

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

Civil Suit No. 94/1 of 2019
Date of Institution: 09/05/2019
Date of Decision: 04/01/2020

Abdullah s/o Abdul Janan

Resident of Village Baghnak Khadizai, PO Ghiljo, Tehsil Upper & District Orakzai..... (Plaintiff)

VERSUS

1. **Chairman, NADRA, Islamabad.**
2. **Registrar, General NADRA Islamabad.**
3. **District Registration NADRA District Orakzai.**

(Defendants)

SUIT FOR DECLARATION & PERMANENT INJUNCTION

JUDGEMENT:

Plaintiff, **Abdullah s/o Abdul Janan**, has brought the instant suit for declaration-cum-permanent injunction against the defendants, referred hereinabove, seeking declaration therein that his correct date of birth is **12.09.2003**, while it has been wrongly mentioned, as **01.01.2013** by the defendants, which is incorrect and liable to be corrected. Hence, the present suit.

Defendants were summoned, who appeared through attorney namely Syed Farhat Abbas and submitted written statement, which is placed on file.

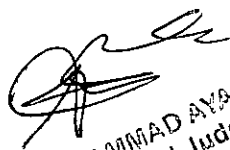
Divergent pleadings of the parties were reduced into the following issues;

Issues:

1. Whether plaintiff has got cause of action.
2. Whether suit of plaintiff is within time.

Muhammad Ayaz Khan
MUHAMMAD AYAZ KHAN
 Senior Civil Judge,
 Orakzai at Hangu

- 3. Whether the date of birth of the plaintiff is **12.09.2003** while it has been wrongly entered in the Form-B of the plaintiff as 01.01.2013.
- 4. Plaintiff is entitled to the decree as prayed for.
- 5. Relief.
- 6. Parties were directed to produce evidence of their own choice, which they did. Plaintiff produced three (03) witnesses including himself.
- 7. PW-1, Nasrullah Khan, is CT teacher of GMS Doctor Banda Kohat, who recorded his statement. He stated that correct date of birth of the plaintiff is **12.09.2003**, while it has been wrongly mentioned in the Form-B of the plaintiff as 01.01.2013 by the defendants. He produced and exhibited the school registration form of the plaintiff. He was cross examined by the defendants.


 MUHAMMAD AYAZ
 Senior Civil Judge
 Orakzai at Hang...

8. PW-2, Abdullah, is plaintiff himself. He stated that his correct date of birth is **12.09.2003**, while it has been wrongly mentioned in his Form-B as 01.01.2013 by the defendants. He produced and exhibited his birth certificate as Ex.PW-2/1, in which date of birth is correctly entered as **12.09.2003**. He exhibited copy his Form-B as Ex.PW-2/2, copies of the CNICs of his brothers as Ex.PW-2/3, Ex.PW-2/4, Ex.PW-2/5, copy of his father's CNIC as Ex.PW-2/6 and copy of his mother's CNIC as Ex.PW-2/7. He requested for grant of decree as prayed for. He is cross examined by the defendants through attorney.

9. PW-3, Abdul Janan, is father of the plaintiff. He stated that the plaintiff is his son, and was born on **12.09.2003**. He

supported the contention of the plaintiff. He is cross examined by the defendants through attorney.

10. In rebuttal defendants produced an examined sole witness namely Syed Farhat Abbas, representative, as DW-1 and recorded his statement as DW-1. He produced the registration form of the plaintiff and exhibited the same as Ex. DW-1/1, family tree of of the plaintiff as Ex. DW-1/2. He is cross examined by the plaintiff.

11. 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:

12. 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.03:

Perusal of record and evidence present on file reveals that plaintiff claims that his correct date of birth is **12.09.2003**, and he relied upon the school record, Ex.PW-1/1. It is settled law that whenever there is clash between the CNIC and school

certificates, in respect of date of birth, the school certificate shall prevail. In present case, as per Ex. PW-1/1, the correct date of the birth of the plaintiff is **12.09.2003**, which is not even objected by the defendants in the evidence. Secondly, the real father of the plaintiff namely Said Man Shah appeared and recorded his statement as PW-3 and exhibited his CNIC as Ex. PW-3/1, who verified that the correct date of birth of the plaintiff is **12.09.2003**, which is wrongly mentioned in the CNIC of the plaintiff as 01.01.2013. Reliance is placed on case law reported in **PLD 2003 Supreme Court page 849**, wherein it


 MUHAMMAD AYAZ
 Senior Civil Judge,
 Orakzai at Hangul

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 real father of the plaintiff is in good position to tell the correct date of birth of the plaintiff. Hence, reliance is placed on said case law in circumstances. The said factum has not been shattered by the defendants in evidence. The same are not rebutted by any documents by the defendants, hence, the said evidence is admissible, which is relied upon in present circumstances. Nothing is produced in rebuttal by the defendants. 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 Qanun-e-Shahadat. Even otherwise, it is the fundamental right of the plaintiff to correct his date of birth in the CNIC, which cannot be denied to him. Interestingly, if we presume the present date of birth of the plaintiff as 01.01.2013 is correct, then as per Ex.PW-1/1, plaintiff was 06 years old when he was in class 7th, which is not only impossible but also against the law of nature. The same is not appealable to any prudent mind. 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 not rebutted by any documents by the defendants, hence, the said document is admissible in evidence, which is relied upon in present circumstances. Nothing is produced in rebuttal by the defendants. Hence, the said document is admissible in evidence, which is relied upon in present circumstances. Nothing is produced in rebuttal by the defendants.

Hence, the issue in hand is decided in affirmative.

Issue No.1&04:


MUHAMMAD ALI
Senior Civil Judge,
Orakzai at Hangu

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 he is entitled to the decree as prayed for.

The issues are 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 correct date of birth as **12.09.2003**. Parties are left to bear their own costs.

File be consigned to the record room after its completion.

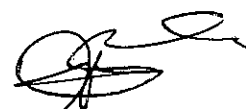
Announced
04/01/2020



(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).