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

Civil Suit No. 151/1 of 2020
Date of Institution: 16.12.2020
Date of Decision: 29.03.2021

Muhammad Naseer S/O Mehmood Shah R/O Kharkai, Sec. Mula Khel, Char Khela, Tehsil Upper, District Orakzai.

(Plaintiff)

VERSUS

1. The Chairman BISE, Kohat.
2. Govt Primary School Saifal Dara (boys) District, Orakzai.
3. Govt Primary School No. 04, Sangreh, Hangu.
4. Govt High School No. 02 (boys), Hangu.
5. The DEO, Education (male), Hangu.
6. The DEO Education (male), Orakzai.

(Defendants)

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

JUDGEMENT:

1. Plaintiff Muhammad Naseer has brought the instant suit for declaration-cum-permanent injunction against defendants, seeking therein that the correct date of birth of the plaintiff is 19.04.1986 as per his CNIC while the defendants have wrongly entered the same as 19.04.1985 in their record instead of 19.04.1986, which is wrong and 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;

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2. Defendants were summoned, in whom the defendant No. 01 appeared before the court through its legal advisor Shaheen Muhammad Advocate while defendants no. 02 To 06 failed to appear before the court, hence, placed and proceeded ex-parte.
3. The defendant no. 01 through its legal advisor contested the suit by filing written statement, wherein various legal and factual objections were raised.
4. Divergent pleadings of the parties were reduced into the following issues;

Issues:

1. Whether plaintiff has got cause of action?
2. Whether the plaintiff is estopped to sue?
3. Whether suit of plaintiff is within time?
4. Whether the correct date of birth of the plaintiff is 19.04.1986 but it has been wrongly mentioned in the record of the defendants as 19.04.1985?
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.

The plaintiff produced witnesses in whom the plaintiff himself appeared as PW-01, who produced his CNIC

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which is Ex.PW-1/1 and according to which his date of birth is 19.04.1986 and further narrated the same story as in his plaint. The one Mehmood Shah, the father of the plaintiff, appeared as PW-02, who supported the stance of the plaintiff by narrating the same story as in the plaint.

The counsel for the contesting defendant no. 01 recorded his statement, wherein he relied on the educational documents produced by the plaintiff and did not produce any evidence.

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 there is a period of 06 years for the institution of such like suits but the aforesaid Limitation Act, 1908 is

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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 16.12.2020. 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 19.04.1986 as per his CNIC while the defendants have wrongly entered the same as 19.04.1985 in their record instead of 19.04.1986, which is wrong and 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;


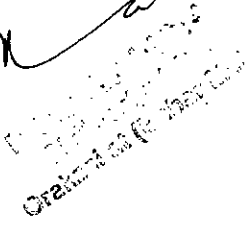
The burden to prove this issue was on the plaintiff but the plaintiff has only produced the copy of his CNIC in support of his contention, which is issued to the plaintiff on 28.01.2016 and through he is going to counter his School Leaving Certificate issued on 20.04.2005 and the DMC issued somewhere in the year 2004, which both are earlier in time and usually based on Primary School record, which by all means bear the presumption of truth unless rebutted

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through cogent and reliable evidence. Further, admittedly the plaintiff has not produced his Primary and Middle School record which might have corroborated his contention. Further, the PW-02, being father of the plaintiff has admitted in his cross examination that it is correct that the date of birth of the plaintiff mentioned in his School Record was told by him. Thus, the plaintiff failed to establish his claim through cogent and reliable evidence. Hence, the issue is, decided in negative.



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 no cause of action and therefore, not entitled to the decree as prayed for. Both these issues are decided in negative.


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RELIEF:

As sequel to my above issue wise findings, the suit of the plaintiff is hereby dismissed with costs.


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

Announced
29.03.2021


(Rehmat Ullah Wazir)
Civil Judge-I,
Orakzai at Baber Mela.

CERTIFICATE

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


(Rehmat Ullah Wazir)
Civil Judge-I,
Orakzai at Baber Mela.