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

Civil Suit No. 149/1 of 2019
Date of Institution: 02/07/2019
Date of Decision: 08/10/2019

Syeda Jan w/o Abdur Raziq
Resident of Village Sama, 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, **Mst Syeda Jan w/o Abdur Raziq**, has brought the instant suit for declaration-cum-permanent injunction against the defendants, referred hereinabove, seeking declaration therein that the correct date of birth of the plaintiff is **01/01/1972** while it has been wrongly mentioned by the defendants as 01/01/1980. Secondly, the correct address of the plaintiff is "**Qaum Mamo Zai, Tappa Aado Khel Sama, PO Ghiljo, Tehsil Upper Orakzai and District Orakzai.**" while it has been wrongly mentioned, by the defendants, which is incorrect and liable to be corrected. Hence, the present suit.

Defendants were summoned, who appeared through attorney namely Habib Ullah Khan and submitted written statement, which is placed on file.


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Senior Civil Judge,
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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.
3. Whether the correct date of the plaintiff is 01/01/1972 which has been wrongly mentioned as 01/01/1980 and the correct address of plaintiff is **“Qaum Mamo Zai, Tappa Aado Khel Sama, PO Ghiljo, Tehsil Upper Orakzai and District Orakzai”**.
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 Fazle Ghani, brother of the plaintiff, who recorded his statement. He stated that plaintiff is 7/8 years younger than him. He produced his CNIC and exhibited the same as Ex. PW-1/1. He stated that plaintiff was born on 01/01/1972, a year after war of 1971. He was cross examined by the defendants.
8. PW-2, Sultan Ghani, another brother of the plaintiff. He stated that plaintiff is 01 year younger than him. He produced his CNIC and exhibited the same as Ex. PW-2/1. He stated that plaintiff was born on 01/01/1972, a year after war of 1971. He was cross examined by the defendants.
9. PW-3, Muhammad Ishaq, son and attorney of the plaintiff. He produced and exhibited his power of attorney as Ex. PW-3/1, his CNIC as Ex. PW-3/2, his sister CNIC as Ex. PW-3/3 and father


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CNIC as Ex. PW-3/5. He requested for grant of decree as prayed for.

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 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:**


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Senior Civil Judge
Orakzai at Hangu

Plaintiff has filed the instant suit for declaration in respect of his correct father's name and correct address is, referred hereinabove.

Perusal of record and evidence present on file reveals that correct date of birth of the plaintiff is 01/01/1972. If we presume the present date of birth i.e 01/01/1980 to be correct, then the difference of age between the plaintiff and her real daughter is 13 years, which is unnatural and not possible as at the age of 13, no marriage of plaintiff is possible. If the correction of age is not made at this stage, it will create problems for the children of the plaintiff in future. Even otherwise, defendants have not rebutted the said factum during the course of evidence, which amounts to admission.

14. The correct address of the plaintiff is “**Qaum Mamo Zai, Tappa Aado Khel Sama, PO Ghiljo, Tehsil Upper Orakzai and District Orakzai**”. The real brothers of the plaintiff have verified not only the date of birth of the plaintiff as 01/01/1972 but also verified the correct address of the plaintiff, mentioned as above. The said brothers are in good position to tell the correct date and address of the plaintiff. 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 real brother and son of the plaintiff are the best available evidence, who have got the personal knowledge of the said factums. Hence, reliance is placed on their statements and the circumstances of the said referred case law are applicable in present case. Therefore, 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. 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.

These issues are decided in positive.


Relief:

Consequently, suit of the plaintiff succeeds and is hereby decreed as prayed for. Defendants are directed to correct the date of birth of the plaintiff as 01/01/1972 and also correct the address of the plaintiff as **Qaum Mamo Zai, Tappa Aado Khel Sama, PO Ghiljo, Tehsil Upper Orakzai and District Orakzai**". Parties are left to bear their own costs.

15. File be consigned to the record room after its completion.



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Senior Civil Judge,
Orakzai at Mangu

Announced
08/10/2019


(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).