

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



Civil Suit No. 160/1 of 2019
Date of Institution: 04/09/2019
Date of Decision: 15/01/2020

Nikmat Ali s/o Khial Zareen

Resident of Village Depar, 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:

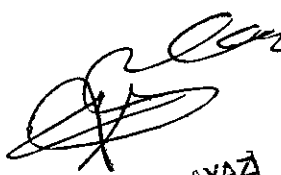
1. Plaintiff, **Nikmat Ali**, has brought the instant suit for declaration-cum-permanent injunction against the defendants, referred hereinabove, seeking declaration therein that his correct date of birth is **01.01.1975** while it has been wrongly mentioned as **01.01.1988** by the defendants, which is unnatural as the difference between the age of the plaintiff and his elder son namely **Shahzeb Ali** is only **05 years** and another son namely **Muhammad Amir** is **09 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.

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


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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 **01.01.1975**, while the date **01.01.1988** 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 three (03) witnesses.
 4. PW-1, Nikmat Ali, is the plaintiff himself. He stated that his correct date of birth is **01.01.1975**, while it has been wrongly mentioned as **01.01.1988** by the defendants. He further stated that his age difference with his sons is unnatural. He produced his CNIC and exhibited copy of his CNIC as Ex.PW-1/1, copy of CNIC of his son namely Shahzeb as Ex.PW-1/2 and copy of CNIC of another son namely Muhammad Amir as Ex.PW-1/3. He requested for grant of decree as prayed for. He is cross examined by the attorney of the defendants.
 5. PW-2, Satar khan, uncle 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


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the plaintiff is **01.01.1975** and plaintiff has an unnatural date gap with his Childs. He is cross examined by the defendants.

6. PW-3, Khayal Marjan, is cousin of the plaintiff. He produced and exhibited his CNIC as Ex. PW-3/1. He supported the contention of the plaintiff and that the correct date of birth of the plaintiff is **01.01.1975**. He is cross examined by the attorney of the defendants.
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 is cross examined by the plaintiff.


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


9. 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.

10. **Issue No.03:**

As per the available record and evidence, present on file, reveals that plaintiff claims his correct date of birth as 01.01.1988 on account of unnatural gape with his sons. Now, if we presume the present date of birth of the plaintiff as correct, which is **01.01.1988**, then, the elder son of the plaintiff namely Shahzeb Ali is born in 1993, another son and another son namely Muhammad Amir is born in 1997 so the difference of age of the plaintiff with his sons is 05 and 09 years respectively, which is not possible. The same is even against the natural difference between father and sons. 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 his date of birth in the CNIC, which cannot be denied to him. 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


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

The real uncle of the plaintiff namely Satar Khan appeared as PW-2, who is 15 years elder than the plaintiff. He has got personal knowledge and in a good position to tell the correct date of birth of the plaintiff. Reliance is placed on 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.*" Hence, in circumstances, the evidence of uncle is relied upon in present case to the extent of correct date of birth.


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In present case, the statement and evidence of the uncle of the plaintiff is relevant and reliance is placed upon his evidence. If this unnatural gap 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.

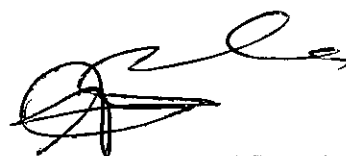
The issues are decided in affirmative.

Relief:

Consequently, suit of the plaintiff succeeds and is hereby decreed as prayed for. Defendants are directed to correct his date of birth as **01.01.1975** forthwith. Plaintiff shall pay all the fee for correction as required by the NADRA.

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

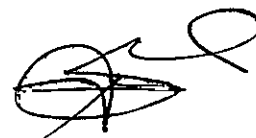
Announced
15/01/2020



(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).