

(6)

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

Civil Suit No. 148/1 of 2019
Date of Institution: 02/07/2019
Date of Decision: 25/10/2019

Noor Mela Jan w/o Wakeel Khan

Resident of Village Sra khona, PO Kurez, Tehsil lower 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

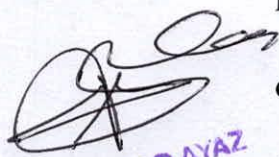
JUDGEMENT:

1. Plaintiff, **Noor Mela Jan**, has brought the instant suit for declaration-cum-permanent injunction against the defendants, referred hereinabove, seeking declaration therein that her correct date of birth is **1960** while it has been wrongly mentioned as **1970** by the defendants, which is unnatural as the difference between the age of the plaintiff and her elder son is **08 years**, which is against the **natural gape**. 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.

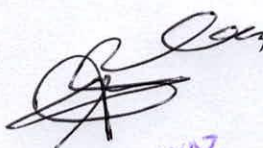
Divergent pleadings of the parties were reduced into the following issues;

Issues:

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



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2. Whether suit of the plaintiff is within time?
 3. Whether the correct date of birth of the plaintiff is 1960, while the date 1970 as mentioned in CNIC of the plaintiff is incorrect.
 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, Rasheed Hassan, who is the relative of the plaintiff. He produced and exhibited copy of his CNIC as Ex. PW-1/1. He stated that the correct date of birth of the plaintiff is **1960** while it has been wrongly mentioned as **1970** by the defendants, which is unnatural as the difference between the age of the plaintiff and her son namely Waseel Khan is 08 years and another son namely Mokil Khan is 11 years, which is against the **natural gape**. He requested for decree as the plaintiff has prayed for. He is cross examined by the attorney of the defendants.
 5. PW-2, Waseel Khan, is son/attorney of the plaintiff, who appeared and recorded his statement. He produced and exhibited copy of his CNIC as Ex. PW-2/1, power of attorney as Ex. PW-2/2, copy of his mother's CNIC as Ex. PW-2/3, copy of his brother namely Mokil Khan's CNIC as Ex. PW-2/4 and copy of another brother namely Laiq Khan's CNIC as Ex. PW-2/5. He


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stated that the real date of birth of the plaintiff is 1960. He is cross examined by the defendants.

6. PW-3, Mokil Khan, is another son of the plaintiff. He stated that his age difference with his mother (plaintiff) is only 11 years which is unnatural. He supported the contention of the plaintiff. He requested for decree. He is cross examined by the defendants.
7. 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.
8. After conclusion of the evidence arguments pro and contra heard. Case file is gone through.


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Grakzal, Hangu

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.

10. **Issue No.03:**

Perusal of record reveals that correct date of birth of the plaintiff is 1960, which is evident from the evidence of the

plaintiff. Further, if we presume 1970 the real date of birth of the plaintiff, then, only 08 years of difference exists between her and her elder son namely Laiq Khan, which is unnatural and not appealable to any prudent mind. Even as per present CNIC of the plaintiff, the age of plaintiff at the time of birth of her first son is 08 years, which is not possible and against the law of nature and society. 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. Nothing is produced in rebuttal by the defendants.


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Senior Civil Judge
Qazal, Hangu.

Interestingly, in present case plaintiff sought increase in her date of birth instead of decrease, so, this factor cannot be ignored while deciding the case. It shows the Bonafide intention of the plaintiff.

If this unnatural gape is not corrected, it will create problems for the plaintiff and her son in future. In circumstances, 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. 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 she is entitled to the decree as prayed for.

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The issues are decided in affirmative.

Relief:

Consequently, suit of the plaintiff succeeds and is hereby decreed as prayed for. Defendants are directed to correct her date of birth as 1960 forthwith.

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

Announced

25/10/2019



(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).