

IN THE COURT OF JAMAL SHAH MAHSOOD,
ADDITIONAL DISTRICT JUDGE-I, ORAKZAI

Civil Appeal No. 17/20 of 2020

Date of institution: 28-02-2020
Date of decision: 30-09-2020

Zafar Ali s/o Mureed Askar; caste Mani Khel, Tapa Zikria Khel; r/o PO Kalaya, Noor Ali Garhi, Orakzai

(Appellant/plaintiff)

Vs

- 1) **Chairman NADRA**, Islamabad
- 2) **Director General NADRA**, Khyber Pakhtunkhwa, at Hayatabad, Peshawar.
- 3) **Assistant Director NADRA**, District Orakzai

(Respondents/defendants)

- Sana Ullah Khan Advocate, for Appellant
- Syed Farhat Abbas, Junior Executive NADRA, for Respondents

APPEAL against order/judgment and decree of learned SCJ, Orakzai, dated 28-01-2020, passed in civil suit no. 232/1 of 2019.

(Impugned Judgment)

Judgment in Appeal:

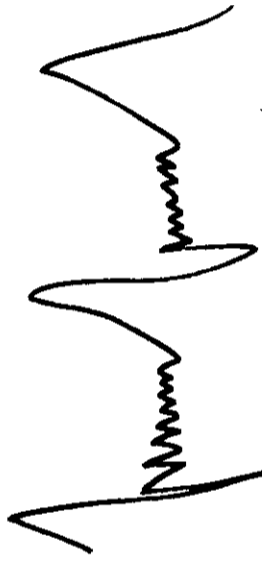
1. Through the impugned judgment the learned trial court decreed the suit of the appellant (plaintiff) "as prayed for". However, the defendants/respondents were directed to correct the date of birth of appellant/plaintiff as 12-09-1981, instead of 12-09-1984, which was prayed for in the suit.
2. The appellant/plaintiff filed his suit against respondents/defendants (NADRA), seeking correction of his date of birth as 12-09-1984, instead of 1977 – as recorded in his national identity card (NIC no. 21603-5596931-3). The appellant/plaintiff filed his suit on the basis of school leaving certificate (Ex. PW-1/2), wherein his date of birth has been mentioned as 12-09-1984; and also, on the

ground that the date of birth of his mother has been recorded as 1964 in her NIC – thereby, reflecting difference of 13 years only between the mother and her son. He prayed that declaration may be issued in respect of his correct date of birth as 12-09-1984, and that NADRA may be directed to make correction in their record and issue fresh NIC to the plaintiff, with the correct date of birth.

3. The respondents/defendants (NADRA) were summoned, by the trial court, who submitted written statement through their representative. Several legal and factual objections were raised by NADRA. The trial court framed issues from the conflicting pleadings of the parties. Thereafter, the parties were called to produce evidence. The appellant/plaintiff appeared as PW-1, he produced one of his neighbors and one of his brothers, as PW-2 and PW-3 respectively. The record keeper of respondents appeared as its sole witness, DW-1. On conclusion of evidence the learned trial court, in order to nullify the so-called un-natural gap between the appellant/plaintiff and his mother, decreed the suit by coming up with a fictitious date (12-09-1981), as the presumed correct date of birth of the appellant/plaintiff. A decree was thus granted for correct date of birth as 01-01-1977, instead of 12-09-1984.

4. Being aggrieved, the plaintiff filed the instant appeal. The main grounds taken in the memorandum of appeal are; that the impugned judgement was passed in contravention of law on point and against the facts & evidence produced in the case.

5. Notices were issued to the respondents. The Junior Executive NADRA office Orakzai, appeared on behalf of the respondents


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(Authority Letter in favor of Syed Farhat Abbas is available on file of trial court).

6. Arguments of the parties were heard and the record has been perused.
7. The counsel for appellant, during arguments, pointed out that he had produced before the learned trial court the school leaving certificate (Ex. PW-1/2) of the appellant/plaintiff, which showed his correct date of birth as 12-09-1984. He argued that in such situation the learned trial court could not have come up with a fictitious date of birth on its own.

8. On the other hand, the representative of NADRA stated that the appellant/plaintiff had submitted his particulars to NADRA through Form Ex. DW-1/2, wherein he has shown himself as illiterate. He further stated that the date of birth of appellant/plaintiff was entered in their record according to the statement of appellant/plaintiff, and that there was no fault on part of NADRA.

9. The perusal of record could reveal that the school leaving certificate (Ex. PW-1/2) remained unchallenged during cross examination by NADRA. Therefore, it will be presumed that NADRA does not contest the authenticity of this school leaving certificate. The date of issue of this school leaving certificate is 25-09-2000, whereas, the date of issue of the current NIC of appellant/plaintiff is 02-08-2016.

10. By comparing the school leaving certificate and the NADRA application form (Ex. PW-1/2 and Ex. DW-1/2), it is evident the appellant/plaintiff had concealed his educational qualification


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from NADRA, at the time of applying for NIC. But now he wants to correct his date of birth in NADRA record, according to his educational record.

11. The National Database and Registration Authority (NADRA) was established under NADRA Ordinance, 2000 for the purpose of registration of all relevant persons, and for the establishment and maintenance of multiple database for the purpose of good governance, public service and for minimizing the scope of inefficiency etc. Even if it is presumed that appellant/plaintiff concealed his educational qualification at the time of applying for NIC, it would not entail that the same cannot be brought on record at a subsequent time. The NADRA is duty bound to record and maintain correct database of all citizens etc., according to latest information supplied to it. The appellant/plaintiff may have concealed information, which he was ought to disclose and furnish to NADRA at the time of applying for NIC; however, the remedy against concealment of information is provided for u/s 30 of the NADRA Ordinance, 2000. In such a case the correction of record cannot be refused as the same would lead to incorrect database, which would not serve the purpose of NADRA Ordinance, 2000.

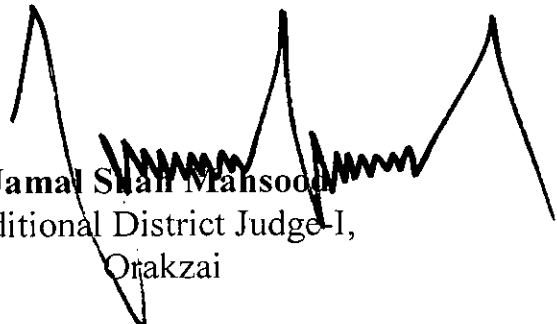
12. It must also be pointed out that the learned trial court erred in coming up with a fictitious date as the probable date of birth of appellant/plaintiff. This would be an illogical way of sweeping the dirt under the carpet. When the appellant/plaintiff had produced reliable documentary evidence (Ex. PW-1/2), then there was no space left for coming up with a fictitious date of birth. Rule 13 of the NADRA (NIC) Rules, 2002 provides for incorporation of

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change in an NIC and for issuing of a revised card, incorporating such change. Thus, it is evident that there is no bar, rather, that the law intends to incorporate correct data in the database.

13. In light of the above observations it is held that the suit of the appellant was improperly decreed. Resultantly, the instant appeal is **accepted** and the impugned judgment and decree is hereby set aside. By accepting this appeal, the suit of the appellant is decreed as prayed for; the respondents/defendants (NADRA) are directed to incorporate the correct date of birth of appellant/plaintiff (Zafar Ali son of Mureed Askar), as 12-09-1984, in their database and to issue a revised NIC to him accordingly. The parties are to bear their own costs.
14. Let a copy of this judgment in appeal be placed on the file of trial court and the record to be returned to Record Room. Let this file be consigned to record room after its necessary completion and compilation.

Announced
30-09-2020


Jamal Shah Mansoor
Additional District Judge-I,
Orakzai

CERTIFICATE

Certified this judgment consists of 05 pages. Each page has been signed by me.


ADJ-I, Orakzai