

IN THE COURT OF SYED ABBAS BUKHARI,
CIVIL JUDGE-II, TEHSIL COURTS, KALAYA, ORAKZAI

Civil Suit No. 111/1 of 2022
Date of Original Institution: 01.08.2022
Date of Decision: 15.03.2023

Salma Bibi W/O Abdullah Khan, R/O Qaum Feroz Khel,
Tapa Jasal Khel, Saam, Tehsil Lower, District Orakzai.
.....(Plaintiff)

VERSUS

1. **Chairman, NADRA, Islamabad.**
2. **Assistant Director, NADRA District Orakzai.**
3. **Kohat Board, District Kohat.**

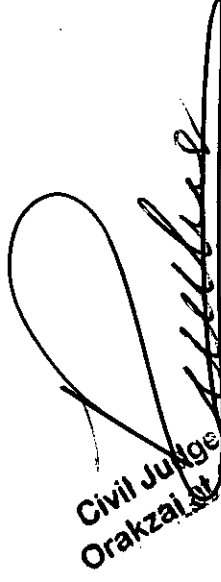
.....(Defendants)

**SUIT FOR DECLARATION -CUM- PERPETUAL AND
MANDATORY INJUNCTION**

JUDGMENT

Brief facts in the backdrop are that plaintiff has filed the instant suit for declaration cum-permanent injunction to the effect that correct name and husband name of plaintiff is **Salma Bibi** and **Abdullah Khan** respectively while defendants have wrongly entered the same as Robina Bibi and Muhammad Ya Khan in their record, which entries are wrong, illegal and ineffective upon the rights of plaintiff and liable to be rectified. That defendants were asked time and again to rectify name and husband name of plaintiff but they refused, hence, the present suit.

With due process of law and procedure, the defendants were summoned, who appeared through their


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representative, who submitted authority letter and written statement.

Divergent pleadings of the parties were reduced into the following issues;

Issues:

1. Whether plaintiff has got cause of action? OPP
2. Whether the plaintiff is estopped to sue?
3. Whether the suit of plaintiff is within time?
4. Whether the correct name of plaintiff is **Salma Bibi** and correct husband name is **Abdullah Khan** where defendants have entered the same as Robina Bibi and Muhammad Ya Khan in her CNIC?
5. Whether the plaintiff is entitled to the decree as prayed for? OPP
6. Relief.

Issue wise findings of this court are as under: -

Issue No. 02:

Whether the plaintiff is estopped to sue? OPD

Burden of proof regarding this issue was on defendants. Estoppel needs cogent, convincing and reliable evidence which is lacking on part of defendants, therefore, the issue is decided in negative and against the defendants.

Issue No. 03:

Whether the suit of plaintiff is within time? OPD

The defendants in their written statements raised their objection that suit of the plaintiff is time barred. In given circumstances although as per Article 120 of the Limitation Act, 1908, the period of limitation to file suit for declaration is 06 years. However, the aforesaid

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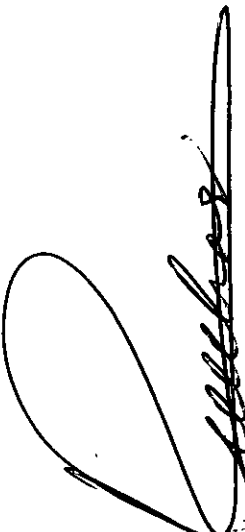
Limitation Act, 1908 is extended to the erstwhile FATA on 31/05/2018 through the 25th constitutional amendment and the same has become operational from the aforesaid date while the instant suit has been filed on **01.08.2022**. Thus, the same is well within time. The issue is decided in positive.

Issue No. 04:

Whether the correct name of plaintiff is Salma Bibi and correct husband name is Abdullah Khan where defendants have entered the same as Robina Bibi and Muhammad Ya Khan in her CNIC? OPP

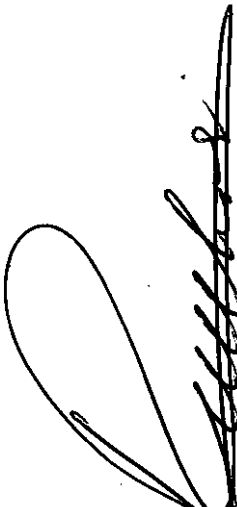
The plaintiff alleged in her plaint that the correct name and husband name of plaintiff is **Salma Bibi** and **Abdullah Khan** respectively, however, defendants have entered the same as Robina Bibi and Muhammad Ya Khan respectively which are wrong, ineffective upon the rights of the plaintiff and liable to correction. That the defendants were asked time and again to do the aforesaid correction but they refused, hence, the present suit;

The plaintiff produced witnesses in whom Abdullah Khan, the husband and attorney for the plaintiff, appeared as PW-01. He stated that plaintiff is his wife and further deposed in light & support of the stance of plaintiff previously alleged in the plaint. He also stated that that Robina Bibi was the wife of his deceased brother Muhammad Ya Khan and after death of his


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brother she contracted her second marriage. He produced his CNIC and CNIC of plaintiff which are Ex. PW-1/1 & Ex. PW-1/2 respectively. During cross examination he deposed that plaintiff visited NADRA Office for the first time for issuance of her CNIC.

PW-02 was produced and examined as one Peer Gul S/O Khanokai, who deposed on oath that the correct name and husband name of plaintiff is Salma Bibi and Abdullah Khan respectively, which has been incorrectly mentioned in the record of defendants as Robina Bibi and Muhammad Ya Khan. He produced his CNIC which is Ex. PW-2/1. During cross examination he deposed that Robina Bibi was wife of Muhammad Ya Khan. Plaintiff visited NADRA Office for first time for issuance of her CNIC.

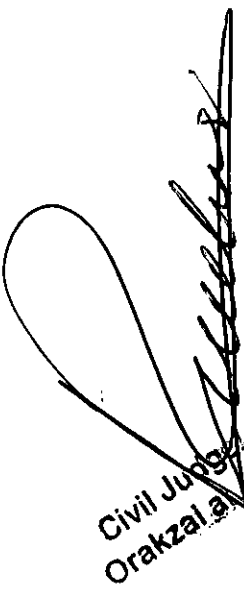

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PW-03 was examined as one Noor Karim S/O Khial Karim. He also supported the stance of the plaintiff as narrated in the plaint. His CNIC is Ex. PW-3/1. During cross examination he deposed that Robina Bibi was the wife of deceased Muhammad Ya Khan while Salma Bibi is the wife of Abdullah Khan.

In light of the above evidence produced by the plaintiff to prove the issue in hand, it is pertinent to mention here that although plaintiff succeeded to prove her relation as wife with one Abdullah Khan, however,

on the other hand it has also been proved that one Robina Bibi was wife of deceased Muhammad Ya Khan who was brother of plaintiff's husband. It is further pertinent to mention here that during defendants evidence DW-01 had deposed in his examination in chief that CNIC No. 21603-6234768-4 is the CNIC No. of Robina Bibi and plaintiff had updated her picture over the CNIC of said Robina Bibi. It is also worth mentioning here that this statement of DW-01 was neither rebutted by the plaintiff nor any suggestion in rebuttal was brought on record by plaintiff, which lead this court to presume that plaintiff fraudulently updated her picture over the CNIC of Robina Bibi, while she was supposed to have applied for fresh CNIC. Furthermore during cross examination of DW-01, a question was put to the witness to which he replied that "*plaintiff may apply for issuance of fresh CNIC*". This answer of DW-01 suggests that plaintiff had not previously applied for issuance of fresh CNIC.

In light of above discussion, this court is of the view that plaintiff previously failed to apply for issuance of fresh CNIC to her rather fraudulently updated her picture over the CNIC of Robina Bibi, hence, in given circumstances plaintiff failed to prove the issue in hand through cogent, convincing and confidence inspiring


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evidence. Accordingly, the issue in hand is hereby decided in negative against the plaintiff and in favor of defendants.

Issue No. 01 & 05:

Both these issues are interlinked, hence, taken together for discussion.

As sequel to my findings on issue No. 4, the plaintiff has got no cause of action and therefore she is not entitled to the decree as prayed for. Thus, both these issues are decided in negative.

RELIEF:

As sequel to my above issue wise findings, the suit of the plaintiff is hereby **dismissed**. However plaintiff is at liberty to apply for her fresh CNIC in accordance with law, if so desired. No order as to costs.

File be consigned to the District Record Room, Orakzai after its completion and compilation.

Announced

15.03.2023

Syed Abbas Bukhari

Civil Judge-II,

Tehsil Court, Kalaya, Orakzai

CERTIFICATE

Certified that this judgment consists of six (06) pages, each has been checked, corrected where necessary and signed by me.

Syed Abbas Bukhari

Civil Judge-II,

Tehsil Court, Kalaya, Orakzai