

(28)

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

Civil Suit No. 234/1 of 2019
Date of Institution: 04/01/2020
Date of Decision: 10/02/2020

Ijaz ul Haq s/o Khaistan Akbar

Resident of Section Mishti, Sub section Darwi Khel, 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)

SUIT FOR DECLARATION & PERMANENT INJUNCTION

JUDGEMENT:

Plaintiff, **Ijaz ul Haq s/o Khaistan Akbar**, 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 **01.01.1993** while it has been wrongly mentioned as **01.08.1995** by the defendants, which is incorrect and against the facts, so, liable to be corrected. Hence, the instant suit.


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Senior Civil Judge,
Orakzai at Hangu.

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;

Issues:

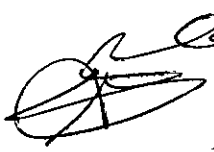
1. Whether the plaintiff has got any cause of action?

2. Whether suit of the plaintiff is within time?
3. Whether the correct date of birth of the plaintiff is **01.01.1993**, while the date 01.08.1995 as mentioned in CNIC of the plaintiff is incorrect.
4. Whether the plaintiff is entitled to the decree as prayed for?
5. Relief.

Parties were directed to produce evidence of their own choice, which they did. Plaintiff produced three (04) witnesses.

1. PW-1, Ijaz ul Haq, is the plaintiff himself. He stated that his correct date of birth is **01.01.1993**, which is correctly entered in

his SSC certificate, while the date of birth in his CNIC has been wrongly mentioned as **01.08.1995** by the defendants. He



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Produced and exhibited the copy of his CNIC as Ex.PW-1/1, copy of SSC certificate as Ex.PW-1/2 and copy of SSC DMC exhibited as Ex.PW-1/3. He requested for decree as prayed for. He is cross examined by the attorney of the defendants.

2. PW-2, Muhammad Rafiq, is close relative 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 **01.01.1993**. He produced and exhibited copy of his CNIC as Ex.PW-2/1. He is cross examined by the attorney of the defendants.

3. PW-3, Talha Muhammad, is neighbor of the plaintiff, who appeared and recorded his statement. He stated that the real date of birth of the plaintiff is **01.01.1993** which is correctly entered in the SSC documents of the plaintiff. He is cross examined by the attorney of the defendants.
4. PW-3, Khaistan Akbar, is father of the plaintiff, who appeared and recorded his statement. He stated that the real date of birth of the plaintiff is **01.01.1993**. He further added that being a father he has personal knowledge about the correct date of birth of the plaintiff. He produced and exhibited his CNIC as Ex.PW-4/1. He is cross examined by the attorney of the defendants.
5. 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 and exhibited processing form of the plaintiff as Ex. DW-1/1, Form-A of the plaintiff as Ex. DW-1/2 and family tree as Ex. DW-1/3. He is cross examined by the plaintiff.

Handwritten signature and official stamp of a Civil Judge.

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

My issues wise findings are as under:

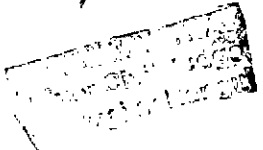
Issue No. 02:

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.

Issue No.03:

Perusal of record and evidence present on file reveals that plaintiff claims that his correct date of birth is **01.01.1993**, and he relied upon the SSC certificate, exhibited as Ex. PW-1/2. It is settled law that whenever there is clash between the CNIC and the Matric certificate, in respect of date of birth of educated person, the matric certificate shall prevail. Interestingly, it is in the policy of the NADRA that for educated person the date of birth is mentioned as per matric certificate of that person. So, as per the matric certificate, correct date of birth of the plaintiff is **01.01.1993**. Reliance is placed on the SSC certificate Ex.PW-1/2. 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 Order, 1984. 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. Secondly, the father of the plaintiff namely Khaistan



Akbar appeared and recorded his statement as PW-4 and exhibited his CNIC as Ex. PW-4/1, who verified that the correct date of birth of the plaintiff is **01.01.1993**. In this regard, 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.”* In present case, the father of the plaintiff is in good position having personal knowledge to tell the correct date of birth of the plaintiff.


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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 otherwise, the same is not rebutted by any documents by the defendants, hence, the said factum is admissible in evidence, which is relied upon in present circumstances. Nothing is produced in rebuttal by the defendants. The issue in hand is decided in affirmative.

Issue No. 04:

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 issue is 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 **01.01.1993** forthwith. Parties are left to bear their own costs. Plaintiff shall pay all the fee for correction as required by the NADRA.

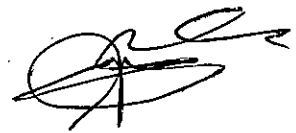
File be consigned to the record room after its completion.

Announced
10/02/2020


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).