

33

33

**IN THE COURT OF ZAHIR KHAN,
Civil Judge-I, Kalaya, Orakzai.**

Suit No.....45/1 of 2023.

Date of Institution.....13.09.2023.

Date of decision.....26.09.2023.

=====

Israfil Khan S/O Malak Ghamai R/O Qoum Mala Khel, Tappa
Qutab Khel, District Orakzai.

..... (Plaintiff)

Versus

1. Chairman NADRA, Islamabad
2. Director General NADRA, KPK, Hayatabad, Peshawar
3. Assistant Director, NADRA, District Orakzai

..... (Defendants)

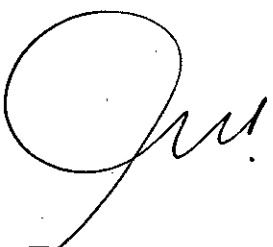
SUIT FOR DECLARATION & PERMANENT INJUNCTION:

JUDGEMENT

26.09.2023

Through this judgement, I am going to dispose of the instant suit filed by plaintiff namely Israfil Khan against the defendants Chairman NADRA, Islamabad and two others for declaration and permanent injunction.

Brief facts in the backdrop are that plaintiff has filed the instant suit against the defendants for declaration and permanent injunction to the effect that as per service and school record, true and correct date of birth of plaintiff is **22.12.1969**, however, defendants have incorrectly entered date of birth of plaintiff as **22.01.1969** which is wrong, illegal



**ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai**

26/09/2023

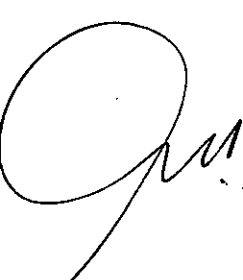
and ineffective upon the rights of plaintiff and liable to be rectified. That defendants were asked time and again to rectify date of birth of plaintiff but in vain hence, the present suit.

After institution of the suit, defendants were summoned, who marked their attendance through representative and contested the suit by filing authority letter and written statement. In the written statement, the defendants have raised several legal and factual objections.

From divergent pleadings of the parties, the followings issues were framed for adjudication of real controversy between the parties.

ISSUES

1. Whether plaintiff has got cause of action? OPP
2. Whether suit of plaintiff is within time? OPP
3. Whether suit of plaintiff is bad due to non-joinder and mis-joinder of the parties? OPD
4. Whether correct date of birth of plaintiff is 22.12.1969 and defendants have wrongly recorded the same as 22.01.1969 in their record? OPP
5. Whether plaintiff is entitled to the decree as prayed for? OPP
6. Relief?



ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

26/09/23


Upon submission of list of witnesses, both the parties on being provided with an opportunity to adduce their desired evidence, the parties produced their respective evidence.

During course of recording evidence, plaintiff produced two witnesses in support of his claim while defendants produced one witness in their defense.

Plaintiff himself appeared and deposed as PW-01. He reiterated the averments of plaint. He produced birth certificate issued by Middle School Darband, Hangu as Ex.PW-1/1, extract of admission and withdrawal register as Ex.PW-1/2, secondary school certificate as Ex.PW-1/3, copy of verification of matriculation (SSC) certificate as Ex.PW-1/4, copy of certificate of service as Ex.PW-1/5, copy of passport as Ex.PW-1/6 and copy of his CNIC as Ex. PW-1/7. He lastly requested for decree of suit against the defendants as prayed for.

Muhammad Arif, relative of the plaintiff appeared and deposed as PW-02. He stated that plaintiff is his relative and correct date of birth of plaintiff is 22.12.1969. Copy of his CNIC is Ex. PW-2/1. Thereafter, evidence of plaintiff was closed.

Irfan Hussain (Legal representative of NADRA, Orakzai) appeared as DW-01. He produced NADRA processing form, Copy of letter issued by Wing Commander Lieutenant Colonel for correction of date of birth and Sheet Roll-Soldiers of plaintiff as Ex.DW-1/1 to Ex.DW-1/3 respectively. He stated that plaintiff has been issued CNIC with date of birth as 22.01.1969 pursuant to the letter issued by Wing Commander Lieutenant Colonel coupled with service documents and that he has got no cause of action. He lastly requested for dismissal of suit of plaintiff.



ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

26/09/23

After completion of evidence of the parties, arguments of the learned counsel for the parties were heard and record of the case file was gone through with their valuable assistance.

My issue wise findings are as under: -

ISSUE NO.2:

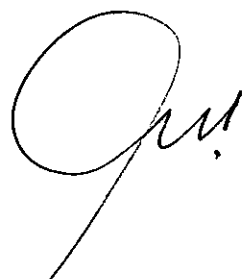
Whether suit of plaintiff is within time? OPP

CNIC of plaintiff was issued on 01.01.2016 with date of expiry as 01.01.2026 while suit in hand was filed on 13.09.2023. Every wrong entry will accrue fresh cause of action. Period of limitation for filing declaratory suit under Article 120 of Limitation Act, is six years therefore, suit of plaintiff is held to be within time. Issue decided in affirmative.

ISSUE NO.03.

Whether suit of plaintiff is bad due to non-joinder and mis-joinder of the parties? OPD

As mentioned above, plea of plaintiff is that his true and correct date of birth is 22.12.1969, however, defendants have incorrectly entered the same as 22.01.1969 in their record which needs to be rectified. Record shows that CNIC of plaintiff was renewed on 01.01.2016 on the request of plaintiff on the basis of letter Ex.DW-1/2 and Sheet Roll-Soldiers Ex.DW-1/3. In both the above referred documents, date of birth of plaintiff is mentioned as 22.01.1969. The letter Ex.DW-1/2 and Sheet Roll-Soldiers Ex.DW-1/3 have been issued by the department of plaintiff but plaintiff has not arrayed his department as party to the suit. Department of plaintiff


ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

26/09/2023

(FC) is necessary party to the suit. Resultantly, issued No. 3 is decided in positive.


ISSUE NO.04.

Whether correct date of birth of plaintiff is 22.12.1969 and defendants have wrongly recorded the same as 22.01.1969 in their record? OPP

As stated above, claim of plaintiff is that his true and correct date of birth is 22.12.1969, however, defendants have incorrectly entered the same as 22.01.1969 which entry is wrong, illegal and ineffective upon the rights of plaintiff and liable to be rectified. On the other hand, defendants are contending that date of birth of plaintiff was modified/corrected on the request of plaintiff on the basis of letter issued by department of plaintiff and Sheet Roll-Soldiers. Burdon of proof was on plaintiff to establish that his true and correct date of birth is 22.12.1969 but defendants have incorrectly and wrongly recorded the same as 22.01.1969 in their record. Plaintiff has placed reliance on service and school record in shape of Ex.PW-1/1 to Ex.PW-1/6. Per Ex.DW-1/1, plaintiff applied for smart card with request for correction of date of birth as per service documents in the year 2015 and he was issued smart card on 01.01.2016 with date of birth as 22.01.1969. Plaintiff applied for modification of date of birth from 22.12.1969 to 22.01.1969 on the strength of letter Ex.DW-1/2 issued by wing Comd: Muhammad Toufeeq, 101 wing Khyber Rifle and Sheet Roll-Soldiers Ex.DW-1/3. Plaintiff was issued CNIC accordingly. Plaintiff categorically admitted this fact in his cross examination by stating:

یہ درست ہے کہ میں نے شناختی کارڈ میں تاریخ پیدائش تبدیل کیا ہے۔ یہ درست ہے کہ میں نے شیٹ رول کی کاپی اور ڈیپارٹمنٹ کے لیٹر کے مطابق شناختی کارڈ میں تاریخ پیدائش تبدیل کیا ہے۔ یہ درست ہے کہ مذکورہ لیٹر وینگ کمانڈر لیفٹننٹ کرنل محمد توفیق نے ایسٹو کیا تھا۔

نے ایسٹو کیا تھا۔


ZAHIR KHAN
 Civil Judge/JM
 Kalaya Orakzai

26/09/23

Plaintiff neither produced original service record through official concerned nor he has arrayed the department as party to the suit. As far as, Ex.PW-1/1 (birth certificate), Ex.PW-1/2 (Extract of admission and withdrawal register) is concerned, the official concerned was not produced as witness. Original admission and withdrawal register was not produced before the court. No official witness was produced to support Ex.PW-1/3 (SSC). Plaintiff failed to produce cogent, convincing and reliable documentary evidence to prove his case. Oral evidence produced by plaintiff is also insufficient to establish the claim of plaintiff. Resultantly, issue No. 4 is decided in negative and against the plaintiff.

ISSUES NO.1 & 5.

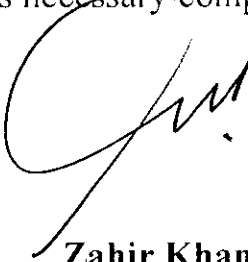
In the light of foregoing discussion, it is held that plaintiff failed to prove his claim, therefore, he has got no cause of action and is not entitled to the decree, as prayed for. Both these issues are decided in negative and against the plaintiff.

RELIEF.

Crux of my issue wise discussion is that as plaintiff failed to prove his claim, therefore, suit of the plaintiff is hereby dismissed. No order as to cost.

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

ANNOUNCED
26.09.2023.

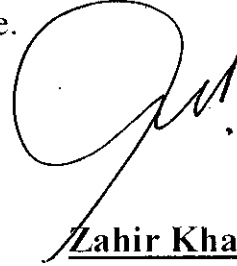


Zahir Khan
Civil Judge-I, Kalaya,
District Orakzai

39
44

CERTIFICATE

It is certified that this judgment consists of **07** pages. Each page has been dictated, read, corrected and signed by me.



Zahir Khan
Civil Judge-I, Kalaya,
District Orakzai