

(2)

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

Civil Suit No. 92/1 of 2019
Date of Institution: 09/05/2019
Date of Decision: 18/10/2019

Aslam Khan s/o Nawab Khan

Resident of Village Meer Ghara, 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)


MUHAMMAD AYAZ KHAN
Senior Civil Judge,
Orakzai at Hangu

SUIT FOR DECLARATION & PERMANENT INJUNCTION


JUDGEMENT:

1. Plaintiff, **Aslam Khan**, has brought the instant suit for declaration-cum-permanent injunction against the defendants, referred hereinabove, seeking declaration therein that the correct name of the father of the plaintiff is Nawab Khan, while it has been wrongly mentioned by defendants is Sawab Khan. Secondly, seeking declaration that his correct date of birth is **15/05/1991** while it has been wrongly mentioned as **01/01/1991** 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?
2. Whether suit of the plaintiff is within time?
3. Whether the correct father name of the plaintiff is Nawab Khan while it has been wrongly mentioned as Sawab Khan and the correct date of birth of the plaintiff is 15/05/1991, while the date 01/01/1991 as mentioned in CNIC of the plaintiff is incorrect.


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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 is Zarman Khan, uncle of the plaintiff, appeared and recorded his statement, wherein he stated that the correct date of birth of the plaintiff is 15/05/1991. He produced and exhibited his CNIC as Ex. PW-1/1. He stated that the correct name of the father of the plaintiff is Nawab Khan. He is cross examined by the attorney of the defendants.
 5. PW-2, is Raheem Khan, cousin 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 15/05/1991. He exhibited his CNIC as Ex. PW-2/1.


He was cross examined by the defendants.

6. PW-3, is Aslam Khan, plaintiff himself, appeared and recorded his statement, wherein he stated that his correct date of birth is 15/05/1991 while it has been wrongly mentioned as 01/01/1991. He further added that his correct father name is Nawab Khan which has been wrongly entered as Sawab Khan. He produced his CNIC and exhibited the same as Ex. PW-3/1, his Madrassa certificate as Ex. PW-3/2, Ex. PW-3/3 and Ex. PW-3/4, his father CNIC as Ex. PW-3/5, his 8th class certificate as Ex. PW-3/6. He was cross examined by the defendants.

7. In rebuttal defendants produced an examined sole witness namely Habib Ullah Khan, 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:**

Perusal of record and evidence present on file reveals that correct date of birth of the plaintiff is 15/05/1991 and correct father name is Nawab Khan which is evident from the school and Madrassa certificates, exhibited as Ex. PW-3/2 to Ex. PW-3/6. It is settled law that whenever there is clash between the CNIC and the school certificates, in respect of date of birth, the

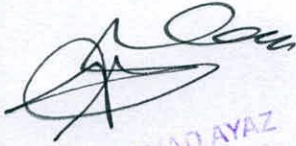
school leaving certificate shall prevail. Nothing is produced by the defendants to rebut the said documents. This factum is admitted by the attorney of the defendants at the time of arguments. Facts admitted need not to be proved as per article 113 of Qanun-e-Shahadat. Even otherwise, the same is not 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.


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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 is 15/05/1991. 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 15/05/1991.

As far as the correction of father name of the plaintiff is concerned, it is a spelling mistake i.e “**Nawab Khan**” has been wrongly mentioned as “**Sawab Khan**”, wherein only correction of letter “N” is sought instead of “S”. It is a clerical mistake, which can be corrected at any stage. Further, original CNIC of the father of the plaintiff is present in file, which also suggest that the correct spelling of the name of the father of the plaintiff is Nawab Khan. Hence, it is held that correct spelling of the name of the father of the plaintiff is Nawab Khan.


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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 15/05/1991 and correct his father name in his CNIC as Nawab Khan forthwith.

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

Announced

18/10/2019

(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).