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IN THE COURT OF ZAHIR KHAN
Civil Judge-I, Kalaya, Orakzai

Suit No.....3/1 of 2023.

Date of Institution.....20.02.2023.

Date of Decision.....08.03.2023.

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1. Hidayat Ali s/o Tahir Ali
2. Mst. Noor Mina Jan w/o Tahir Ali both residents of Qoam Behram Zai, Tappa Madool Nawasi, Tehsil Lower, District Orakzai.

.....(Plaintiffs)

Versus

1. Assistant Director NADRA, District Orakzai.

..... (Defendants)

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SUIT FOR DECLARATION & PERMANENT JUNCTION


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JUDGEMENT

08.03.2023

Through this judgement, I am going to dispose of the instant suit filed by plaintiffs namely Hidayat Ali and Mst. Noor Mina Jan against defendants, Assistant Director NADRA, District Orakzai for declaration and permanent injunction.

Brief facts in the backdrop are that plaintiffs have filed the instant suit for declaration cum-permanent injunction to the effect that correct father's name of plaintiff No.1 and correct husband's name of plaintiff No. 2 is **Tahir Ali** whereas defendants have incorrectly and wrongly entered the same as **Mughal Baz** which is wrong, illegal and


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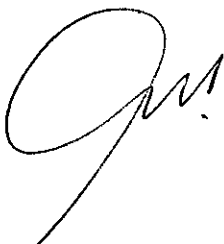
ineffective upon the rights of plaintiffs and liable to be rectified. That after death of 1st husband (Mughal Baz) of plaintiff No. 2, she solemnized 2nd Nekah with Tahir Ali who was younger brother of deceased Mughal Baz (1st husband) and after Nekah with Tahir Ali, plaintiff No. 1 was born. That defendants were asked time and again to do the needful but in vain, hence the present suit.

After institution of the suit, defendants were summoned, who marked their attendance through representative and contested the suit by filing authority letter and written statement.

From divergent pleadings of the parties, the following issues were framed for adjudication of real controversy between the parties. The controversial pleadings of the parties were reduced into the following issues:

ISSUES

1. Whether plaintiffs have got cause of action? OPP
2. Whether suit of plaintiffs is within time? OPP
3. Whether correct father's name of plaintiff No.1 and correct husband's name of plaintiff No. 2 is Tahir Ali instead of Mughal Baz? OPP
4. Whether plaintiffs are 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.

Hidayat Ali, plaintiff No. 1 and as special attorney for plaintiff No. 2 appeared himself and recorded his statement as PW-01. Copy of his CNIC and special power of attorney are Ex. PW-1/1 and Ex. PW-1/2. Photocopy of CNIC of his mother is Ex-PW 1/3. He reiterated the averments of plaint and lastly requested for decree of suit.

Tajdar Ali, co-villager of the plaintiffs, appeared and deposed as PW-02. He supported claim of plaintiffs. Photocopy of his CNIC is Ex-PW 2/1.


Rehman Ali, another co-villager of the plaintiffs, appeared and deposed as PW-03. He also supported claim of plaintiffs. Photocopy of his CNIC is Ex-PW 3/1.

Thereafter, evidence of plaintiffs was closed.

Irfan Hussain (Representative of NADRA, Orakzai) appeared as DW-01. He stated that plaintiffs have been issued CNICs as per information provided by them and that they have got no cause of action and lastly requested for dismissal of suit.

Thereafter, evidence of defendants was closed.

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


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The above discussion boils down to my following issue-wise findings.

ISSUES NO.2

As per Ex.PW-1/1 (copy of CNIC of plaintiff No. 1), plaintiff No. 1 has been issued CNIC on 09.02.2015 with expiry date as 09.02.2025 while as per Ex.PW-1/3, plaintiff No. 2 has been issued CNIC on 30.05.2020 with expiry date as 30.05.2030. Suit in hand was filed on 20.02.2023. As period for filing suit for declaration under Article 120 of Limitation Act is 06 years, therefore, suit of plaintiffs is in time. Issue is decided in positive.

ISSUE NO.03:

Burden of proof was on plaintiffs to establish that correct father's name of plaintiff No. 1 and correct husband's name of plaintiff No. 2 is Tahir Ali instead of Mughal Baz.

Record transpires that plaintiffs failed to produce any documentary evidence in shape of death certificates of Mughal Baz, Tahir Ali, marriage registration certificates of plaintiff No. 2 with Tahir Ali and CNIC or any other document in respect of Tahir Ali. As per DW-1/1, marital status of plaintiff No. 2 (Noor Mina Jan) has been shown as "Widow" of deceased Mughal Baz. Furthermore, as per statements of PWs, Muhammad is youngest/last son of plaintiff No. 2 from deceased Mughal Baz. Per Ex.DW-1/1, date of birth of Muhammad is recorded as 01.01.1999 while as per Ex.PW-1/1, date of



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birth of plaintiff No. 1 (Hidayat Ali) is recorded as 01.01.1997 which shows that the said Muhammad is younger than plaintiff No. 1 allegedly son of Tahir Ali. This negates the version of plaintiffs. Oral evidence produced by plaintiffs is also insufficient to prove claim of plaintiffs. None from brothers and sisters of plaintiffs deposed in support of claim and contention of plaintiffs. Plaintiff No. 2 was an important witness but she was not produced as witness. PW-03 deposed that deceased Mughal Baz is son of Sharbat Ali but he does not know father's name of Tahir Ali who is allegedly brother of deceased Mughal Baz. Hence, the testimony of PWs cannot be considered as confidence inspiring and reliable evidence.


Keeping in view the above discussion, documentary as well as oral evidence available on file, it is held that plaintiffs failed to prove their case through cogent, convincing and reliable documentary and oral evidence, therefore, issue No. 3 is decided against plaintiffs.

ISSUES NO.1 & 4.

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

RELIEF:

Crux of my issue wise discussion is that as plaintiffs failed to prove their claim through cogent, convincing and reliable documentary


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and oral evidence, therefore, suit of the plaintiffs is hereby dismissed.

No order as to cost.

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

ANNOUNCED
08.03.2023



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CERTIFICATE

It is certified that this judgment consists of 06 pages. Each page has been dictated, read, corrected and signed by me.



Zahir Khan
Civil Judge-I, Kalaya, Orakzai