

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

Civil Suit No. 246/1 of 2020
Date of Institution: 21/01/2020
Date of Decision: 17/03/2021

Arbab Khan s/o Salamat Shah
Section Mishti, Sub Section, Mamizai P/O Mishti Mela Tehsil Central & 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:

17.03.2021

Brief facts of case in hand are that the plaintiff, **Arbab Khan s/o Salamat Shah**, 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 as per his service record and medical certificate is **01.09.1968** while defendants have wrongly mentioned the same in their record as **01.01.1960**, which is incorrect and liable to be corrected. That he repeatedly asked defendants to correct his date of birth by issuing CNIC but they refused. Hence, the present suit.


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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;

Issues:

1. Whether plaintiff has got cause of action?
2. Whether suit of plaintiff is within time?
3. Whether the correct date of birth of the plaintiff is "01.09.1968" while defendants have wrongly mentioned the same as 01.01.1960 in his CNIC?
4. Whether plaintiff is entitled to the decree as prayed for?
5. Relief.

6. 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-04.

7. In rebuttal defendants produced their sole witness namely Syed Farhat Abbas, representative, as DW-1. He produced the CNIC processing form of plaintiff and family tree as Ex. DW-1/1 to Ex. DW-1/2.
8. After conclusion of the evidence arguments pro and contra heard. Case file is gone through.
9. My issues wise findings are as under:

Issue No.03:

Plaintiff contended in his plaint that his correct date of birth as per his service record and medical certificate is **01.09.1968** but inadvertently the same was recorded as **01.01.1960** in NADRA record. Hence, the record is liable to be corrected.

Plaintiff in support of his contention has appeared as PW-1 and he repeated the contents of plaint in his examination in chief. He also produced his service record as Ex.PW-1/2 and medical certificate as Ex. PW-1/3. During the cross examination stated that manual ID card was issued to him, however, he does not know his date of birth recorded in his manual ID card. PW-02 and PW-03 stated in their examination in chief that plaintiff is their co-villager and the correct date of birth of plaintiff is 01-09-1968 while PW-04 produced the service record of plaintiff as Ex.PW-1/2 and stated that as per service record , the date of birth of plaintiff is 01-09-1968.

On other hand DW-01 produced the CNIC processing form of plaintiff as Ex.DW-1/1 while family tree of the plaintiff as Ex.DW-1/2.

From the analysis of available record, it is evident that PW-02 and PW-03 produced by the plaintiff are neither his

family members nor close relatives rather both the PWs are mere the co-villagers of plaintiff. The persons acquainted with the facts related to the date of birth of plaintiff could only be his close relatives or family members but plaintiff failed to produce any of such a family member rather he produced the strangers as PW-02 and PW-03. Hence, the testimony PW-02 and PW-03 cannot be considered as confidence inspiring and reliable evidence. Though PW-04 has produced the service record of plaintiff as Ex.PW-1/2, wherein the date of birth of plaintiff has been mentioned in figures and words as 01-09-1968(1st September, N.H and sixty eight) yet the close and minute perusal of Ex.PW-1/2 on the face of it clearly reflects that the hand writing of date of birth of plaintiff recorded in words is entirely different from the rest of hand writing on Ex.PW-1/2. Even the pen used in both of writing is not the same. Moreover, the date of birth recorded in figures on Ex.PW-1/2 also seems dubious and appears that "0" of sixty has been altered to "8" by making 60 to 68. Being such a position Ex.PW-1/2 cannot be held as authentic piece of evidence regarding the date of birth of plaintiff. Furthermore, plaintiff in his statement has produced the medical certificate as Ex.PW-1/3 issued in a year 1998. The perusal of which reflects that though no medical test for the determination of age was conducted but his age has been

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recorded on the bases of oral assertion of plaintiff and from physical appearance of plaintiff by the MS. Even in a year 1998 the MS has opined the age of plaintiff from his physical appearance about 34 years. If 34 is subtracted from 1998 then it comes 64, which means that the date of birth of plaintiff comes to be 1964 and not 1968. So, Ex.PW-1/3 also does not support the claim of plaintiff. Hence the evidence produced by plaintiff does not establish the date of birth of plaintiff as 01-01-1968. Issue is decided in negative.

Issue No. 02:

From the available record produced by the DW-01 as Ex.DW- 1/1 it is evident that CNIC was issued to the plaintiff in year 2008 and in which the date of birth of plaintiff was incorporated as 01-01-1960, but the plaintiff has challenged his date of birth recorded in his CNIC through instance suit in a year 2020. Period provided for filing of suit for declaration under Article 120 of Limitation Act is 06 years while plaintiff has filed instant suit after the laps of that time. Hence, the suit of plaintiff is also time barred. Issue is decided in negative.

Issue No. 01 & 04:

These issues are taken together. For what has been held in issue No. 2 and 3, this court is of the opinion that plaintiff

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has got neither cause of action nor he is entitled to the decree as prayed for.

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, reliable and confidence inspiring evidence and suit of plaintiff is also time barred. Hence, the suit of plaintiff is dismissed. No order as to costs.

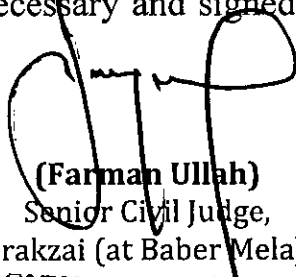
File be consigned to the record room after its completion and compilation.

Announced
17/03/2021


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

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).
FARMANULLAH
Senior Civil Judge
Orakzai at Baber Mela