

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

Civil Suit No. 144/1 of 2019
 Date of Institution: 01/07/2019
 Date of Decision: 06/01/2020

Bibi Marhamy w/o Noor Habib Khan

Resident of Village Yakho kandao, 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, **Bibi Marhamy**, has brought the instant suit for declaration-cum-permanent injunction against the defendants, referred hereinabove, seeking declaration therein that her correct date of birth is **01.01.1966** while it has been wrongly mentioned as **1983** by the defendants, which is unnatural as the difference between the age of the plaintiff and her elder son Namely Muhammad Qasim is only **03 years**, another son namely Ahmad Ullah is **06 years** and with another son namely Ibrahim is **10 years**, which is against the **natural gape**. Hence, the instant suit.
2. Defendants were summoned, who appeared through attorney namely **Syed Farhat Abbas** and submitted written statement, which is placed on file.



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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 date of birth of the plaintiff is **01.01.1966**, while the date **1983** 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.


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PW-1, Ahmad Ullah, is elder son/attorney of the plaintiff. He produced and exhibited his CNIC as Ex. PW-1/1, copy of the CNIC of the plaintiff as Ex.PW-1/2, copy of CNIC of his elder brother namely Muhammad Qasim as Ex.PW-1/3, copy of CNIC of his another as Ex.PW-1/4, copy of CNIC of another brother namely Ibrahim as Ex.PW-1/5 and his power of attorney as Ex.PW-1/6. He stated that the correct date of birth of the plaintiff is **01.01.1966** while it has been wrongly mentioned as **1983** by the defendants. He further stated that the age difference between the age of the plaintiff and her sons is unnatural, which

is against the **natural gape**. He is cross examined by the attorney of the defendants.

5. PW-2, Noor Habib khan, husband of the plaintiff, who appeared and recorded his statement. He produced and exhibited copy of his CNIC as Ex. PW-2/1. He stated that the correct date of birth of the plaintiff is **01.01.1966** and plaintiff has an unnatural age gape with her sons. He is cross examined by the defendants.
6. 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.


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

My issues wise findings are as under:


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.

9. **Issue No.03:**


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 Senior Counsel
 Orakzai Bench
 Ferozpur

As per the available record and evidence, present on file, reveals that if we presume the present date of birth of the plaintiff as correct, which is **01.01.1966**, then, the elder son of the plaintiff namely Muhammad Qasim is born in 1986, another son namely Ahmad Ullah is born in 1989 and another son Namely Ibrahim is born in 1993 so the difference of age of the plaintiff with her sons is 02, 06 and 10 years respectively, which is not possible. The same is even against the natural difference between mother and son. The difference must be more than 19 years, under the normal circumstances. The said difference of ages is unnatural and the same is not appealable to any prudent mind. This factum is admitted by the attorney of the defendants at the time of arguments. Facts admitted need not to be proved as per article 113 of Qanoon-e-Shahadat. Even otherwise, it is the fundamental right of the plaintiff to correct her date of birth in the CNIC, which cannot be denied to her. Moreover, it is even in the interest of NADRA to have correct database of the citizens of Pakistan including the present plaintiff. If the date of birth of the plaintiff is not corrected, it would serve no purpose. In addition to, there is no legal bar on such correction and if the date of birth is corrected it would not affect the right of any third person. Even otherwise, the same is



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not rebutted by any documents by the defendants. Nothing is produced in rebuttal by the defendants.

If this unnatural gape is not corrected, it will create problems for the plaintiff in future. In circumstances, the claim of the plaintiff, as mentioned above, is proved through cogent and reliable evidence. Hence, the issue in hand is decided in affirmative.

Issue No. 01 & 04:

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

The issues are decided in affirmative.

Relief:

Consequently, suit of the plaintiff succeeds and is hereby decreed as prayed for. Defendants are directed to correct her date of birth as **01.01.1966** forthwith.

10. Parties are left to bear their own costs.
11. File be consigned to the record room after its necessary completion and compilation.

Announced
06/01/2020



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

CERTIFICATE

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



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