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IN THE COURT OF SHAUKAT AHMAD KHAN
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 23/13 OF 2021
DATE OF INSTITUTION : 17.04.2021
DATE OF DECISION : 31.05.2021

ARBAB KHAN S/O SALAMAT SHAH, R/O CASTE MISHTI,
TAPA MAMAZAI MEHGRA, TEHSIL CENTRAL, DISTRICT
ORAKZAI

....(APPELLANT)

-VERSUS-

CHAIRMAN NADRA ISLAMABAD AND TWO OTHERS

.... (RESPONDENTS)

Present: Sana Ullah Khan Advocate for appellant.
: Syed Farhat Abbas, representative of respondents

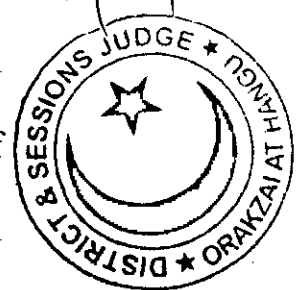
JUDGEMENT
31.05.2021

In a suit before the trial court, appellant/plaintiff claimed correction of his date of birth from 01.01.1960 to 01.09.1968 in the record of the respondents/defendants. The learned trial court after full trial dismissed the suit vide impugned judgement and decree dated 17.03.2021, hence the appeal in hand.

(2). As per contents of plaint, appellant/plaintiff claims that the correct date of his birth is 01.09.1968 which has also been incorporated in the service record of the appellant/plaintiff while the respondents/defendants have incorrectly incorporated the same in their record as 01.01.1960. The respondents/defendants contested the suit by submission of

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written statement. The learned trial court incorporated the pleadings of the parties into the following 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*

(3). Parties were given opportunity to produce pro and contra evidence in support of their respective contention.

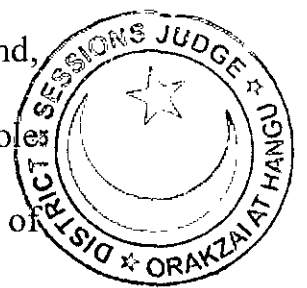
(4). Accordingly, appellant/plaintiff produced Mazhar Khan as PW-2, Khial Bahadar as PW-3, Bayan Khan PSHT Primary school, Mirgharra as PW-4 while the appellant/plaintiff himself appeared in the witness box as PW-1. On the other hand, respondents/defendants remained contented with the sole statement of Farhat Abbas, the representative of respondents/defendants. After having heard arguments, the learned trial court non-suited the appellant/plaintiff, hence, the present appeal.

(5). Arguments heard. Record perused.

(6). Perusal of case file shows that the claim of the appellant/plaintiff is based upon the oral testimony of PW-2 and

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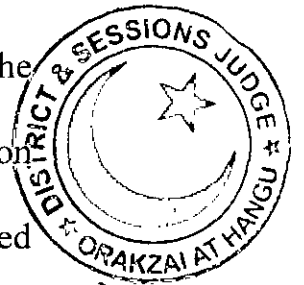
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PW-3 who are his co-villagers. PW-2 is 25 years older in age than the appellant/plaintiff. The knowledge of the PW-2 regarding the age of appellant/plaintiff cannot be doubted. Moreover, his statement has also not been shattered in cross examination. In these circumstances, the statement of PW-2 cannot be discarded on the sole ground that he is not a relative of appellant/plaintiff. Similarly, the service record Ex. PW-1/2, produced from the custody of concerned official, also supports the stance of appellant/plaintiff. The entries of the service record regarding the date of birth of the appellant/plaintiff was not disputed between the trial court, therefore, casting doubt upon the entry regarding the date of birth of the appellant/plaintiff in the service record was neither the mandate of the learned trial court nor it can be declared inadmissible in evidence on the sole ground that there is difference in ink between the writing of date of birth in figures and the date of birth written in words.

(7). In view of what is discussed above it is held that the oral evidence as well as the documentary evidence available on file support the contention of the plaintiff, however, the learned trial court while passing the impugned judgement has failed to appreciate the evidence available on file in support of the contention of appellant/plaintiff, therefore, the impugned judgement and decree cannot be maintained in the eyes of law. Hence, upon the acceptance of the instant appeal, the impugned judgement/decree dated 17.03.2021 passed by the court of


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learned Senior Civil Judge, Orakzai, is set aside. The suit of the appellant/plaintiff is decreed as prayed for. Parties are left to bear their own costs.

(8). File of the trial court be returned while file of this court be consigned to Record Room after its completion and compilation.


Announced
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CERTIFICATE

Certified that this judgment consists of four (04) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 31.05.2021


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