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

BEFORE THE COURT OF
ADDITIONAL DISTRICT JUDGE, ORAKZAI

Civil Appeal No. CA-27/13 of 2023

Date of institution: 21.10.2023

Date of decision: 27.10.2023

Israfil Khan son of Malak Ghamai, resident of Qaum Mala Khel, Tappa
Qutab Khel, District Orakzai. **(Appellant)**

...Versus...

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

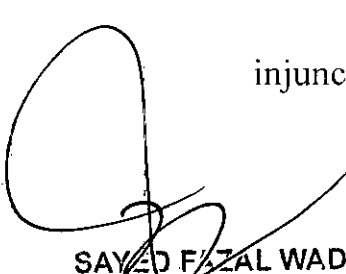
..... **(Respondents)**

**Appeal against Judgement, Decree and Order dated 26.09.2023 in
Civil Suit No. 45/1 of 2023.**

JUDGMENT

Instant Civil Appeal has been preferred by the appellant against the Judgment & Order dated 26.09.2023, passed by learned Civil Judge-I, Kalaya, Orakzai in Civil Suit bearing No.45/1 of 2023; whereby, the suit of plaintiff (appellant herein) with the title of "Israfil Khan Vs NADRA" was dismissed.

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


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birth is 22.12.1969; whereas, defendants (respondents herein) have wrongly entered the same as 22.01.1969 in his Computerized National Identity Card. 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 himself has changed his date of birth once from 22-12-1969 to 22.01.1969 on 07-07-2015 and the same could not be changed as per the rules. 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 suit of the plaintiff is bad due to non-joinder and mis-joinder of the parties.*
- iv. *Whether correct date of birth of the plaintiff is 22.12.1969 and defendants have entered the same as 22.01.1969?*
- v. *Whether the plaintiff is entitled to the decree as prayed for?*
- vi. *Relief*

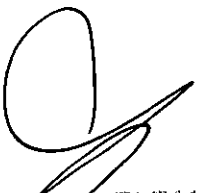
4. On framing of issues, the parties were given full opportunity to produce their respective pro and contra evidence in support of their respective claims. Accordingly, plaintiff himself appeared and recorded his statement as PW-1. He produced birth certificate as Ex. PW-1/1,

extract of school register as Ex.PW-1/2, SSC certificate as Ex.PW-1/3, SSC verification certificate as Ex.PW-1/4, Service record copy as Ex.PW-1/5, copy of Passport as Ex.PW-1/6 and copy of his CNIC as Ex.PW-1/7. Plaintiff produced his relative Muhammad Arif as PW-2, who supported the contention of the plaintiff and submitted his CNIC as Ex.PW-2/1. On turn, the defendants have relied upon the sole statement of legal representative of NADRA, Irfan Hussain as DW-1 who requested for dismissal of suit and produced copy issued by Wing Commander for correction of date of birth and Sheet Roll-Soldier of plaintiff as Ex.DW-1/1 to DW-1/3. Parties had closed their evidence and after hearing the arguments, the learned Trial Court has dismissed the suit of the plaintiff.

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.

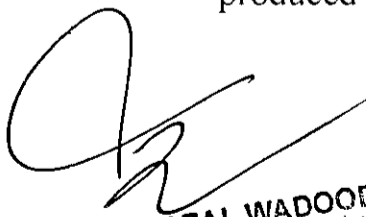
6. Irfan Hussain being representative of NADRA is of the stance that the dismissal of suit was result of proper application of law and accurate appreciation of evidence. He concluded with the prayer of dismissal of appeal.

7. The matter agitated in appeal is being determined on the basis of memorandum of appeal, the arguments and record in the following


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terms; while, refusing declaration of the date of birth as 22.01.1969 was illegal and based on improper application of law and non-reading of evidence, is point for determination in appeal.

8. It is the main contention of the appellant/plaintiff that his correct date of birth is 22.12.1969 that has wrongly been recorded as 22.01.1969. Plaintiff appeared as PW-1 and stated that the recorded date of birth is neither actual nor real. He produced the Service related documents and School certificate. These documents are carrying all the details regarding date of birth of the plaintiff. This document has also been produced from proper custody; that too, without objection on part of defendants. Birth certificate of the plaintiff Ex.PW-1/1, extract of admission/withdrawal register of the school as Ex.PW-1/2, SSC Ex.PW-1/3 and PW-1/4 are documentary evidence of higher evidentiary value that has sufficiently proved the case of the plaintiff and had been relied as true copies of public documents by the learned Trial Judge, learned the opponent counsel and NADRA Authority. The single question being apple of discard is that the plaintiff has once corrected the date of birth and cannot do it again. The Registration Policy of NADRA duly published vide Version: RP-5.0.3 when consulted reflects that second time age change is allowed if applicant possesses Matric Certificate. The same is the case of plaintiff as he has produced a verified SSC Certificate exhibited in Trial; therefore, as per



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policy of the respondents, he cannot be deprived of correction; especially when it is floating on the surface vibrantly.

10. For what has been discussed above, the appeal in hand is accepted; the impugned Judgment, Order and Decree dated 26.09.2023 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.

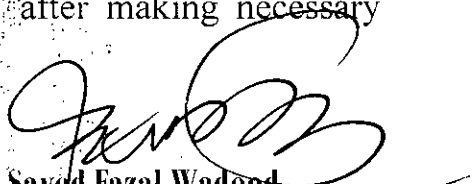
Announced in the open Court
27.10.2023



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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