

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


2

Order
11/12/2019

Plaintiff present. Attorney of the defendant present. Vide my detailed separate judgement of today, consists of 06 (six) pages, suit of the plaintiff is hereby decreed as prayed for. No order as to cost.

Case file be consigned to record room.

Announced
11/12/2019


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

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

Civil Suit No. 194/1 of 2019
Date of Institution: 17/10/2019
Date of Decision: 11/12/2019

④

Iqbal Hussain s/o Noor Mohsin

Resident of Village Sar Mila, PO Samana, Tehsil Ismail Zai 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, **Iqbal Hussain s/o Noor Mohsin**, 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 **02.05.1994** while it has been wrongly mentioned as **01/01/1989** by the defendants, which is unnatural as the difference between the age of the plaintiff and his mother is only **14 years**, which is against the **natural gape**. Hence, the instant suit.


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Orakzai at Hangu

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?

- (5)
2. Whether suit of the plaintiff is within time?
 3. Whether the correct date of birth of the plaintiff is **02.05.1994**, while the date 01/01/1989 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 three (03) witnesses.

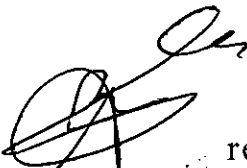
4. PW-1, Iqbal Hussain, is the plaintiff himself. He stated that his correct date of birth is **02.05.1994** while it has been wrongly mentioned as **01/01/1989** by the defendants, which is unnatural as the difference between the age of him and his mother is 14 years. He produced and exhibited the copy of his CNIC as Ex. PW-1/1, copy of his school certificate as Ex. PW-1/2 and copy of the CNIC of his mother as Ex. PW-1/3. He requested for decree as prayed for. He is cross examined by the attorney of the defendants.

5. PW-2, Muhammad Ullah, is the maternal uncle 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 **02.05.1994**. He produced and exhibited copy of his CNIC as Ex. PW-2/1 He is cross examined by the attorney of the defendants.

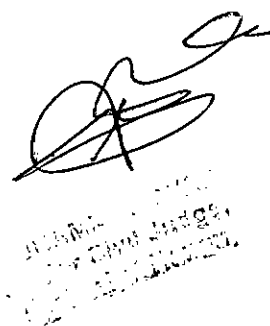

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6. In rebuttal defendants produced an examined sole witness namely Syed Farhat Abbas, representative, as DW-1 and recorded his statement as DW-1. He produced and exhibited record form of the plaintiff as EX. DW-1/1, birth family tree as Ex. DW-1/2 and marriage family tree 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:**

As per the available record and evidence, present on file, reveals that if we presume the present date of birth of the plaintiff as correct, which is **02.05.1994**, then, only 14 years of gape exists with his mother, which is not possible. The same is even against the natural difference between mother and son. The difference must be more than 19 years, under the normal circumstances. The said difference of age is unnatural and the same is not appealable to any prudent mind. Furthermore, the same is even evident from the school certificate of the plaintiff, which is exhibited as Ex.PW-1/2. It is settled law that whenever there is clash between the CNIC and school certificates, in respect of date of birth, the school certificate shall prevail. Even, the factums are 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, it is the


M.A. Javed
Senior Civil Judge,
District Court, Hyderabad

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 factum is admissible in evidence, which is relied upon in present circumstances. Nothing is produced in rebuttal by the defendants.



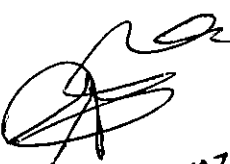
Taking wisdom from the case law reported in PLD 2003 Supreme Court page 849, *“wherein it has been mentioned by the honorable Supreme Court of Pakistan that the best evidence to prove this fact (age or date of birth) was of those persons who would have an ordinary course of life having personal knowledge. Statement of mother is at high pedestal as compared to other as she has given birth to him.”*

In present case, the real maternal uncle of the plaintiff has recorded his statement and mentioned the correct date of birth of the plaintiff as **02.05.1994**. As per the said judgement, real uncle 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.

If this unnatural gape is not corrected, it will create problems not only for the plaintiff but also for his mother in future. In circumstances, it is held that the correct date of birth is **02.05.1994**. Hence, the claim of the plaintiff, as mentioned above, is proved through cogent and reliable evidence. 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.


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Orakzai at Hangu

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.

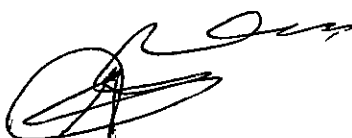
Relief:

Consequently, suit of the plaintiff succeeds and is hereby decreed as prayed for. Defendants are directed to correct his date of birth as **02.05.1994** forthwith.

10. Parties are left to bear their own costs.

11. File be consigned to the record room after its completion.

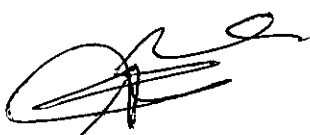
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(Muhammad Ayaz Khan)
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Orakzai at Baber Mela

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).