

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

Civil Suit No. 171/1 of 2019
 Date of Institution: 12/09/2019
 Date of Decision: 11/10/2019

Syed Muzamil Hussain s/o Syed Khadim Abbas
 Resident of Village Kalaya, PO Kalaya, Tehsil Lower 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, **Syed Muzamil Hussain**, 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 **03/03/1983** while it has been wrongly mentioned as **03/03/1976** 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.



 MUHAMMAD AYAZ
 Senior Civil Judge,
 Orakzai at Hangu.

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 03/03/1983, while the date 03/03/1976 as mentioned in CNIC of the plaintiff is incorrect.
 4. Whether the plaintiff is entitled to the decree as prayed for?
 5. Relief.
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3. Parties were directed to produce evidence of their own choice, which they did. Plaintiff produced three (03) witnesses.
 4. PW-1 is Syed Muzamil Hussain, plaintiff himself appeared and recorded his statement, wherein he stated that the correct date of birth of the plaintiff is 03/03/1983. He produced and exhibited his CNIC as Ex. PW-1/1. He also produced his school leaving certificates and exhibited the same as Ex. PW-1/2 and 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, is Syed Naeem Syed, uncle 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 03/03/1983. He exhibited his CNIC as Ex. PW-2/1. He was cross examined by the defendants.
 6. PW-3, is Syed Amjad Hussain, 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


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birth of the plaintiff is 03/03/1983. He exhibited his CNIC as Ex. PW-3/1 He was cross examined by 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.
8. After conclusion of the evidence arguments pro and contra heard. Case file is gone through.
9. My issues wise findings are as under:
10. **Issue No.03:**



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Senior Judge,
Orakzai District

Perusal of record and evidence present on file reveals that correct date of birth of the plaintiff is 03/03/1983, which is evident from the school leaving certificates, exhibited as Ex. PW-1/2 and Ex. PW-1/3. It is settled law that whenever there is clash between the CNIC and the school leaving certificate, in respect of date of birth, the school leaving certificate shall prevail. In present case, as per Ex. PW-1/2, the correct date of the birth of the plaintiff is 03/03/1983. Nothing is produced by the defendants to rebut the said document. 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.

Taking wisdom from 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.*"

In present case, the uncle of the plaintiff has recorded his statement and mentioned the correct date of birth of the plaintiff as 03/03/1983. As per the said judgement, uncle of the plaintiff is in a good position to tell the real date of birth of the plaintiff. Hence, reliance is placed on the judgement, referred hereinabove. It is held that the correct date of birth of the plaintiff is 03/03/1983.


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Senior Civil Judge,
Qakzai at Hangu

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. 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 he is entitled to the decree as prayed for.


These 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 03/03/1983 forthwith.


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

Announced
11/10/2019


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

CERTIFICATE

Certified that this judgment of mine consists **05** (five) pages, each has been checked, corrected where necessary and signed by me.


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