

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

Civil Suit No. 126/1 of 2019
Date of Institution: 14/06/2019
Date of Decision: 11/10/2019

Abdur Rauf s/o Muzammil Khan
Resident of Village Tairi, 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, **Abdur Rauf s/o Muzammil Khan**, has brought the instant suit for declaration-cum-permanent injunction against the defendants, referred hereinabove, seeking declaration therein that correct name of his father is "**Muzammil Khan**" while it has been wrongly mentioned as **Naimat Gul** by the defendants, which is incorrect and liable to be corrected. Hence, the present suit.


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

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3. Whether the correct name of the father of the plaintiff is Muzammil Khan while it has been wrongly entered in his CNIC as Naimat Khan.
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.
7. PW-1 is Abdur Rauf, plaintiff himself, who recorded his statement. He stated that his correct name of his father is Muzammil Khan, which is mentioned in his CNIC. He produced the CNIC of his father and exhibited the same as Ex. PW-1/1. He produced his own CNIC and exhibited the same as Ex. PW-1/2, the CNIC of his mother as Ex. PW-1/3 while exhibited the domicile as Ex. PW-1/4. He requested for decree as prayed for. He was cross examined by the defendants.
8. PW-2, Naimat Gul, uncle of the plaintiff. He stated that plaintiff is his nephew and Muzammil Khan is the real father of the plaintiff. He exhibited his CNIC as Ex. PW-2/1. He is cross examined by the defendants through attorney.
9. PW-3, is Muhammad Arif, maternal uncle of the plaintiff, who stated that the real name of the father of the plaintiff is Muzammil Khan. 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 form-A of



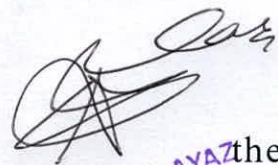
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plaintiff and exhibited the same as Ex. DW-1/1. He is cross examined by the plaintiff.

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

Plaintiff has filed the instant suit for declaration in respect of his correct father's name.



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Perusal of record reveals that correct name of the father of the plaintiff is Muzammil Khan. The real uncle of the plaintiff namely Naimat Gul appeared and recorded his statement as PW-2 and exhibited his CNIC as Ex. PW-2/1. The said uncle verified that his name was written in the CNIC of the plaintiff in the column of father, which is against the facts as he is the uncle of the plaintiff. Interestingly, Muhammad Arif, the real maternal uncle appeared and recorded his statement as PW-3 and stated that the real father of the plaintiff is Muzammil Khan while defendants have wrongly mentioned his uncle name in the column of parentage of the plaintiff. The real uncles of the plaintiff are in good position to tell the real name of the father of the plaintiff. Moreover, PW-2 is the best available evidence upon whom this court can easily rely. 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

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 people 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.*”



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In circumstances, the evidence of the uncle of the plaintiff is the best available evidence, who have got personal knowledge regarding the correct date of birth of the plaintiff. Hence, reliance is placed on the above judgement. Hence, 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. 01 & 04:

These 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 his correct name of his father as **Muzammil Khan**. Parties are left to bear their own costs.


14. 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).