

(54)

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

Civil Suit No. 330/1 of 2020
Date of Institution: 14/09/2020
Date of Decision: 05/04/2021

Zahir Shah s/o Muhammadi Khan
R/o Baland Khel, Tehsil Ismail Zai, 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:

Brief facts of case in hand are that the plaintiff, **Zahir Shah s/o Muhammadi Khan**, 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 is **01.01.1981** while defendants have wrongly mentioned the same in their record as **1976**. That date of birth of the mother of the plaintiff as per her CNIC is 1963 while date of the father of the plaintiff as per his manual ID Card is 1962. So, the difference between the age of plaintiff and his parents is unnatural and contrary to the facts. That the date of birth of the elder sister of the plaintiff is 01.01.1980 which is correct. That defendants were repeatedly asked to correct the date of birth of plaintiff but they refused. Hence, the present suit.

OS 4.2021

*FARMANULLAH
Senior Civil Judge
Orakzai at Baber Mela*

(SB)

01.01.1981 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 the copy of his father MNIC as Ex.PW-1/2, copy of his mother CNIC as Ex.PW-1/3 and copy of CNIC of his elder sister namely Shazia Bibi as Ex.PW-1/4. PW-2 is the statement of Sial Muhammad, who stated in his examination in chief that plaintiff is his cousin and the correct date of birth of the plaintiff is **01.01.1981**. He also stated that due to incorporation of wrong date of birth of plaintiff, there is unnatural gap in age of plaintiff and his parents. PW-3 is the statement of Malak Mir Nawaz, who stated in his examination in chief that plaintiff is his relative and the correct date of birth of the plaintiff is **01.01.1981**.

PARMANULLAH
Senior Civil Judge
Orakzai at Bar

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PW-1 to PW-3 were subjected to cross examination but nothing substantial was brought on record which could have shattered their testimony rather they remained consistent regarding the facts uttered by them in their examination in chief. The perusal of CNIC of mother of plaintiff Ex.PW-1/3 shows her date of birth as 01-01-1963 and similarly the date of birth of father of plaintiff as per manual ID Card Ex.PW-1/2 is 1962 while the date of birth of plaintiff recorded in his CNIC Ex.PW-1/1 is 1976, which shows that the age gap between the plaintiff and his parents are 13 and 14 years. The said difference in age of parents and plaintiff on the face of it appears to be unnatural and contrary to the facts.

(S7)

Similarly, from the statement of plaintiff it is evident that Mst; Shazia Bib is the elder sister of plaintiff and her date of birth as per her CNIC Ex.PW-1/4 is 01-01-1980, which further support the claim of plaintiff that his date of birth has been wrongly recorded in his CNIC as 1976. So, the oral and documentary evidence produced by the plaintiff clearly establishing that his date of birth recorded as 1976 is contrary to facts. The incorporation of date of birth of the plaintiff as 1976 in the record of NADRA appears to be a mistake and as per available record his correct date of birth is 01-01-1981. Hence, the issue No. 3 is decided in positive.

Issue No. 02:

Plaintiff appearing as PW-01 stated in examination in chief that he applied for the issuance of smart card at the office of NADRA few days prior to the institution of instant suit but defendants refused to issue smart card on the ground that there is unnatural gap in the age of plaintiff and his parents. Hence, smart card could not be issued to him. Such facts uttered by the PW-01 went un rebutted as no cross was made on these facts by the defendants. Meaning thereby that case of action accrued to the plaintiff few days prior to the institution of instant suit when defendants refused to issue smart card to him. Period provided for declaratory suit as per article 120 of Limitation Act is 06 years. Hence, the suit of plaintiff is within time.

The issue is decided in positive.

(CS8)

Issue No. 01 & 04:

These issues are taken together. For what has been held in issue No. 3, this court is of the opinion that plaintiff has got cause of action and he is entitled to the decree as prayed for.

The issues are decided in positive.

Relief:

Consequently, suit of the plaintiff succeeds and is hereby decreed as prayed for. Defendants are directed to correct their record by incorporating the date of birth of the plaintiff as **01.01.1981** in their record. Parties are left to bear their own costs.

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

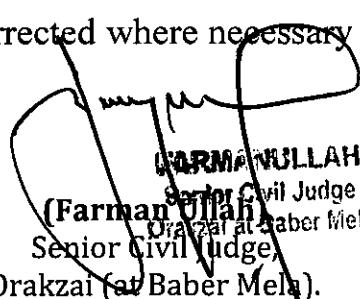
Announced

05/04/2021


Farmanullah
Senior Civil Judge
Orakzai (at Baber Mela).

CERTIFICATE

Certified that this judgment of mine consists **05** (five) pages (including this page), each has been checked, corrected where necessary and signed by me.


Farmanullah
Senior Civil Judge
Orakzai (at Baber Mela).

(SS)

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 the suit of the plaintiff is within time?
3. Whether the correct date of birth of the plaintiff is "**01.01.1981**" while defendants have wrongly mentioned the same as **1976** in their record?
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 and PW-3.

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7. In rebuttal defendants produced their sole witness namely Syed Farhat Abbas, representative, as DW-1. He produced CNIC processing form, MNIC and family tree of plaintiff as Ex. DW-1/1 to DW-1/3.
 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 is **01.01.1981** but inadvertently the same was recorded as