

4

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

Civil Suit No. 87/1 of 2019
Date of Institution: 07/05/2019
Date of Decision: 06/11/2019

Khan Sheera W/O Muhammad Sadiq

Resident of Village Tairi, Orhi Bar Tappa Mir Was Khel PO Ghiljo, Tehsil Upper &
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, **Khan Sheera w/o Muhammad Sadiq**, 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 **01/01/1982** while it has been wrongly mentioned as **01/01/1988** by the defendants, which is unnatural as the difference between the age of the plaintiff and her elder daughter is **11 years**, while with elder son the difference is **13 years**, which is against the **natural gape**. 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.


MUHAMMAD AYAZ
Senior Civil Judge,
Orakzai at Mangu

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 01/01/1982, while the date 01/01/1988 as mentioned in CNIC of the plaintiff is incorrect.
4. Whether the plaintiff is entitled to the decree as prayed for?
5. Relief.


MUHAMMAD AYAZ
Senior Civil Judge,
Qazai at Hangu.


Parties were directed to produce evidence of their own choice, which they did. Plaintiff produced two (02) witnesses.

4. PW-1, Muhammad Sadiq, who is the husband and attorney of the plaintiff. He stated that the correct date of birth of the plaintiff is **01/01/1982** while it has been wrongly mentioned as 01/01/1988 by the defendants, which is unnatural as the difference between the age of her and her elder daughter is 11 **years**, with her elder son, the difference is 13 years, which is against the **natural gape**. He produced and exhibited his power of attorney as Ex.PW-1/1, copy of his CNIC as Ex. PW-1/2, copy of CNIC of the plaintiff as Ex. PW-1/3, copy of school certificate of the son of the plaintiff as Ex. PW-1/4. He

requested for grant of decree as prayed for. He is cross examined by the attorney of the defendants.

5. PW-2, Muhammad Zareen, is relative and witness 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 01/01/1982. He is cross examined by the attorney of the defendants.

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 produced and exhibited form-A as EX. PW-1/2. He is cross examined by the plaintiff.


MUHAMMAD AYAZ
Senior Civil Judge,
Gakzai at Hangu

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:**

Perusal of record reveals that correct date of birth of the plaintiff is 01/01/1982, which is evident from the evidence of the plaintiff. Further, if we presume 1988, the real date of birth of the plaintiff, then, only 11 years of difference exists between the plaintiff and her elder daughter, while with her son, the difference is 13 years, which is against the natural gape and 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 Qanun-e-Shahadat. Even otherwise, the same is 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.

If this unnatural gape is not corrected, it will create problems for the plaintiff and her children 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.


MUHAMMAD AYAZ
Senior Civil Judge,
Orakzai at Hangu

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. 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 01/01/1982 forthwith.

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

Announced

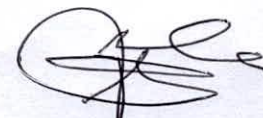
06/11/2019



(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).