was born on 28.06.2014. Basavaraj died intestate on 09.10.2016 leaving behind the plaintiff and his two children as his legal heirs, they being successors to his estate and property left behind him. Except the plaintiff and her children, there are no other legal heirs to the deceased Basavaraj. The plaintiff and her children resided with the deceased Basavaraj till his last days at Raichur in the house bearing Municipal No.6-5-78 (old), 6-5-91



(new), measuring 1089 Sq.ft. The said house property is standing in the name of deceased Basavaraj. After death of Basavaraj, the plaintiff has approached defendant No.2 for issuing death certificate of her husband/Basavaraj and filed application for mutation entry in respect of the house property in her name. But the defendant No.2 issued the death certificate dated 16.06.2016 by registering his date of death as per Register No.367/2016-2017 dated 27.10.2016, wherein in column No.7 the name of the defendant No.1 is mentioned as wife of the deceased. Such entry is without any basis and it is illegal without making any proper enquiry. The defendant No.1 is not at all concerned with the deceased. After knowing the said fact, once again the plaintiff approached the defendant No.2 and filed application for making correction of the death certificate mentioning her name in column No.7 in the place of name of defendant No.1. But once again the defendant No.2 issued certificate dated 26.10.2018 entering the same as earlier. Thereafter, the plaintiff



issued legal notice to the defendant No.2 for mentioning her name as wife of the deceased Basavaraj in column No.7 of the death certificate. But there was no response from the defendant No.2. The defendant No.1 is no way concerned with the deceased Basavaraj, but she has been claiming that she is the second wife of the deceased without any basis and proof. The deceased Basavaraj at no point of time married defendant No.1 during subsistence of his marriage with the plaintiff. Hence, the plaintiff was constrained to file suit before the Family Court and she prayed for necessary relief.

5. In pursuance of service of summons, the defendant No.1 and 2 appeared through their respective counsels and filed their separate written statements.

6. The defendant No.1 filed statement denying the plaint averments. She submitted that the plaintiff is stranger and she did not reside in the house of the deceased Basavaraj. Actually, the defendant No.1 is the only legally wedded wife of the deceased. The plaintiff is



not at all concerned with the family of the deceased Basavaraj. It is false that the children were born to the plaintiff and the deceased Basavaraj. Hence, the question of mutation of khata of the house property in the name of plaintiff did not arise. There is no cause of action to file the suit. The defendant No.1 produced necessary document to show that she is the wife of the deceased Basavaraj. Further, the partition held between the family members of the deceased Basavaraj on 27.08.2014 would show that the house property fell to the share of the deceased Basavaraj and he in turn gifted the said property to the defendant No.1 through registered gift deed. In view of the said gift deed, the defendant No.1 has been in physical possession of the house property since 2014 and she is in enjoyment of the house property, paying property tax continuously from the date of gift deed. Therefore, the defendant No.1 prayed for dismissal of the suit of the plaintiff with costs.



7. The defendant No.2 filed separate written statement submitting that the suit filed by the plaintiff seeking direction against the defendant No.2 is not maintainable either in law or on the facts of the case. The plaintiff has no locus standi to file the suit claiming correction of the name in the death certificate issued by the Municipality. The competent jurisdiction lies under provisions of Birth and Death Act before the competent jurisdictional Magistrate. Therefore, the suit of the plaintiff for change of name in the death certificate is not maintainable. The plaint averments are denied as false. It is further submitted that the alleged matrimonial relationship between the plaintiff and the deceased Basavaraj etc., is not within the knowledge of defendant No.2. The Court has no power to allow the suit or issue direction for correction of the death certificate. In view of Section 15 of Birth and Death Act, the suit of the plaintiff is misconceived and bad in law and the same is not



maintainable. Therefore, the defendant No.2 prayed for dismissal of the suit.

8. On the basis of pleadings of both the parties, the Family Court framed following issues for consideration:

1. Whether the plaintiff proves that she is the legally wedded wife of deceased Basavaraj S/o Yenkanna?

2. Whether the plaintiff is entitled for the relief of declaration as sought?

3. What order or decree?

Addl. Issue No.1: *Whether the defendant No.1 proves that, she is the only legally wedded wife of deceased Sri Basavaraj?*

9. In support of the case of plaintiff she got examined herself as PW1 and also examined three witnesses as PW2 to PW4. The plaintiff produced documents at Ex.P.1 to Ex.P.17. Per contra, the defendant No.1 examined as DW1 and examined two witnesses as DW2 and DW3 and produced documents at Ex.D.1 to Ex.D.23.



10. After hearing the arguments of both the parties and on considering relevant materials on record, the Family Court by answering the issue No.1 and 2 in the affirmative and the additional issue No.1 in the negative, has decreed the suit of the plaintiff under the impugned judgment and decree dated 14.10.2019.

11. Being aggrieved by the impugned judgment and decree, the defendant No.1 has approached this Court by filing the present appeal.

12. The argument of the learned counsel for the defendant No.1 is that the impugned judgment and decree of the trial Court is contrary to material facts, documents and evidence on record and same is liable to be set aside. The trial Court has not considered the fact that the witnesses examined on behalf of plaintiff are none other than the grandmother and brother of the plaintiff. They are interested witnesses. The Family Court has not considered the evidence of defendant No.1 that her marriage was performed with the deceased Basavaraj on



25.04.2008 at Paguntaswamy Devastan Gadwal Road and their marriage was love marriage. Only the friends of the deceased Basavaraj were present at the time of marriage and hence, no marriage card or photographs were taken regarding the marriage. The Family Court is not justified in not considering the documents at Ex.D.1 to Ex.D.23, especially the gift deed at Ex.D.3 executed by deceased Basavaraj in favour of defendant No.1 gifting the house property. The Family Court is also not considered the document at Exs.D.10 and D.11, which are birth certificates of the children of the defendant No.1 and the Bank passbook of the deceased Basavaraj at Ex.D.19. The Family Court has exceeded its jurisdiction and granted relief of direction against the defendant No.2 to make necessary corrections in the death certificate of the deceased. Under the provisions of Birth and Death Act, the jurisdictional Magistrate is competent authority and hence, viewed from any angle, the impugned judgment of the



trial Court is against the facts, probability and equity of case and it is liable to be set aside in the Family Court.

13. On the other hand, the argument of the learned counsel for the plaintiff is that the Family Court has rightly appreciated the oral and documentary evidence on record in proper perspective and thereby decreed the suit and hence, he supports the impugned judgment and thereby he has sought for dismissal of the appeal.

14. In the background of argument of both the parties, it is relevant to consider the evidence forthcoming on record. It is pertinent to note that the suit is filed by the plaintiff for the relief of declaration that she is the legally wedded wife of the deceased Basavaraj. On the other hand, the defendant No.1 has contented that she is the legally wedded wife of the deceased Basavaraj. Hence, in view of rival contentions of the plaintiff and the dependent No.1, the evidence forthcoming on record from the both the parties should be appreciated.



15. The plaintiff got herself examined as PW1. She has filed her affidavit as evidence in chief examination reiterate the facts averred in the petition. The plaintiff has produced wedding card and four marriage photos, copies of Aadhar cards, engagement photos regarding her marriage with the deceased as per Exs.P.1 to P.9 respectively. Further, the LIC bond of Pooja, the daughter of the plaintiff, application, death certificates of the deceased, legal notice with postal receipt and acknowledgment card and Birth certificates of the children of the plaintiff born to Basavaraj are produced as per Exs.P.10 to P.17 respectively.

16. Moreover, the plaintiff has examined one Smt. Jambalamma as PW2. She is maternal grandmother of the plaintiff and also mother of the deceased Basavaraj. PW2 has filed an affidavit as evidence in chief examination, wherein she has clearly stated that the defendant No.1 is no way concerned to her family and the deceased Basavaraj never married the defendant No.1. She has also



deposed that the marriage of the plaintiff with deceased Basavaraj was solemnized on 20.05.2009 at Anjaneyaswamy Temple, Chatnapalli village i.e., at the native place of her daughter Smt. Laxmi, who is also the mother of the plaintiff and the elder sister of the deceased Basavaraj.

17. It is not in dispute that there is custom prevailing in the community of plaintiff that the girls would marry their maternal uncle. There is absolutely no material in the cross examination of PW2 to disbelieve the evidence of PW2.

18. PW3 Smt. Nagalakshmi is the resident of Chatnapalli village, which is native of the mother of plaintiff. PW3 has filed her affidavit, wherein she has deposed that the plaintiff married the deceased Basavaraj on 20.05.2009 and she attended the said marriage. She identified the photo at Ex.P.5, wherein she appears, as the photo of the marriage of plaintiff with deceased Basavaraj.



19. PW4 Urukundappa has filed affidavit as evidence in chief examination, wherein he stated that his sister by name Smt.Urukundamma was given in marriage to elder brother of the deceased Basavaraj and the said Huligeppa, and the plaintiff and PW4 are residing at Raichur. PW4 attended and participated in the marriage function and arrangement of the marriage of plaintiff with the deceased Basavaraj solemnized on 20.05.2009. Further, he identified the photo at Ex.P.2, which is marriage photo of the plaintiff with the deceased Basavaraj, and PW4 is appearing in the said photo. There is no material in the cross examination of PW4 to make his evidence disbelievable.

20. However, the contention of the defendant No.1 in one of the grounds of appeal is that the PW2 and PW4 are relatives of the plaintiff and they are interested witnesses. But it is very pertinent to note that to prove the marriage of the plaintiff, the relatives and friends, who attended the marriage, are material witnesses. It is not



disputed by defendant No.1 that the PW2 is maternal grandmother of the plaintiff and the PW4 is brother-in-law of the plaintiff i.e., PW4 is brother of the co-sister of plaintiff. There is absolutely no reason to disbelieve the evidence of PW2 to PW4, which would prove the marriage of plaintiff with the deceased Basavaraj.

21. The defendant No.1 got herself examined as DW1 and she filed her affidavit as evidence in chief examination reiterating the facts averred in the written statement. However, in the evidence of chief examination defendant No.1 as DW1 has stated that her marriage with Basavaraj was held on 25.04.2008. But the said fact is not pleaded in the written statement. Moreover, there is correction of the date, which was earlier mentioned as 20.07.2010 and subsequently it was corrected as 25.04.2008.

22. As submitted by the learned counsel for the plaintiff, only to make out a case that the defendant No.1 married the deceased Basavaraj earlier to the marriage of



the plaintiff, the date would have been mentioned as 25.04.2008 by correcting the same, which is only an afterthought of the defendant No.1.

23. Moreover, there is absolutely no document forthcoming from the defendant No.1 to prove her marriage with the deceased Basavaraj. It is true that the defendant No.1 has produced Partition Deed, Mutation Extract, Gift Deed, Mutation Receipt, Khata Challan, Khata, Tax Paid Receipt, Death Certificate, Ration Card, Birth Certificates of her children, Tayee (mother card), Form No.1, Bhagyalaxmi Bond, Aadhar cards, Vidhava Vetana Form, Ayushman Bharat Yojane card, Syndicate Bank passbook of the deceased, PACL India Limited, Six photos, Original Bills and One C.D. as per Ex.D.1 to Ex.D.23 respectively.

24. It is the case of the defendant No.1 that the photo at Ex.D.21 is the birthday photos of the son of defendant No.1 and in the said photo the deceased Basavaraj and his mother appear. But mere fact that the



mother of the deceased Basavaraj is appearing in the photo of birthday of the son of the defendant No.1 cannot be a ground to come to the conclusion that the defendant No.1 is the legally wedded wife of the deceased Basavaraj. Even if it is true that the two children were born to the defendant No.1 by the deceased Basavaraj, such fact cannot be a ground to come to the conclusion that the defendant No.1 is the legally wedded wife of the deceased.

25. Mere fact that the deceased Basavaraj executed the gift deed at Ex.D.3 in favour of the defendant No.1 on 31.12.2014 cannot be a ground to come to the conclusion that the defendant No.1 is the legally wedded wife of the deceased. The mention in the gift deed that the defendant No.1 is wife of Basavaraj, does not prove that she is legally wedded wife of the deceased Basavaraj.

26. Moreover, as held by the Family Court in the impugned judgment, even though in the evidence of defendant No.1 as DW1 she has stated that she married the deceased Basavaraj on 25.04.2008, as per the Aadhar



card of the defendant No.1 produced at Ex.D.16 the year of birth of the defendant No.1 is 1992. Hence, if at all it is accepted that the defendant No.1 married to the deceased Basavaraj in the year 2008, she should have been aged 16 years at the time of her marriage. It is not the case of the defendant No.1 in her written statement that when she was minor and she was studying either in SSLC or PUC, she married the deceased Basavaraj.

27. The defendant No.1 has examined one Eresh as DW2, an independent witness in support of her case. DW2 has filed his affidavit as evidence in chief examination, wherein he has deposed that the marriage of defendant No.1 with one Basavaraj was held on 25.04.2008 and he was invited to the said marriage and thus the plaintiff is stranger to the family of the defendant No.1 and Basavaraj. In the evidence in cross examination of DW2, it is stated that the deceased Basavaraj is his uncle, but he is not the blood relative of the deceased. On the other hand, they are belonging to same caste. He did not



receive any marriage invitation of the marriage of the defendant No.1 and Basavaraj.

28. Further, it is very interesting to note that DW2 in his evidence in cross examination has stated that the parents, brothers, sisters and neighbouring people of the deceased Basavaraj were not present in the alleged marriage of the defendant No.1 with the deceased Basavaraj. Further, as per the evidence of DW2 in cross examination, the defendant No.1 was aged 19 years at the time of the alleged marriage. But as discussed herein above, if the date of birth of the defendant No.1 on the basis of the concerned document produced by her is taken into consideration, she should be aged 16 years only and she was minor at the time of the alleged marriage.

29. The defendant No.1 also examined her father Govindappa as DW3. The DW3 has filed his affidavit as evidence in chief examination. But it is very pertinent to note that the DW3 has not deposed regarding the alleged marriage of defendant No.1 with the deceased Basavaraj.



The evidence of DW3 in chief examination is that two children were born to the defendant No.1 from the deceased Basavaraj and in the death certificate, the name his daughter/ defendant No.1 is shown as wife of the deceased. But, as argued by the learned counsel for the plaintiff, the said death certificate of the deceased Basavaraj is questioned by the plaintiff in the suit. Moreover, in the evidence in cross examination DW3, who is father of the defendant No.1, has deposed that the defendant No.1 studied 1st PUC. He has also deposed that there was marriage invitation done regarding the marriage of the defendant No.1 and deceased Basavaraj. But the DW3 has not produced any such invitation card and marriage photos of the defendant No.1 in the suit.

30. As discussed herein above, even if it is accepted as true that the deceased Basavaraj executed the gift deed at Ex.D.3 in favour of defendant No.1, it cannot be a ground to come to the conclusion that the defendant No.1 is the legally wedded wife of the deceased Basavaraj.



Moreover, it is not the case of the defendant No.1 that she married Basavaraj at her age of 16 years when she was minor. Further, the oral evidence and the documents forthcoming from the defendant No.1 do not help the defendant No.1 to falsify the case of plaintiff. Therefore, the Trial Court has rightly come to the conclusion that the plaintiff has proved that she is the legally wedded wife of the deceased Basavaraj.

31. The submission of the learned counsel for the defendant No.2 is that, the defendant No.2 has filed the written statement submitting that in view of the provisions of the Registration of Births and Deaths Act, the direction sought by the plaintiff against the defendant No.2 to correct the name of the wife of the deceased Basavaraj in the death certificate of the deceased Basavaraj, is not maintainable. But in support of such contention the learned counsel for the defendant No.2 has neither put forth any argument before the Trial Court nor produced



any evidence in support of their written statement averments.

32. On the other hand, as submitted by the learned counsel for the plaintiff, the suit is for the relief of declaration that the plaintiff is the legally wedded wife of the deceased and she has sought correction in the death certificate of the deceased to mention her name as wife of the deceased instead of the name of defendant No.1. Hence, the relief of declaration sought against defendant No.2 is not for entry of the date of death of the deceased in the concerned register of defendant No.2. Further, even if defendant No.2 is not a party to the suit, if the plaintiff is declared as legally wedded wife of deceased by the suit, such relief is binding on defendant No.2, as the impugned judgment and decree passed in the suit is judgment in rem.

33. Further, the contention of the defendant No.2 that the suit is not maintainable without prior notice to the defendant No.1, also does not stand for consideration.



From the documentary evidence on record, it would be clear that the plaintiff issued legal notice to the defendant No.2 as per Ex.P.14 which is dated 15.11.2018. The said notice was served to the defendant No.2 as per the postal acknowledgment at Ex.P.15. The plaintiff filed the suit before the Family Court on 22.02.2019 i.e., after more than 2 months from the date of service of the notice at Ex.P.14 to the defendant No.2. Hence, on this ground also, the contention of the defendants No.1 and 2 that the suit is not maintainable against defendant No.2, does not have legs to stand on the facts of the case and also in law.

34. The meticulous consideration of the reasoning of the Family Court in the impugned judgment would clearly show that the Family Court has appreciated the oral and documentary evidence forthcoming on record from both the parties in proper perspective and thereby the Family Court has come to the correct conclusion that the plaintiff is entitled to the relief sought for in the suit. Hence, any of the grounds urged by the defendant No.1 in



the present appeal does not merit consideration to set aside the impugned judgment and decree of the Family Court at the hands of this Court in the present appeal. Consequently, we are of the considered view that the appeal filed by defendant No.1 is liable to be dismissed.

35. In the result, we proceed to pass the following:

ORDER

- (i) The appeal filed by the defendant No.1/appellant is hereby ***dismissed***.
- (ii) Consequently, the judgment and decree dated 11.10.2019 of the learned Principal Judge, Family Court, Raichur in OS No.5/2019 shall stand confirmed.
- (iii) In the circumstance, there shall be no order as to costs.



(iv) The Trial Court Record shall be
returned to the Family Court along
with copy of this judgment.

Sd/-
(H.T. NARENDRA PRASAD)
JUDGE

Sd/-
(TYAGARAJA N. INAVALLY)
JUDGE

AMM
List No.: 1 Sl No.: 2