

(23)

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

Civil Suit No. 227/1 of 2019
Date of Institution: 19/12/2019
Date of Decision: 18/02/2020

Jamil Hussain s/o Dabab Khan

Resident of Village Dargai, PO Kurez, Tehsil Lower & 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, **Jamil Hussain s/o Dabab Khan**, 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 **11.01.1998**, correct father's name is **Dabab Khan** and correct mother's name is **Gul Khandan** while it has been wrongly mentioned, date of birth as **01.01.1989** in his CNIC, father's name as **Dabab Ali** and mother's name as **Hamdu Jana** in his CNIC by the defendants, which is incorrect and liable to be corrected. Hence, the present suit.

Defendants were summoned, and 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;

24

Issues:

1. Whether plaintiff has got cause of action.
2. Whether suit of plaintiff is within time.
3. Whether the correct name of the parents of the plaintiff is **Dabab Khan** and **Gul Khandan** while it has been wrongly entered in his CNIC as **Dabab Ali** and **Hamdu Jana** and the correct date of birth of the plaintiff is **11.01.1998** while it has been wrongly entered in her CNIC as **01.01.1989**.
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 two (02) witnesses.
7. PW-1, Jamil Hussain, is plaintiff himself, who recorded his statement. He stated that correct names of his parents are Dabab Khan and Gul Khandana, which are wrongly mentioned in his CNIC as Dabab Ali and Hamdu Jana. Secondly, his correct date of birth is **11.01.1998**, while it has been wrongly mentioned in his CNIC as 01.01.1989 by the defendants. He produced and exhibited the copy of his CNIC as Ex.PW-1/1 and copy of CNIC of his mother as Ex.PW-1/2. He is cross examined by the attorney of the defendants.
8. PW-2, Dabab Khan, is father of the plaintiff. He stated that his correct name is Dabab Khan and his wife name is Gul Khandana. Secondly, the correct date of birth of the plaintiff is 11.01.1998. He exhibited copy of his CNIC as Ex. PW-2/1. He is cross examined by the defendants through attorney.

9. 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 registration form of the plaintiff and exhibited the same as Ex. DW-1/1. He is cross examined by the plaintiff.

10. 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:

11. 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.


[Handwritten signature]
JUDGE
01/11/2018

Issue No.03:

Perusal of record and evidence present on file reveals that the plaintiff claims his correct date of birth as **11.01.1998** on account of unnatural gape with his parents. Now, if we presume the present date of birth of the plaintiff as correct, which is **11.01.1998**, then, the gape with his mother is 13 years and with his father is 09 years respectively, which is not possible. The same is even against the

law of nature. The difference must be more than 18 years, under the normal circumstances. The said difference of ages is unnatural and the same is not appealable to any prudent mind. 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 Qanoon-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. 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. Nothing is produced in rebuttal by the defendants. Secondly, the correct names of the parents of the plaintiff are Dabab Khan and Gul Khandana, and he relied upon the CNICs of his parents, which are exhibited as Ex.PW-1/2 and Ex.PW-2/1 to the extent of his parents' names. 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 evidence is admissible, which is relied upon in present circumstances. Nothing is produced in rebuttal by the defendants. 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. In this regard, reliance is placed on 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.*" The ratio behind the said judgement is to rely upon the statement of such person, who is in such position having personal knowledge regarding the real date of birth of the person.


MUHAMMAD AYYAZ
Senior Civil Judge,
Orakzai at Hang

In present case, the father of the plaintiff is in good position having personal knowledge to tell the correct date of birth and parents names of the plaintiff.

Interestingly, as far as the correct name of the father of the plaintiff is concerned, it is noticed that there is spelling mistake in the present name of the father of the plaintiff. Instead of **Dabab Khan**, defendants have written **Dabab Ali**. The same is clerical mistake, which can be corrected at any stage by the defendants even without intervention of the court.

As far as correction of mother of the plaintiff is concerned, plaintiff claims that his correct mother's name is Mst Gul Khandana while it has been wrongly entered as Hamdu Jana by the defendants. Father of the plaintiff namely Wahab Khan appeared as

a witness who verified that the correct name of his wife and mother of the plaintiff is Gul Khandana. Interestingly, defendants have not cross examined the said witness to the extent of correct name of mother of the plaintiff. Even, no suggestion has been given by the defendants, which is admission on the part of defendants.

Hence, the issue in hand is decided in affirmative.

Issue No.1&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.


The issues are decided in positive.

Relief:

Consequently, suit of the plaintiff succeeds and is hereby decreed as prayed for. Defendants are directed to correct their record and issue CNIC to the plaintiff with correct name of his father as **Dabab Khan**, mother's name as **Gul Khandana** and correct the date of birth as **11.01.1998**. Parties are left to bear their own costs.

File be consigned to the record room after its completion.

Announced
18/02/2020


(Muhammad Ayaz Khan)
Senior Civil Judge,
Orakzai at Baber Mela

29

CERTIFICATE

Certified that this judgment of mine consists **07** (seven) pages, each has been checked, corrected where necessary and signed by me.



(MUHAMMAD AYAZ KHAN)
Senior Civil Judge,
Orakzai (at Baber Mela).