

IN THE COURT OF ZAHIR KHAN
CIVIL JUDGE-I, TEHSIL KALAYA, ORAKZAI

Suit No.....14/1 Neem of 2022.
Date of Original Institution.....12.02.2022.
Dated of Remand.....20.12.2022.
Date of Decision.....09.02.2023.

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Muhammad Zaman S/O Noor Ghani, R/O Qaum Feroz Khel, Tappa Ghairat
Khel, Village Said Khalil Baba, Tehsil Lower, District Orakzai.

.....(*Plaintiff*)

VERSUS

1. Chairman NADRA, Islamabad.
2. Director General NADRA, Khyber Pakhtunkhwa, Peshawar.
3. Assistant Director NADRA, Orakzai.

..... (*Defendants*)


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SUIT FOR DECLARATION & PERMANENT INJUNCTION
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JUDGEMENT

09.02.2023

Through this judgement, I am going to dispose of the instant
suit remanded by the court of learned District & Sessions Judge,
Orakzai vide judgement dated 16.12.2022.

Record shows that suit of plaintiff was dismissed vide
judgement and decree dated 03.11.2022. Plaintiff challenged the
judgement and decree dated 03.11.2022. Learned appellate court
set aside judgement and decree dated 03.11.2022 and remanded
back the case with directions to decide the case on merits after
giving opportunity to the plaintiff to prove both the documents


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(Extract of Admission & Withdrawal Register and School Leaving Certificate) through production of additional evidence.


Brief facts in the backdrop are that plaintiff has filed the instant suit against the defendants for declaration and permanent injunction to the effect that as per School record, true and correct date of birth of plaintiff is 01.01.2004, however, defendants have incorrectly entered the same as 01.01.1994 which is wrong, illegal, ineffective upon the rights of plaintiff and liable to be rectified. That defendants were asked time and again to rectify date of birth of plaintiff but in vain hence, the present suit.

Defendants contested the suit by filling written statement wherein various legal and factual grounds have been taken.

From divergent pleadings of the parties, the following issues were framed for adjudication of real controversy between the parties.

ISSUES

1. Whether plaintiff has got cause of action? OPP
2. Whether suit is within time? OPP
3. What is the correct date of birth of plaintiff? OPP
4. Whether plaintiff is entitled to the decree as prayed for? OPP
5. Relief?


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Upon submission of list of witnesses, both the parties on being provided with an opportunity to adduce their desired evidence, the parties produced their respective evidence.

After the completion of evidence, arguments of the learned counsel for the parties were heard and record of the case file was gone through with their valuable assistance.

During course of recording evidence, plaintiff himself appeared and deposed as PW-01. Copy of his CNIC is Ex. PW-1/1. He reiterated the averments of plaint. He produced school leaving certificate issued by Lower Orakzai Model School as Ex. PW-1/2 and extract of admission and withdrawal register as Ex. PW-1/3. He lastly requested for decree of suit in his favour.

Irfan Hussain (Representative of NADRA, Orakzai) appeared as DW-01. He produced RTS, CNIC processing form, family tree (02 sheets) which are Ex. DW-1/1 to Ex. DW-1/4. He stated that plaintiff has been issued CNIC as per information provided by plaintiff and that he has got no cause of action and lastly requested for dismissal of suit.

Suit of plaintiff was dismissed vide judgement and decree dated 03.11.2022. Plaintiff challenged the judgement and decree dated 03.11.2022. Learned appellate court set aside judgement and decree dated 03.11.2022 and remanded back the case with directions to decide the case on merits after giving opportunity to the plaintiff to prove both the documents (Extract of Admission &


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Withdrawal Register and School Leaving Certificate) through production of additional evidence.

After remand of the case, in order to prove both the documents, plaintiff produced additional evidence as APW-01. Record Keeper, Orakzai Model School appeared and deposed as APW-01. He produced admission and withdrawal register as per which date of birth of plaintiff is recorded as 01.01.2004. Extract of admission and withdrawal register is Ex. APW-1/1. He further stated that School Leaving Certificate was issued to the plaintiff by Orakzai Model School which is Ex. APW-1/2. Copy of his CNIC is Ex. APW-1/3.

Thereafter, evidence of plaintiff was closed.

Defendants opted not to produce any further/additional evidence.

My issue wise findings are as under: -

ISSUE NO.2:


Record shows that plaintiff was issued CNIC by defendants on 28.11.2012 with expiry date 28.11.2022 while suit in hand was filed on 12.02.2022. In plethora of judgements of the apex superior courts it is held that every wrong entry will accrue fresh cause of action. As period of limitation under Article 120 of Limitation Act is six years, therefore, suit of plaintiff is held to be within time. Issued decided in affirmative.


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ISSUE NO.3:

Per record, plea of plaintiff is that his true and correct date of birth is **01.01.2004** but defendants have incorrectly recorded the same as **01.01.1994** in their record, which is wrong, illegal, ineffective upon the rights of plaintiff and liable to be rectified. Plaintiff produced documentary evidence in support of his claim in shape of School Leaving Certificate and extract of admission and withdrawal register exhibited as Ex. APW-1/1 and Ex. APW-1/2. Primary school record was not produced and exhibited during course of recording evidence. Both the documents are not attested and verified by principal Lower Orakzai Model School and Education Officer concerned. Mere exhibition of a document does not mean that the document is proved. No birth certificate and Form B was produced during evidence. Furthermore, as per Ex. DW-1/2 to Ex. DW-1/4, plaintiff was issued CNIC on 28.11.2012 with date of birth as 01.01.1994. Plaintiff did not produce any school certificate to the NADRA authorities at the time of apply for CNIC. Per Ex. DW-1/2 (Alpha Family Tree and CNIC Processing Form) plaintiff has been shown as illiterate and marital status as married. If date of birth of plaintiff is reckoned as 01.01.2004, then age of plaintiff on 28.11.2012 would be 8 years, 10 months, 3 weeks and 6 days. Minimum age limit for CNIC is 18 years. No person below the age of 18 years could be issued CNIC. The picture on the CNIC shows that plaintiff was not a child of 8/9 years in the year 2012. His marital status is shown as


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married. Despite the fact that plaintiff was given opportunity to produce additional evidence, but he failed to produce his parents, brothers and sisters as witnesses. Oral evidence produced by plaintiff is also insufficient to prove claim of plaintiff. Plaintiff was issued CNIC on 28.11.2012. Plaintiff received his CNIC from defendants without any objection on date of birth recorded therein.


Keeping in view the above discussion, documentary as well as oral evidence available on file, it is held that plaintiff failed to establish that his true and correct date of birth is 01.01.2004, hence, issue No. 3 is decided against the plaintiff.

ISSUES NO.1 & 4.

In the light of foregoing discussion, it is held that plaintiff failed to prove his claim through cogent, convincing and reliable documentary and oral evidence; therefore, he has got no cause of action and he is not entitled to the decree, as prayed for. Both these issues are decided in negative and against the plaintiff.

RELIEF.

Crux of my issue wise discussion is that as plaintiff failed to prove his claim through cogent, convincing and reliable documentary and oral evidence, therefore, suit of the plaintiff is hereby dismissed. No order as to cost.


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File be consigned to record room after its necessary completion and compilation.

ANNOUNCED

09.02.2023



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CERTIFICATE

It is certified that this judgment consists of **07** pages. Each page has been dictated, read, corrected and signed by me.



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