

*In the name of almighty Allah who has unlimited jurisdiction over and beyond the universe.*

BEFORE THE COURT OF  
ADDITIONAL DISTRICT JUDGE, ORAKZAI

**Civil Appeal No. CA-10/13 of 2023**

**Date of institution: 11.03.2023**

**Date of decision: 27.04.2023**

- 1. Chairman NADRA, Islamabad
- 2. DG NADRA, Islamabad
- 3. Director NADRA, District Orakzai

..... (Appellants)

...Versus...

- 1. Nizam ur Rehman son of Haji Noor Rehman
- 2. Shafiq ur Rehman son of Nizam ur Rehman both residents of Mamozai, Tappa Adoo Khel, Barkhan Nawasi Tehsil Upper, District Orakzai.

..... (Respondents)

**Appeal against Judgement, Decree and Order dated 15.02.2023 in Civil Suit No. 17/1 of 2023.**

**JUDGMENT**

Instant Civil Appeal has been preferred by the appellants against the Judgment/Decree & Order dated 15.02.2023, passed by learned Senior Civil Judge, Orakzai in Civil Suit bearing No.17/1 of 2023; whereby, the suit of plaintiff (respondents herein) with the title of "Nizam ur Rehman Vs NADRA" was decreed.

2. The brief facts of the case are such that plaintiffs have brought suit for declaration and mandatory injunction against the defendants to the effect that correct date of birth of Plaintiff No.1 is 01.01.1984 and correct date of birth of the plaintiff No. 2 is 01-01-2001; whereas, defendants (Appellants herein) have wrongly entered the same as 1964 and 1988 respectively in the Computerized National Identity Card of the plaintiffs. The suit was decreed

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District & Sessions Judge  
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by the learned Trial Judge vide Judgement and Decree dated 15.02.2023. Feeling aggrieved, the appellants/defendants have presented instant civil appeal, which is under consideration.

3. Mr. Nizam ur Rehman (plaintiff No.1) being father of the plaintiff No.2 as special attorney accompanied by Mr. Sana Ullah Khan Advocate appeared as respondent in instant appeal. They presented application for withdrawal of the suit with permission to file fresh suit on the score of formal defect.

4. Mr. Irfan being representative of NADRA (appellants) is before the Court conceded the issue of formal defect in the suit and stated that he has got no objection on withdrawal of the suit with permission to file fresh one. He has pen it downed on margin of such application as well.

5. Perusal of case file reflects that it is the main contention of the appellants/defendants that if the correct date of birth of the plaintiff No.1 is considered as 01-01-1984 and that of plaintiff No. 2 is 01-07-2001; the dates that have been decreed, the gap between of the real son and mother would be unnatural. The attorney for plaintiff along with Mr. Sana Ullah Khan Advocate by sensing the ground sufficient for failure on score of formal defect presented application for grant of permission to file fresh one. This application was wholeheartedly conceded by the appellants giving no objection in writing on such application.

6. Appellate Court as a general rule and ordinarily, has the same powers to exercise and function to perform which are open to the original Court from whose decision, appeal is being brought before it. It has been settled in a case reported as PLD 1965 Supreme Court Page-634 that appellate Court has power to allow withdrawal of appeal and the suit as well with the permission to file fresh one. On this given criteria, the reason mentioned in the petition

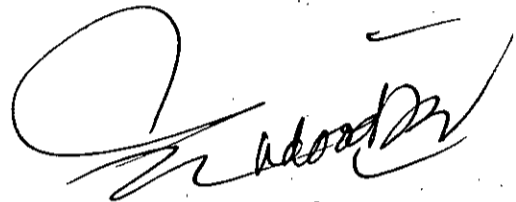
  
MAYED FAZAL  
District & Sessions Judge  
Orakzai at Hattisu

is assessed which falls within the ambit of formal defect as such, sufficient ground is available to allow application under adjudication.

7. For what has been discussed above, the appeal in hand is disposed of accordingly; the impugned Judgment, Order and Decree dated 15-02-2023 is set aside; consequently, plaintiff is allowed withdrawal of the suit with permission to file fresh one. Cost shall follow the events.

8. Requisitioned record be returned back with the copy of this Judgement; whereas, File of this Court be consigned to District Record Room, Orakzai after completion and compilation within the span allowed for.

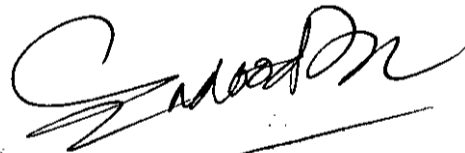
Announced in the open Court  
27.04.2023



**Sayed Fazal Wadood,**  
ADJ, Orakzai at Baber Mela

**CERTIFICATE.**

Certified that this Judgment consists of three (03) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.



**Sayed Fazal Wadood,**  
ADJ, Orakzai at Baber Mela