

03

IN THE COURT OF MUHAMMAD AYAZ KHAN,
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Civil Suit No. 8/1 of 2019
Date of Institution: 21/3/2019
Date of Decision: 18/07/2019

Mushtaq Hussain s/o Aman Ullah Khan
Resident of Village Bakha, PO Ghiljo, Tehsil Upper & District Orakzai..... (Plaintiff)

VERSUS


1. **Chairman, NADRA, Islamabad.**
2. **Registrar, General NADRA Islamabad.**
3. **District Registration NADRA District Orakzai.**
4. **District Education Officer, Hangu.**

(Defendants)

SUIT FOR DECLARATION & PERMANENT INJUNCTION

JUDGEMENT:

1. Plaintiff, **Mushtaq Hussain**, has brought the instant suit for declaration-cum-permanent injunction against the defendants, referred hereinabove, seeking therein that his correct name is "**Mushtaq Hussain**" and correct father's name is "**Aman Ullah Khan**", correct mother's name is "**Tootya Gulla**" and correct date of birth is **03/01/1992**; however, it has been wrongly mentioned as "**Mushtaq**", father's name as "**Muhammad Rasheed**" and date of birth as "**01/1/1989**", which are incorrect, against the facts and in effective upon the rights of plaintiff, which need to be corrected. Likewise, his correct date of birth is **03/01/1992**, but at the time of registration, the defendants have wrongly incorporated his date of birth as 01/01/1989, which needs to be corrected.


MUHAMMAD AYAZ
Senior Civil Judge,
Orakzai at Hangu

Defendants were summoned, who appeared through attorney namely Habib Ullah Khan and submitted written statement, which is placed on file.

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

Issues:

1. Whether the plaintiff has got any cause of action?
2. Whether suit of the plaintiff is within time?
3. Whether the correct name of the plaintiff is Mushtaq Hussain and father name is Aman Ullah Khan while correct date of birth is 03/01/1992.
4. Whether the plaintiff is entitled to the decree as prayed for?
5. Relief.



MUHAMMAD AYAZ
Senior Civil Judge,
Orakzai at Hangu

2. Parties were directed to produce evidence of their own choice, which they did. Plaintiff produced four (04) witnesses including his mother who was examined as PW-2.
3. PW-1 is Shehzad Ali, Head Teacher, GPS, Saam kachai, Kohat. He produced register of admission/withdrawal and admission form of the plaintiff, copies of which are Ex. PW-1/1 to Ex. PW-1/4 respectively.
4. PW-2, Tootiya gula, mother of the plaintiff appeared and recorded her statement, wherein she supported the contention of the plaintiff and stated that the plaintiff is his real son and

correct date of birth of the plaintiff is 03/01/1992, while correct name of the plaintiff is Mushtaq Hussain, real father name is Aman Ullah Khan and real name of the mother is Tootiya Gula. She exhibited her CNIC as EXP-W 2/1. She is cross examined by the defendants through attorney.

5. PW-3 is Aman Ullah Khan, father of the plaintiff. He supported the contention of the plaintiff and produced his CNIC and exhibited the same as Ex. PW-3/1. He is also cross examined by the attorney of the defendants.

6. PW-4 is Mushtaq Hussain, plaintiff himself, he narrated the same facts as given in the plaint. He stated that his correct date of birth is 03/01/1992 and his father correct name is Aman Ullah Khan, which is evident from CNIC of his father, already exhibited Ex. PW-3/1. He prayed for the decree in his favour.



MUHAMMAD AYAZ
Senior Civil Judge,
Muzaj Mahangu

In rebuttal defendants produced an examined sole witness namely Syed Farhat Abbas, representative, as DW-1 and recorded his statement as DW-1. He is cross examined by the plaintiff.

8. After conclusion of the evidence arguments pro and contra heard. Case file is gone through.

9. My issues wise finding are as under:

10. **Issue No.01 and 03:**

These issues taken together. Plaintiff has filed the instant suit for declaration in respect of his real name, father name and mother name and also for correct date of birth.

Perusal of record reveals that correct name of the plaintiff is Mushtaq Hussain and correct name of the father of the plaintiff is Aman Ullah Khan, and correct name of the mother of the plaintiff is Tootiya Gula, which is evident from the CNIC, already exhibited as Ex. PW-2/1 and Ex. PW-3/1. Moreover, the correct date of birth of the plaintiff is 03/01/1992, which is evident from the school register produced and exhibited as Ex. PW-1/2 by the school Head Master. The same are not rebutted by any documents by the defendants, hence, the said documents are admissible in evidence, which is relied upon in present circumstances. Nothing is produced in rebuttal by the defendants. Taking wisdom from the case law reported in **PLD 2003 Supreme Court page 849**, *“wherein it has been mentioned by the honorable Supreme Court of Pakistan that the best evidence to prove this fact (age or date of birth) was of those person who would have an ordinary course of life having personal knowledge. Statement of mother is at high pedestal as compared to other as she has given birth to him.”*


MUHAMMAD AYAZ
Senior Civil Judge,
Orakzal at Hangu

In circumstances, the claim of the plaintiff, as mentioned above, is proved through cogent and reliable evidence. Hence, the issues in hand are decided in affirmative.

Issue No. 02:

The instant suit is for declaration and the limitation for the instant suit is 06 years. As per the available record, suit of the

plaintiff is within time. Onus of proof was upon the defendants to establish that suit is barred by time. However, nothing is produced by the defendants in this regard and the onus has not been discharged by the defendants. Resultantly, the issues in hand is decided in negative.

Issue No. 04:

For what has been held in issue No. 3, this court is of the opinion that plaintiff has got cause of action and he is entitled to the decree as prayed for.


The issue is decided in positive.

Relief:

Consequently, suit of the plaintiff succeeds and is hereby decreed as prayed for. Defendants are directed to correct their record and issue CNIC to the plaintiff with his correct name as Mushtaq Hussain and correct father as Aman Ullah Khan and mother name as Tootiya Gula and correct date of birth as 03/01/1992.

11. Parties are left to bear their own costs.
12. File be consigned to the record room after its completion.

Announced
18/07/2019


(Muhammad Ayaz Khan)
Senior Civil Judge,
Orakzai at Baber Mela