

(4)

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

Civil Suit No. 88/1 of 2019
Date of Institution: 07/05/2019
Date of Decision: 19/09/2019

Muhammad Sadiq s/o Niaz Badshah

Resident of Village Orhi Bar, PO Ghiljo, Tehsil upper Orakzai & District Orakzai.....
(Plaintiff)

VERSUS

1. **Chairman, NADRA, Islamabad.**
2. **Director, General NADRA KPK Peshawar.**
3. **Assistant Director, NADRA District Orakzai.**

(Defendants)

SUIT FOR DECLARATION & PERMANENT INJUNCTION

JUDGEMENT:

1. Plaintiff, **Muhammad Sadiq**, has brought the instant suit for declaration-cum-permanent injunction against the defendants, referred hereinabove, seeking therein that his correct date of birth is **01/01/1979** while it has been wrongly mentioned as **01/01/1985** by the defendants, which is unnatural as the difference between the age of the plaintiff and his elder daughter is 14 years, which is against the natural gape. Hence, the instant suit.

2. Defendants were summoned, who appeared through attorney namely Farhat abbas 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?


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3. Whether the correct date of birth of the plaintiff is 01/01/1979, while the date 01/01/1985 as mentioned in CNIC of the plaintiff is incorrect.
4. Whether the plaintiff is entitled to the decree as prayed for?
5. Relief.

3. Parties were directed to produce evidence of their own choice, which they did. Plaintiff produced two (02) witnesses including his relative who was examined as PW-1.

4. PW-1 is Bahadar Shah, relative of the plaintiff. He stated that the real date of birth of the plaintiff is 01-01-1979. He produced his CNIC and exhibited the same as Ex.PW-1/1. He added that at the time of birth of plaintiff, he was on job at Karachi. When he visited Orakzai, plaintiff was born. It was the same year in which Zulfiqar Ali Bhutto was hanged, the witness added. He is cross examined by the attorney of the defendants.

5. PW-2, Mazhar Khan, another witness of the plaintiff appeared and recorded his statement, wherein he supported the contention of the plaintiff and stated that the real date of birth of the plaintiff is 01/01/1979. He further stated that the gape between the plaintiff and his elder daughter is only 14 years which is unnatural. He exhibited his CNIC as Ex.PW-2/1. He is cross examined by the defendants through attorney.

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


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7. After conclusion of the evidence arguments pro and contra heard. Case file is gone through.
8. My issues wise findings are as under:
9. **Issue No.01 and 03:**

These issues taken together. Plaintiff has filed the instant suit for declaration in respect of his real date of birth.

Perusal of record reveals that correct date of birth of the plaintiff is 01/01/1979, which is evident from the evidence of the plaintiff. 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.”*

In present case, the relative namely Bahadur Shah has personal knowledge regarding the date of birth of the plaintiff, which cannot be ignored, hence, wisdom can be taken from the above cited case law, in present circumstances.

Further, the difference of age between the plaintiff and his elder daughter is only 14 years, which is unnatural and not acceptable to any prudent mind. If this unnatural gape is not


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corrected, it will create problems for the elder daughter of the plaintiff in future. During the course of arguments, the learned attorney of the defendants conceded the factum that the unnatural gape is not possible in ordinary circumstances, so, he admitted the fault of NADRA at the bar. Facts admitted need not to be proved. 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.


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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 date of birth of the plaintiff as 01/01/1979 forthwith.

10. Parties are left to bear their own costs.

11. File be consigned to the record room after its completion.

Announced
19/09/2019



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

CERTIFICATE

Certified that this judgment of mine consists **05** (five) pages, each has been checked, corrected where necessary and signed by me.



(MUHAMMAD AYAZ KHAN)
Senior Civil Judge,
Orakzai (at Baber Mela).