

(27) (27)

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

Civil Suit No. 366/1 of 2020
Date of Institution: 05/12/2020
Date of Decision: 30/01/2021

Syed Ikhtiar Syed s/o Malak Syed Yaqeen Hussain
Caste Kalaya Saidan, Tappa Saidan Kalaya, Tehsil lower Orakzai & District
Orakzai..... (Plaintiff)

VERSUS

1. **Assistant Director NADRA, District Orakzai.**

(Defendants)

SUIT FOR DECLARATION

SUMMARY JUDGEMENT:

30.01.2021

1. Brief facts of the case in hand are that plaintiff filed instant suit by seeking declaration to the effect that his correct date of birth is 01.01.2002 which has correctly been recorded in his Matric certificate and birth certificate but defendants have erroneously recorded his date of birth as 01.03.1998 in his CNIC. Hence, liable to be corrected. That defendants were repeatedly asked to correct the date of birth of plaintiff in his CNIC but they refused. Hence, the instant suit.
2. Defendants were summoned, who appeared through attorney namely **Syed Farhat Abbas**, and submitted their written statement, wherein, they objected the suit of plaintiff on various grounds.
3. During Discovery management and scheduling conference within the meaning of order IX-A of CPC, it was revealed that the matter involve in the instant case is very petty in nature, which can be decided through summary judgement as per

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relevant record and to this effect notice was given to the parties that why not case in hand be decided on the basis of available record without recording pro and contra evidence, as the primary aim and objective of Amended Management Rules in CPC is, "to enable the court to-

- a. Deal with the cases justly and fairly;
- b. Encourage parties to alternate dispute resolution procedure if it considers appropriate;
- c. Save expense and time both of courts and litigants; and
- d. Enforce compliance with provisions of this Code."

Learned counsel for plaintiff and representative for defendants heard and record gone through.

4. From the perusal of documents produced by the defendant it is evident that initially date of birth of plaintiff was mentioned in his Form-B as 01.02.2000 but the father of plaintiff challenged the same before the court of learned Additional District Magistrate (FCR) by contending that the correct date of birth of plaintiff is 01.03.1998. The learned Additional District Magistrate (FCR) vide order dated: 24.11.2016 accepted the request of plaintiff and decreed the suit of plaintiff and directed the NADRA to correct the date of birth of plaintiff as 01.03.1998 instead of 01.02.2000. Pursuant to which CNIC was issued to the plaintiff on 16.01.2017 by recording his date of birth as 01.03.1998. But through instant suit plaintiff has challenged the same date of birth which was recorded in pursuant to decree passed by the Learned APA under FCR. So,

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the available record clearly depicts that matter in controversy between the parties regarding the age of plaintiff has already been decided by the competent court of jurisdiction under FCR and the same issue cannot be re-opened as it is past and closed transaction. In other words, plaintiff is precluded under S-11 of CPC read with Article 264 of the constitution of Islamic Republic of Pakistan, 1973 and Section-6 of General Clause Act to reopen the matter in controversy already decided by competent court of jurisdiction.

Moreover, record reflects that date of birth of plaintiff was recorded as 01.03.1998 on the request of the plaintiff. Hence, plaintiff is also precluded under Principle of estoppel to challenge the same date of birth.

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Furthermore, plaintiff through instant suit is claiming that his correct date of birth is 01.02.2002 but the family tree of plaintiff produced by the defendants shows the date of birth of brother of the plaintiff namely Syed Shah Hussain as 05.04.2002, hence, if the date of birth of the plaintiff is changed to 01.02.2002, then age difference between the plaintiff and his brother would be 2 months and 4 days, which is unnatural and such fact alone negates the contention of plaintiff regarding his date of birth as 01.02.2002. Though, date of birth of plaintiff recorded in his Matric DMC and provisional certificate is 01.02.2002 but the same cannot be presumed as correct for the reason mentioned above.

- 5. As the available record is sufficient to decide the fate of case in hand and no useful purpose would be served to record evidence in instant case. So, in view of available record the suit of plaintiff is hereby dismissed. No order as cost.
- 6. File be consigned to record room after necessary completion and compilation.

Announced
30/01/2021

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CERTIFICATE

Certified that this judgment of mine consists of 04 (four) pages including this page, each has been checked, corrected where necessary and signed by me.

FARMANULLAH
Senior Civil Judge
Orakzai at Baber Mela

Farman Ullah
Senior Civil Judge,
Orakzai at Baber Mela.