

IN THE COURT OF REHMAT ULLAH WAZIR,
CIVIL JUDGE-I ORAKZAI AT BABER MELA

Civil Suit No. 37/1 of 2019
 Date of Institution: 19/03/2019
 Date of Decision: 16/01/2020

**Muhammad Hayat S/O Ahmad Jan, Caste Shikhan, Tehsil Central,
 District Orakzai.** (Plaintiff)

VERSUS

1. **Controller Examination, BISE Kohat.**
2. **NADRA, District Orakzai.**
3. **Head Master Govt: High School Bazid Khel, Orakzai.**
4. **Principal Govt: Degree College, Jalaka Mela, Orakzai.**
5. **Controller Examination, AIOU, Islamabad.**
 Through Assistant Director NADRA, Orakzai..... (Defendants)

**SUIT FOR DECLARATION -CUM- PERPETUAL AND
 MANDATORY INJUNCTION**

JUDGEMENT:

1. Plaintiff Muhammad Hayat has brought the instant suit for declaration-cum-permanent injunction against defendants, seeking therein that correct date of birth of the plaintiff is **15-09-1996**, as per his primary school record whereas, defendants have wrongly entered the same as **15-09-1990** in his CNIC and other Academic documents instead of **15-09-1996**, which is wrong, ineffective upon the rights of the plaintiff and liable to correction. That the defendants were asked time and again for correction of date of birth of the plaintiff but they refused to do so, hence, the present suit;
2. Defendants were summoned, in whom the defendant No. 2 appeared before the court through its representative and contested the suit by filing their written statement, wherein various legal and factual objections were raised while the rest of

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 Orakzai at (Baber Mela)

the defendants failed to appear before the court, hence, placed and proceeded ex-parte.

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

Issues:

1. Whether the plaintiff has got any cause of action?
2. Whether the plaintiff is estopped to sue?
3. Whether suit of the plaintiff within time?
4. Whether the correct date of birth of the plaintiff is **15-09-1996** as per his Primary School Record while the same has been wrongly entered in his CNIC, Secondary School Certificates and Higher Secondary School Certificates as **15-09-1990**?
5. Whether the plaintiff is entitled to the decree as prayed for?
6. Relief?

Parties were given ample opportunity to produce evidence which they did accordingly.

Issue wise findings of this court are as under: -

Issue No. 02:

The contesting defendant in its written statement raised the objection that the plaintiff is estopped to sue but later on failed to prove the same, hence, the issue is decided in negative.

Issue No. 03:

The contesting defendant in its written statement raised their objection that suit of the plaintiff is time barred but I am the opinion that as per Article 120 of the Limitation Act, 1908

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Orakzai at (Babar Mela)

there is a period of 06 years for the institution of such like suits but the aforesaid Limitation Act, 1908 is extended to the erstwhile FATA on **31/05/2018** through the 25th constitutional amendment and the same has become operational from the aforesaid date while the instant suit has been filed on **19-03-2019**. Thus, the same is well within time. The issue is decided in positive.

Issue No. 04:

The plaintiff alleged in his plaint that his correct date of birth is **15-09-1996**, as per his primary school record whereas, defendants have wrongly entered the same as **15-09-1990** instead of **15-09-1996**, which is wrong, ineffective upon the rights of the plaintiff and is liable to correction. That the defendants were asked time and again for correction of date of birth of the plaintiff but they refused to do so, hence the present suit;

The plaintiff produced witnesses in whom the plaintiff himself appeared as PW-1, who narrated the same story as in his plaint. He has been cross examined but nothing solid has been extracted out of him during cross examination. Further Mr. Sabeel Khan, the cousin of the plaintiff appeared as PW-2, who also supported the stance of the plaintiff by deposing the same facts as in the plaint. He has cross examined but he has not been contradicted during cross examination. Further, Mr. Tariq Khan, another cousin of the plaintiff appeared as PW-3, who also supported the stance of the plaintiff by the narrating the same facts as in the plaint. During cross examination no contradiction is extracted out of him. Further, Mst: Shehnaz Begum, Theology Teacher,

Retired Magistrate
Civil Judge (M.A.)
Orakzai (Sabeel Mala)

GGPS Nakka Mela, appeared as PW-4, who produced the Enrolment Register of the plaintiff, which is Ex. PW-4/1 and stated that according to this, the correct date of birth of the plaintiff is **15-09-1996**. She has been cross examined but nothing contradictory has been extracted out of her during cross examination.

In order to counter the claim of the plaintiff, the contesting defendant produced only one witness as Mr. Syed Farhat Abbas, the representative of the defendant No. 2 appeared as DW-1, who produced the Processing Form, Secondary School Certificate, Form A, Form B and Family Tree of the plaintiff which are Ex. DW-1/1 to DW-1/5 respectively. And that according to these documents, the date of birth of the plaintiff is **15-09-1990**. But admitted in his cross examination that it is correct that the plaintiff has not provided his primary school certificate to NADRA.

Arguments heard and record perused.

After hearing of arguments and perusal of record I am of the opinion that the stance of the plaintiff is supported by his primary school record which is Ex. PW-4/1, which is earlier in time and presumed to be more authentic than the documents in the possession of the defendants. Thus, in the light of the aforesaid findings, the issue is decided in positive.

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Reliance on PW-4/1
is not correct as
it is not a primary
school certificate.

Issue No. 01 &05:

Both these issues are interlinked, hence, taken together for discussion. As sequel to my findings on issue No. 4, the plaintiff has got a cause of action and therefore entitled to the decree as prayed for. Both these issues are decided in positive.

RELIEF:

As sequel to my above issue wise findings, the suit of the plaintiff is hereby decreed as prayed for with no order as to costs.

File be consigned to the Record Room after its completion and compilation.

Announced
16-01-2020

M Rehmat Ullah Wazir
Civil Judge/JM-I
Orakzai at (Babar Mela)
(Rehmat Ullah Wazir)
Civil Judge-I,
Orakzai at Baber Mela.

CERTIFICATE

Certified that this judgment of mine consists of 05 pages, each has been checked, corrected where necessary and signed by me.

M Rehmat Ullah Wazir
Civil Judge/JM-I
Orakzai at (Babar Mela)
(Rehmat Ullah Wazir)
Civil Judge-I,
Orakzai at Baber Mela.