

(2)

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

Civil Suit No. 86/1 of 2019
Date of Institution: 06/05/2019
Date of Decision: 18/10/2019

Muhammad Waris s/o Sherzah Khan
Resident of Village Sarka, PO Ghiljo, Upper 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, **Muhammad Waris**, 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 **15/04/1996** while it has been wrongly mentioned as **01/01/1991** by the defendants, which is incorrect and against the facts, so, liable to be corrected. Hence, the instant suit.


MUHAMMAD AYAZ
Senior Civil Judge,
Orakzai at Hangu

Defendants were summoned, who appeared through attorney namely **Habib Ullah Khan** and submitted written statement, which is placed on file.

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

Issues:

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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 **15/04/1996**, while the date 01/01/1991 as mentioned in CNIC of the plaintiff is incorrect.
4. Whether the plaintiff is entitled to the decree as prayed for?
5. Relief.

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

3. PW-1, Feroz Shah, is the Principal of Usama Model School, Garhi Ghulam Shah, Peshawar. He stated that the plaintiff was admitted in his school on 12.02.2002, in Nursery class and at that time, the date of birth of the plaintiff was 15/04/1996, which is evident from the registration register. He produced the original registration register and exhibited the copy of same as Ex. PW-1/1. He is cross examined by the attorney of the defendants.

4. PW-2, Muhammad Waris, is the plaintiff himself, who appeared and recorded his statement. He stated that his real date of birth is **15/04/1996** and exhibited copy of his CNIC as Ex.PW-2/1, copy of SSC certificate as Ex.PW-2/2 and copy of DMC as Ex.PW-


MUHAMMAD AYAZ
Senior Civil Judge,
Tribunal at Hangu

2/3. He requested for grant of decree as prayed for. He was cross examined by the defendants.

5. PW-3, Misri Khan, is the cousin of the plaintiff. He produced and exhibited copy of his CNIC as Ex. PW-3/1. He stated that the correct date of birth of the plaintiff is **15.04.1996**. He supported the claim of the plaintiff. He was cross examined by 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 is cross examined by the plaintiff.

MUHAMMAD AYAZ
Senior Civil Judge,
Chakzai at Mangu

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 and evidence present on file reveals that correct date of birth of the plaintiff is **15/04/1996**, which is evident from the school SSC certificate, exhibited as Ex. PW-2/2. It is settled law that whenever there is clash between the CNIC and the SSC certificate, in respect of date of birth, the SSC certificate shall prevail. In present case, as per Ex. PW-2/2, the correct date of the birth of the plaintiff is **15/04/1996**.

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. Even otherwise, the same is 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.

For above, it can be safely presumed that the correct date of the birth of the plaintiff is 15/04/1996 while it has been wrongly entered by the defendants in their record as 01/01/1991.


MUHAMMAD AYAZ
Senior Civil Judge,
Orakzai at Hangu

Hence, the issue in hand is decided in affirmative.

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. 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 he is entitled to the decree as prayed for.

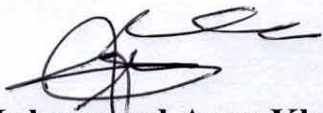
These issues are decided in affirmative.

Relief:

Consequently, suit of the plaintiff succeeds and is hereby decreed as prayed for. Defendants are directed to correct his date of birth as **15/04/1996** forthwith.

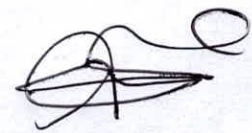
10. Parties are left to bear their own costs.
11. File be consigned to the record room after its completion.

Announced
18/10/2019


(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).