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# In the name of almighty Allah who has unlimited jurisdiction over and beyond the universe.

## BEFORE THE COURT OF SADDITIONAL DISTRICT JUDGE ORAKZAI

### Civil Appeal No. CA-25/13 of 2023

Date of institution: 18.09.2023
Date of decision: 30.09.2023

...Versus...

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

..... (<u>Respondents</u>)

Appeal against Judgement, Decree and Order dated 16.08.2023 in Civil Suit No. 34/1 of 2023.

### **JUDGMENT**

Instant Civil Appeal has been preferred by the appellant against the Judgment & Order dated 16.08.2023, passed by learned Civil Judge-I, Kalaya, Orakzai in Civil Suit bearing No.34/1 of 2023; whereby, the suit of plaintiff (appellant herein) with the title of Syed Shahab ul Hassan Vs NADRA etc. was dismissed.

2. The brief facts of the case are such that plaintiff Syed Shahab ul Hassam has instituted suit for declaration and perpetual as well as mandatory injunction against the defendants to the effect that his correct

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date of birth is 01.01.1976; whereas, defendants (respondents herein) have wrongly entered the same as 1964 in his Computerized National Identity Card. Plaintiff and his real sister Syeda Bibi Sheherbanu Jan are twins whose date of birth has rightly been recorded as 01.01.1976 and that of Plaintiff is required to be corrected from 1964 to 1976. This recorded date of birth of the plaintiff has created unnatural gap of 06 years period in birth with his father which is not sustainable. The suit was dismissed by the learned Trial Judge vide Judgement dated 16.08.2023. Feeling aggrieved, the appellant/plaintiff has presented instant civil appeal, which is under consideration.

- 3. The respondents/defendants on appearance objected the suit on various grounds of law and facts. It was specifically pleaded that plaintiff has his date of birth recorded as 1964 followed by issuance of passport reflecting the same date of birth. The learned trial court framed the following issues from divergent pleadings of the parties.
- i. Whether plaintiff has got cause of action?
- ii. Whether suit of the plaintiff is within time?
- iii. Whether correct date of birth of the plaintiff is 01.01.2976 and defendants have entered the same as 1964?
- iv. Whether the plaintiff is entitled to the decree as prayed for?
- v. Relief
- 4. After framing of issues, the parties were given full opportunity to produce their respective pro & contra evidence in support of their

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claim. Accordingly, plaintiff himself appeared and recorded his statement as PW-1. He produced copy of his CNIC as Ex. PW 1/1, copies of CNICs of his father, mother and his sister as Ex. PW 1/2 to 1/4 respectively. On turn, the defendants have relied upon the sole statement of legal representative of NADRA, Irfan Hussain as DW-1. He produced Family Tree of plaintiff as Ex. DW 1/1. Parties had closed their evidence and after hearing the arguments, the learned Trial Court has dismissed the suit of the plaintiff vide impugned Judgment & decree dated 16.08.2023. Feeling aggrieved, the appellant has preferred instant appeal, which was contested by the defendants/respondents.

- 5. Mr. Abid Ali Advocate while representing appellant argued that the impugned Judgement is result of misreading and non-reading of record available on file which is passed in disregard of law and facts of the case. Acceptance of the appeal followed by grant of decree has been prayed for.
- 6. Irfan Hussain being representative of NADRA is of the stance that the dismissal of suit was result of proper application of law and accurate appreciation of evidence. He concluded with the prayer of dismissal of appeal.
- 7. The matter agitated in appeal is being determined on the basis of memorandum of appeal, the arguments and record in the following terms; while, refusing declaration of the date of birth as 01.01.1976 was

SAYED FARL VADOOD Addi: District & Sessions Judge Orakçai at Hangu illegal and based on improper application of law and non-reading of evidence, is point for determination in appeal.

It is the main contention of the appellant/plaintiff that his correct date of birth is 01.01.1976 that has wrongly been recorded as 1964. Plaintiff appeared as PW-1 and stated that the recorded date of birth is neither actual nor real. He produced the copies of Computerized National Identity Cards of his parents and siblings as Ex. PW 1/1 to Ex. PW 1/4. These documents are carrying all the details of birth of his siblings and parents which are in consonance with the family tree presented by the defendants as Ex.DW-1/1. This document has also been produced from proper custody; that too, without objection on part of defendants. It is on record that Syeda Bibi Sheherbanu Jan is the real sister of plaintiff with actual and recorded date of birth as 01.01.1976 who is twin of the plaintiff and recording date of birth of the plaintiff as 1964 is not appealing to prudent mind. Similarly, if the recorded date of birth of the plaintiff is presumed as correct, it will obviously give birth to the age difference with the parents as 06 and 09 years which is impossible for a spouse to marry and give birth to child. The evidence so produced by the plaintiff has successfully established the preponderance of probability in line with Article 117 of the Qanoon-e-Shahadat Order, 1984. The burden is therefore shifted to the defendants to rebut the probability so establish and to prove the specific plea taken in defense.

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- 10. Defendants produced family tree of plaintiff as Ex.DW-1/1. Representative of NADRA is the sole witness of the defendants recorded as DW-1. DW has categorically admitted the fact that if the proposed and agitated date of birth of the plaintiff has not been allowed, the defect in shape of unnatural gap of 06 years age difference with the mother and 09 years age difference with the father cannot be remedied.
- 11. For what has been discussed above, the appeal in hand is accepted; the impugned Judgment, Order and Decree dated 16.08.2023 is set aside; consequently, suit of the appellant (plaintiff) stands decreed as prayed for. Cost shall follow the events.
- 12. Requisitioned record be returned back with the copy of this Judgement; whereas, File of this Court be consigned to District Record Room, Orakzai after completion and compilation within the span allowed for.

Announced in the open Court 30.09.2023

Sayed Fazal Wadood, ADJ, Orakzai at Baber Mela

#### **CERTIFICATE.**

Certified that this Judgment consists of five (05) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.

Sayed Fazal Wadood

ADJ, Orakzai at Baber Mela