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In the name of almighty Allah who has got unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL DISTRICT JUDGE, ORAKZAI AT BABER MELA

Civil Appeal No. CA-26/13 of 2022

Date of institution: 22.12.2022

Date of decision: 25.01.2023

Umair Ali son of Abdul Jabbar resident of Mahoora, Teshil Lower, District Orakzai.

..... (**Appellant/Plaintiff**)

...Versus...

1. Chairman NADRA Islamabad, Pakistan
2. Assistant Director NADRA Orakzai
3. Director General NADRA, Orakzai

..... (**Respondents/Defendants**)

**Appeal against Judgement, Decree and Order dated 22-11-2022, passed in
Civil Suit No. 95/1 of 2022**

JUDGMENT

Instant Civil Appeal has been preferred by the appellant/plaintiff against the Judgment, Decree & Order dated 22.11.2022, passed by learned Civil Judge-1, Kalaya Orakzai in Civil Suit bearing No.95/1 of 2022; whereby, the suit of the plaintiff was dismissed.

2. Briefly stated facts of the case are such that the plaintiff Umair Ali has filed suit against the defendants for declaration with consequential relief of mandatory injunction to the effect that her mother name is Bibi Mehreen which has wrongly been mentioned by NADRA (defendants) as Bibi Halal. The suit was dismissed by learned Trial Judge vide Judgement and Decree dated 22-11-2022. Feeling aggrieved, the appellant/plaintiff has presented instant Civil Appeal, which is under consideration.

3. The prime ground of attack in pending civil appeal is that that recorded mother name of the appellant is Bibi Halal; whereas, the correct mother name of

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the appellant is Bibi Mehreen which requires correction and appellant has technically been knocked out.

4. Mr. Khursheed Alam Advocate for appellant is of the stance that the correct mother name of the plaintiff is Bibi Mehreen which has incorrectly been mentioned as Bibi Halal. The appellant has not been afforded opportunity of hearing and was non-suited on technical ground.

5. Mr. Irfan Legal representative of NADRA representing the respondents assisted the Court by stating that appellant has earlier sued the NADRA for correction of the name of his father; hence, Civil Suit bearing No. 65/1 of 2022 which was decreed vide Judgement and Decree dated 26-08-2022. The appellant being plaintiff was supposed to seek correction of the name of his mother in such suit which was omitted and thus the learned Trial Judge has rightly rejected the plaint by attracting Order-2 Rule-2 of Code of Civil Procedure, 1908.

6. Perusal of record reflects that Suit bearing No. 95/1 of 2022 has been dismissed on the single score of relinquishment of part of claim under Order-2 Rule-2 of Code of Civil Procedure, 1908. It was clarified therein that the appellant was supposed to include the correction of mother name in his earlier suit with claim of correction of father name. Whether appellant has omitted to include the whole claim and thereby relinquish part of the claim is point of determination of appeal.

7. The only requirement of Order-2 Rule-2 of Code of Civil Procedure, 1908 is that the plaintiff shall include whole of the claim in respect of cause of action and omission in this regard shall operate as relinquishment of claim with the object to prevent further litigation concerning that particular cause of action in a suit. Similarly, this Rule is directed against the splitting up of this single cause of action into parts and bringing separate suits in respect of each part. Meaning thereby that the stated Rule does not bar a subsequent suit on a different cause of

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action. For example, a dismissal of a suit for specific performance does not bar a subsequent suit for rent as there are different causes of action accrued to plaintiff.

It has been settled in a case reported as 2002 CLC 1784 that the test to be employed for the purpose of determining whether the claim or relief arises out of the same cause of action, is whether the same evidence will sustain both the suits?

On touch stone of this settled principle, correction of the name of plaintiff's father is different phenomena giving birth to a separate cause of action and correction of the name of mother will require separate evidence creating different cause of action. Consequently, the Order-2 Rule-2 of Code of Civil Procedure, 1908 is not applicable to the case of plaintiff and thus impugned Judgement and Decree is not sustainable.

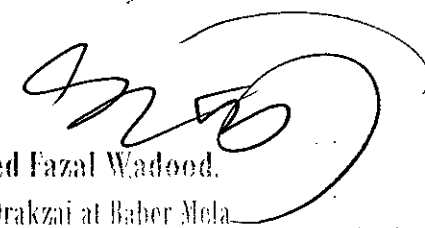
8. For what has been above, appeal stands allowed. Consequently, Judgement and Decree dated 22-11-2022, passed in Civil Suit bearing No. 95/1 of 2022 is reversed and case is remanded back with the directions to the Trial Court to proceed with the case in accordance with law. Costs shall follow the events. Requisitioned record be returned with copy of this Judgement; whereas, File of this Court be consigned to District Record Room, Orakzai as prescribed within span allowed for.

Announced in the open Court
25.01.2023


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CERTIFICATE.

Certified that this Judgment is consisting upon three (03) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.


Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela