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

Civil Suit No. 139/1 of 2019
Date of Institution: 26/06/2019
Date of Decision: 29/10/2019

1. **Tajmeen Khan s/o Momin Khan, and**
2. **Khatima Bibi w/o Tajmeen Khan**

Resident of Village Spidar Sama, PO Ghiljo, Upper Orakzai & District Orakzai.....
(Plaintiffs)

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. Plaintiffs, **Tajmeen Khan and Khatima Bibi**, have 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 No. 1 is **1978** and plaintiff No. 2 is **1980**, while these have been wrongly mentioned as **1985** and **1986** by the defendants, which are unnatural as the difference between the plaintiffs and their elder son is 13 and 14 years respectively. Hence, the instant suit.
2. 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;


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Issues:

1. Whether the plaintiffs have got any cause of action?
2. Whether suit of the plaintiffs is within time?
3. Whether the correct date of birth of the plaintiffs are 1978 and 1980, while the dates 1985 and 1986 as mentioned in CNICs of the plaintiffs are incorrect.
4. Whether the plaintiffs are entitled to the decree as prayed for?
5. Relief.

Parties were directed to produce evidence of their own choice, which they did. Plaintiffs produced three (03) witnesses.

³ PW-1, Momin Khan, is the father of the plaintiff No.1. He produced and exhibited copy of his CNIC as Ex. PW-1/1. He stated that Plaintiff No.1 is his son and the correct date of birth of the Plaintiff No. 1 is 1978, and his wife (plaintiff No.2) age is 02 years less than plaintiff No.1. He added that the elder son of the plaintiffs was born on 07/04/1999, and if the present wrong date of birth of the plaintiffs are considered, then there is only 13 and 14 years of gape remain between the elder son and his parents respectively. The said is unnatural difference with his parents, which is not possible. He requested for decree of the suit. PW-I is cross examined by the attorney of the defendants.

4. PW-2, Tajmeen khan, plaintiff himself appeared and recorded his statement. He produced and exhibited copy of his CNIC as Ex.


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PW-2/1, power of attorney on behalf of his wife (Plaintiff No.2) exhibited as Ex. PW-2/2, copy of his wife's CNIC as Ex. PW-2/3. He stated that their dates of births are wrongly entered in their CNICs by the defendants. He added that he has 13 years of age difference with his elder son namely Muhammad Sajid and his wife has 14 years of difference, which is unnatural. He produced and exhibited his son documents, SSC certificate as Ex. PW-2/4, DMC as Ex. PW-2/4-A, Domicile certificate as Ex. PW-2/5 and HSSC certificate as Ex. PW-2/6. He requested for decree as prayed for. He is cross examined by defendants.

5. PW-3, Gul Islam, brother of the plaintiff No.1. He stated that Plaintiff No.1 is his brother and plaintiff No.2 is his sister-in-law. He further stated that he is elder than both the plaintiffs, but he knows that they have unnatural gape with their elder son. He is cross examined by the defendants through attorney.

6. 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.
7. After conclusion of the evidence arguments pro and contra heard. Case file is gone through.

8. My issues wise findings are as under:

9. **Issue No. 03:**

Plaintiffs have filed the instant suit for declaration in respect of their real dates of birth on the ground of unnatural gape with


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their son. Perusal of record reveals that correct date of birth of the plaintiff No. 1 is **1978** and plaintiff No.2 is **1980**, which is evident from the evidence of the plaintiff. 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.

Moreover, 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 persons 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 present case, the father of plaintiff No. 1 appeared and recorded his statements, wherein he stated that the correct dates of birth of the plaintiffs are 1978 and 1980. He is in such relation with plaintiffs who has personal knowledge regarding the dates of birth of the plaintiffs, which cannot be ignored, hence, wisdom can be taken from the above cited case law, in present circumstances.

Further, the difference between the dates of the birth of the plaintiffs and their elder son are 13 and 14 years, which are unnatural and not acceptable to any prudent mind. If this

unnatural gape is not corrected, it will create problems for the elder son of the plaintiffs in future. During the course of arguments, the learned attorney of the defendants conceded the factum that the unnatural gape is not possible in ordinary circumstances, so, he admitted the fault of NADRA at the bar. Facts admitted need not to be proved. In circumstances, the claim of the plaintiff, as mentioned above, is proved through cogent and reliable evidence. Hence, the issues in hand are decided in affirmative.

Issue No. 02:


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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 plaintiffs have got cause of action and they are entitled to the decree as prayed for.


The issues are decided in positive.

Relief:

Consequently, suit of the plaintiffs succeeds and is hereby decreed as prayed for. Defendants are directed to correct date of birth of the plaintiff No. 1 namely Tajmeen Khan as **1978** and plaintiff No. 2 Khatima Bibi as **1980** forthwith.


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

Announced
29/10/2019


(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).