

4

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

Civil Suit No. 32/1 of 2019  
Date of Institution: 11/04/2019  
Date of Decision: 04/10/2019

**Abdul Janan s/o Din Akbar**

Resident of Village Mishti Mela, PO Mishti Mela, Tehsil Central 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, **Abdul Janan**, has brought the instant suit for declaration-cum-permanent injunction against the defendants, referred hereinabove, seeking therein that his correct date of birth is **27/12/1960** while it has been wrongly mentioned as **01/01/1957** by the defendants, which is incorrect and against the facts, so, liable to be corrected. Hence, the instant suit.
2. 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?

  
**MUHAMMAD AYAZ**  
Senior Civil Judge  
Orakzai at Baber Mela



2. Whether suit of the plaintiff is within time?
3. Whether the correct date of birth of the plaintiff is 27/12/1960, while the date 01/01/1957 as mentioned in CNIC of the plaintiff is incorrect.
4. Whether the plaintiff is entitled to the decree as prayed for?
5. Relief.

  
3-Z  
Civil Judge,  
Orakzai

Parties were directed to produce evidence of their own choice, which they did. Plaintiff produced four (04) witnesses.

4. PW-1 is Taj Muhammad, relative/witness of the plaintiff. He stated that the correct date of birth of the plaintiff is 27/12/1960. He added that when he joined Army, at that time his age was 18 years while the age of the plaintiff was 03 years. He produced and exhibited his CNIC as Ex. PW-1/1. He is cross examined by the attorney of the defendants.
5. PW-2, is Ayub Khan, relative/witness of the plaintiff, who 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 27/12/1960. He added that at the time of birth of the plaintiff, he was 23/24 years old. He was cross examined by the defendants.
6. PW-3, is Azeem Gul, relative/witness of the plaintiff, who 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 27/12/1960.

7. In rebuttal defendants produced an examined sole witness namely Syed Farhat Abbas, representative, as DW-1 and recorded his statement as DW-1. He added that plaintiff is 03 years younger than him. He added that his date of birth is 1957.

He is cross examined by the plaintiff.

8. PW-4, is Anwar Shah, PSHT Government primary school Jatta Mishti, Orakzai. He appeared and recorded his statement, wherein he produced the service book of the plaintiff and exhibited the same as Ex. PW-4/1. He also produced a letter of District Education Officer to the NADRA, wherein correction of date of birth of the plaintiff is sought as 27/12/1960. Finally, he requested for correction of the date of birth of the plaintiff as 27/12/1960. He was cross examined by the defendants.


  
MUHAMMAD AYAZ  
Senior Civil Judge,  
Orakzai at Hangu

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

Perusal of record reveals that correct date of birth of the plaintiff is 12/07/1960, which is evident from the evidence of the plaintiff in shape of service book and pension record. Further, if we presume 01/01/1957 the real date of birth of the



plaintiff, then, plaintiff should have been retired on 01/01/2017. However, as per the record and statement of PW-4, plaintiff is still on job. Moreover, this strong documentary piece of evidence on part of the plaintiff, in shape of service record, has not been rebutted by the defendants, which amounts to admission on part of 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, the same is 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.

  
MUHAMMAD AYAZ  
Senior Civil Judge  
Orakzai at Hangu

As for as the issue of service is concerned, plaintiff is going to retire on 26/12/2020. There is no change in the service record of the plaintiff which is correct and has rightly been mentioned as 27/12/1960. The claim of the defendant is against the facts as if we presume for a while the correct date of birth as 01/01/1957, plaintiff should have retired from service 03 years ago. However, plaintiff has not retired, which corroborates the stance of the plaintiff. Hence, claim of the plaintiff is accepted. 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. 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 affirmative.

**Relief:**

Consequently, suit of the plaintiff succeeds and is hereby decreed as prayed for. Defendants are directed to correct his date of birth as 01/07/1937 forthwith.

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

**Announced**  
04/10/2019

  
(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).