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

Civil Suit No. 174/1 of 2019
Date of Institution: 12/09/2019
Date of Decision: 09/11/2019

Abu Bakar Saddiq s/o Akbar Ghani

Resident of Village Teray, PO Ghiljo, Tehsil 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:

1. Plaintiff, **Abu Bakar Saddiq s/o Akbar Ghani**, 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 **01/01/1997** while it has been wrongly mentioned as **01/01/1992** by the defendants, which is unnatural as the difference between the age of the plaintiff and his father is **13 years** and with his mother is **12 years**, which is against the **natural gape**. Hence, the instant suit.


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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?

2. Whether suit of the plaintiff is within time?
 3. Whether the correct date of birth of the plaintiff is **01/01/1997**, while the date 01/01/1992 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 two (02) witnesses.
4. PW-1, Abu Bakar Saddiq, is the plaintiff himself. He stated that his correct date of birth is **01/01/1997** while it has been wrongly mentioned as **01/01/1992** by the defendants, which is unnatural as the difference between the age of him and his father is 13 years and with mother is 12 years. He further stated that his date of birth in his school certificate is **01/01/1997**, which is correct. He produced and exhibited the copy of his CNIC as Ex. PW-1/1, copy of his school certificate as Ex. PW-1/2, copy of his father CNIC as Ex. PW-1/3 and copy of his mother CNIC as Ex. PW-1/4. He requested for decree as prayed for. He is cross examined by the attorney of the defendants.
5. PW-2, Akbar Ghani, is the father of the plaintiff, who appeared and recorded his statement. He clarified that his date of birth is 17/06/1979, while his son (plaintiff) date of birth according to his CNIC is 01/01/1992, which becomes only 13 years of unnatural difference. Wherein he supported the contention of the plaintiff and stated that the real date of birth of the plaintiff is


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01/01/1997. 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 of the plaintiff as EX. DW-1/1, family tree as Ex. DW-1/2, passport of the plaintiff as Ex. DW-1/3. 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:**


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Perusal of record reveals that correct date of birth of the plaintiff is 01/01/1997, which is evident from the evidence of the plaintiff. Further, plaintiff produced his school certificate as evidence. Beside this, if we presume 01/01/1992, the real date of birth of the plaintiff, then, only 12 years of difference exists between him and his father, and 13 years of difference with his mother, which is unnatural 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. In circumstances, the evidence of the father of the plaintiff is the best available evidence to tell the real date of birth of the plaintiff. 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, hence, the said document is admissible in evidence, which is relied upon in present circumstances. Nothing is produced in rebuttal by the defendants.


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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 person 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.”*

In present case, the father of the plaintiff has recorded his statement and mentioned the correct date of birth of the plaintiff as **01/01/1997**. As per the said judgement, father of the plaintiff is in a good position having personal knowledge to tell the real date of birth of the plaintiff. Hence, reliance is placed on the judgement, referred hereinabove.

Even otherwise, the same is not rebutted by any documents by the defendants, hence, the said facts are admissible as evidence, 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 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. 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. 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 **01/01/1997** forthwith.


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

Announced
09/11/2019


(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).