

IN THE COURT OF MUHADMMAD IMTIAZ
CIVIL JUDGE-II ORAKZAI

Suit No..... 71/1 of 2019
Date of Institution..... 26/09/2019
Date of Decision..... 29/01/2020

1. Khan Khela D/O Surat Shah, R/O: Sec. Ali Kheil, Sub-Sec. Emal Kheil, Tehsil Upper; District Orakzai.
..... (Plaintiff)

V E R S U S

2. Chairman Nadra, Islamabad
3. Director General Nadra Hayat abad Peshawar, KPK
4. Assistant Director General Nadra District Orakzai at Hangu
.....(Defendants)

SUIT FOR DECLARATION, PERPETUAL AND MANDATORY INJUNCTION

Mr. Abid Ali Advocate for the Plaintiff
Defendants through representative MR. Farhat Abbas

JUDGMENT

1. Brief facts of the case are that Plaintiff filed suit for Declaration along with Perpetual and Mandatory Injunction to effect that Plaintiff correct Date of birth is 05/04/1995 while in the defendant's record (CNIC No. 14101-5666503-8) her Date of birth is recorded as 12/03/2000 which is wrong, clerical mistake and liable to be corrected.

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2. Defendant were summoned through the Process of the Court upon which they appeared, through representative Mr. Farhat Abbas filed Written Statement and denied the claim of the plaintiff and objected the same on so many legal and factual grounds.

3. Pleadings of the parties were reduced to the following issues.

ISSUES:

(1) *Whether the plaintiff has got the cause of action? OPP*

(2) *Whether suit of the plaintiff is bad in its present form?*

OPD

(3) *Whether correct date of birth of plaintiff is 05-04-1995 whereas defendants have wrongly recorded the same in their record as 12-03-2000? OPP*

(4) *Whether the plaintiff is entitled to the decree as prayed for? OPP*

Relief

4. Parties were provided with an opportunity to produce their respective evidence who accordingly produced them as follows:

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PW- NAME	DOCUMENTS PRODUCED	EXHIBIT
<p><u>PW-01</u></p> <p>Bakhtawar Shah brother of plaintiff and as attorney for the plaintiff</p>	<p>a. Copy of his CNIC, b. Copy of CNIC of his sister Khan Khela (Plaintiff), c. Copy of Death Certificate of his Mother d. Copy of Death Certificate of his Father e. Copy of his father MNIC f. Copy of his father MNIC g. Original power of attorney in his favour by plaintiff</p>	<p>a. Ex.PW 01/01, b. Ex.PW 01/02, c. Ex.PW 01/03 and d. Ex.PW 01/04 e. Ex.PW 01/05 f. Ex.PW 01/06 g. Ex.PW 01/07</p>
<p><u>PW-02</u></p> <p>Safeer Badshah brother of plaintiff</p>		

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Then after Plaintiff closed his evidence. On the other hand, Defendants produced the following evidence.

DW- NAME	DOCUMENTS PRODUCED	EXHIBIT
<p><u>DW-01</u></p> <p>Representative of the defendants Mr. Farhat Abbas</p>	<p>a. CNIC Processing form of the Plaintiff b. Plaintiff's family tree by birth</p>	<p>a. EX. DW 1/1 b. EX.DW-1/2</p>

Evidence of the Defendant then closed

5. With the valuable assistance of learned counsel for the parties, I have gone through the record. My issue wise findings are as under: -

Issue No. 02:- *Whether suit of the plaintiff is bad in its present form? OPP*

6. Perusing the case file and going through the evidence recorded by the parties' defendants fail to point out any defect or illegality in the form of the suit.

7. Hence above issued is decided in "Negative"

Issue No.03:- *Whether correct date of birth of plaintiff is 05-04-1995 whereas defendants have wrongly recorded the same in their record as 12-03-2000? OPP*

8. Onus to prove this issue is upon the plaintiff. Perusal of case file reveals that this is the main contention of the plaintiff.

9. From perusal of Plaintiff and Ex.DW1/2 it is admitted fact that Plaintiff and PW-01 are the siblings. Their Father Name is صورت شاه while their mother name is بی بی زریه. PW-01 also submitted original special power of

attorney in his favour on behalf of the plaintiff. Through the said special power of attorney plaintiff authorized her brother namely Bakhtawar Shah to submit written statement and documentary or oral evidence to the court.

10. PW-01 produced the death certificates of their parents as Ex.PW1/4 and Ex.PW1/5 respectively duly signed, verified and counter signed by then Competent authorities. The same has NOT been contested/objected by the representative of Defendants. Meaning thereby that he impliedly admitted them as true.

11. Admittedly father of the Plaintiff had passed away on 02-03-1995 and mother on 17-05-1999. This fact is also nowhere controverted by the Defendants that Plaintiff's mother married again after the demise of their father namely Surat Shah.

12. Taking into consideration of the dates on which parents of the Plaintiffs passed away, it becomes clear that it is very much Un-Natural that somebody born after the 04 long years of his/her father demise. It does not appeal to the prudent mind and against the laws of nature.

13. Documentary and oral evidence produce by the Plaintiff supports Plaintiff's stance. Plaintiff succeeded to

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prove her case through reliable, cogent evidence and up to satisfaction of this court.

14. For what has discussed above this issue is decided in “Affirmative”

Issue No.01:- *Whether plaintiff has got the cause of action? OPP*

Issue No.04:- *Whether the plaintiff is entitled to the decree as prayed for? OPP*

15. Both issues are inter-related, will be decided together. On the basis of discussion, while deciding issue No.03, Plaintiff has **GOT** cause of action. Plaintiff is **Entitled** to the decree as prayed for.

16. Hence both issued are decided in “Affirmative”.

Relief

17. As plaintiff proved her case through cogent and reliable evidence the same is hereby Decreed to effect that Plaintiff’s correct Date of Birth is 05-04-1995 while in the defendant’s record (CNIC No. 14101-5666503-8) her Date of birth is recorded as 12/03/2000 which is wrong, clerical mistake and liable to be corrected.

18. Defendants are hereby directed to make the changes/correction accordingly in their Documents/Record concerned as per their prescribed procedure by law.

19. Parties are left to bear their own cost. Case file be consigned to record room after necessary completion and compilation.

ANNOUNCED:
29/01/2020

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CERTIFICATE

Certified that this judgment consists of seven (07) pages and each page is read over, checked and corrected wherever necessary.

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