

**IN THE COURT OF FARMAN ULLAH,**  
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

(29)

Civil Suit No. 274/1 of 2020  
Date of Institution: 25/02/2020  
Date of Decision: 26/11/2020

**Abdul Wali Khan s/o Mir Ghamay**

Section Shekhan, Sub Section Samo Zai, PO Ghiljo, Tehsil lower & District Orakzai.....  
(Plaintiff)

VERSUS

1. **Chairman, NADRA, Islamabad.**
2. **Director, General NADRA Hayatabad KP.**
3. **Assistant Director, Registration NADRA District Orakzai.**

(Defendants)

**SUIT FOR DECLARATION, PERMANENT & MANDATORY INJUNCTION**

**JUDGEMENT:**

26.11.2020

Brief facts of case in hand are that the plaintiff, **Abdul Wali Khan s/o Mir Ghamay**, has brought the instant suit for declaration, permanent and mandatory injunction against the defendants, referred hereinabove, seeking declaration, therein, that his correct date of birth is **1976** while defendants have wrongly mentioned the same in their record as **1970**, which is incorrect and liable to be corrected. Hence, the present suit.

Defendants were summoned, who appeared through attorney namely Syed Farhat Abbas and submitted written statement, wherein, they contested the suit of plaintiff on various grounds.

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

**Abdul Wali Khan vs NADRA**

FARMANULLAH  
Senior Civil Judge  
Orakzai at Baber Mela

26.11.2020

Issues:

1. Whether plaintiff has got cause of action?
2. Whether suit of the plaintiff is within time?
3. Whether plaintiff is estopped to file instant suit?
4. Whether the correct date of birth of the plaintiff is "1976" while defendants have wrongly mentioned the same as 1970 in their record?
5. Whether plaintiff is entitled to the decree as prayed for?
6. Relief.

7. Parties were provided opportunity to produce evidence in support of their respective contention, which they did. Plaintiff produced his witnesses as PW-1 to PW-2.

8. In rebuttal defendants produced their sole witness namely Syed Farhat Abbas, representative, as DW-1. He produced the record form of plaintiff and exhibited the same as Ex. DW-1/1 and Ex. DW-1/2.

9. After conclusion of the evidence arguments pro and contra heard. Case file is gone through.

10. My issues wise findings are as under:

Issue No. 03 & 04:

Both the issues are interlinked and interconnected, hence, to avoid repetition of facts both the issues are taken together for discussion. Plaintiff contended in his plaint that his correct date of birth is 1976, but inadvertently his date of birth is erroneously recorded as 1970, hence, the record is liable to be corrected.

On other hand, defendants denied the contention of plaintiff and also raised the objection in the preliminary objections of written statement that plaintiff is estopped to file instant suit.

Plaintiff in support of his contention appeared as PW-1 and repeated the contents of plaint in his examination in chief. During cross examination admitted that manual ID card was also issued to him however, he does not remember his date of birth recorded in his manual card. PW-2 is the record keeper of District Police Orakzai who produced the appointment order, service book and medical certificate of plaintiff as Ex.PW-2/1, Ex.PW-2/2 and Ex.PW-1/2 respectively.

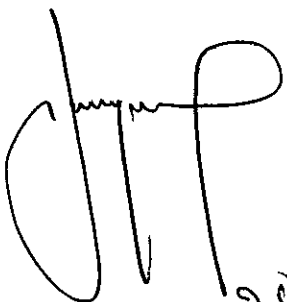
On other hand, representative of NADRA appeared as DW-1, who stated in his examination in chief that CNIC for the first time was issued to the plaintiff in year, 2002. He produced the CNIC processing form of the plaintiff as Ex. DW-1/1 while record of manual ID card of plaintiff as Ex. DW-1/2 and family tree of plaintiff by marriage as Ex. DW-1/3.

From the analysis of available record, it is evident that plaintiff applied for issuance of Manual ID card in year, 1990 and ID card was issued to him. Record of Manual ID card of plaintiff Ex. DW-1/2 reveals that his date of birth has been mentioned as 1970. Similarly, Ex. DW-1/1 also shows that CNIC for the first time was issued to the plaintiff on 18-10-

*[Handwritten signature]*  
26.11.2020  
[Stamp]

32

2002 and thereafter he renewed his CNIC in year 2010. Ex. DW-1/1 also depicts that date of birth of plaintiff has been mentioned as 1970. Though, in service record of plaintiff Ex.PW-1/2 and Ex.PW-2/2 his date of birth has been mentioned as 1976 yet, such entry of date of birth of plaintiff in his service record has been recorded on the basis of medical certificate Ex.PW-1/2. The perusal of which clearly manifests that no medical test of plaintiff for determination of age was conducted rather such recording of date of birth in medical certificate is based on the oral assertion of plaintiff and his physical appearance. Being such a position the medical certificate Ex.PW-1/2 is of no worth to be rely as a confidence inspiring evidence. No other document is available on file which could show that date of birth of plaintiff in his service was recorded on the basis of any document. Rather the record suggest that plaintiff concealed his date of birth as recorded in his ID card and even did not provide his ID card to the department concerned at the time of his appointment. So, the service record of plaintiff can not be considered as an authentic piece of evidence. Plaintiff also failed to produce any oral evidence to prove that his correct date of birth is 1976. On other hand, the documentary evidence produced by the DW-1 as Ex. DW-1/1 and Ex.DW-1/2 shows that date of birth of plaintiff as 1970 in his manual card issued in year 1990 and such information



26.11.2020  
**FARMANULLAH**  
Senior Civil Judge  
Orizal of P-ber 13/14

regarding the date of plaintiff were provided by plaintiff himself. Similarly, later on plaintiff applied for the issuance of CNIC in year, 2002 and 2010 and accordingly CNICs were issued to him, wherein, his date of birth was also recorded as 1970. As manual ID card and CNIC were issued to the plaintiff on the basis of his own information, hence, under principle of estoppel plaintiff is also precluded to challenge the same due to his own conduct.

Hence, issue No.3 is decided in positive while issue No.4 in negative.

**Issue No. 02:**

From the perusal of Ex. DW-1/1 and Ex. DW-1/2 it is evident that manual ID card was issued to the plaintiff in the year 1990 while CNIC for the first time in 2002 and for second time in the year 2010, wherein, his date of birth was recorded as 1970. So, the cause of action for the first time accrued to the plaintiff in year 1990 when manual ID card was issued to the plaintiff, while plaintiff has challenged such a date of birth through instant suit in year 2020. Period provided for declaratory suit under article 120 Limitation Act 1908, is 06 years, hence, suit of plaintiff is not within time rather badly time barred. So, the issue is decided in negative.

**Issue No.01 & 05:**

*Handwritten signature*  
26.11.2020  
FARMANULLAH  
Senior Civil Judge  
District of Bahawalpur

34

For what has been held in issue No. 2,3 and 4 this court is of the opinion that plaintiff has got neither cause of action nor he is entitled to the decree as prayed for.

Thus, both the issues are decided in negative.

**Relief:**

As sequel to above discussion, it is held that plaintiff has failed to prove his stance through cogent and confidence inspiring evidence. Similarly, plaintiff is precluded to file instant suit under principle of estoppel and suit of plaintiff is also time barred. Hence, suit is dismissed. No order as to cost.


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

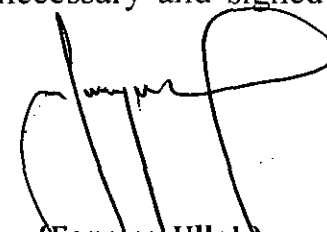
**Announced**

26/11/2020

**CERTIFICATE**

Certified that this judgment of mine consists of 06 (six) pages, each page has been checked, corrected where necessary and signed by me.

  
(Farman Ullah)  
Senior Civil Judge,  
Orakzai (at Baber Mela).  
Senior Civil Judge  
Orakzai (at Baber Mela)

  
(Farman Ullah)  
Senior Civil Judge,  
Orakzai (at Baber Mela).

FARMANULLAH  
Senior Civil Judge  
Orakzai (at Baber Mela)