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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-28/13 of 2023**

**Date of institution: 20.10.2023**

**Date of decision: 27.10.2023**

Syed Ikhtiar Syed son of Malak Yaqeen Hussain, resident of Qaum Kalaya Saidan, District Orakzai. .... **(Appellant)**

...Versus...

1. Board of Intermediate and Secondary Education, Kohat through Chairman
2. The Chairman, NADRA, Islamabad.
3. Director General NADRA, KPK, Peshawar.
4. Assistant Director, NADRA, District Orakzai

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

**Appeal against Judgement, Decree and Order dated 21.09.2023 in Civil Suit No. 34/1 of 2023.**

**JUDGMENT**

Instant Civil Appeal has been preferred by the appellant against the Judgment & Order dated 21.09.2023, passed by learned Civil Judge-I, Headquarter Orakzai in Civil Suit bearing No. 34/1 of 2023; whereby, the plaint of plaintiff (appellant herein) with the title of "Syed Ikhtiar Syed Vs BISE Kohat etc." was rejected under Order-7 Rule-11 of the Code of Civil Procedure, 1908.

2. The brief facts of the case are such that plaintiff has instituted suit for declaration and perpetual as well as mandatory injunction

  
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against the defendants to the effect that his correct date of birth is 01.02.2002; whereas, defendants (respondents herein) have wrongly entered the same as 01.03.1998 in their record. The plaint was rejected by the learned Trial Judge vide Judgement dated 21.09.2023. 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 01.02.2000 to 01.03.1998 (the present one) on 24-04-2016 and the same could not be changed again as per the policy.

4. The learned Trial Court has rejected the plaint on the ground that the correction has already been made once which operates as estoppel and rejected the plaint which is impugned herein.

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 remand of the case for trial has been prayed for.

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



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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, rejection of plaint on the score of being barred by law 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 01.02.2002 that has wrongly been recorded as 01.03.1998. The ground pleaded by the respondents/defendants is that once the date of birth is changed, that cannot be corrected subsequently and this was assigned reason by learned Trial Judge while attracting the principle of estoppel. Article-114 of the Qanun-e-Shahadat Order 1984 enacts that a person is not allowed to plead contrary to a fact formerly asserted its existence. It has been classified into different kinds including estoppel by conduct, estoppel by representation, promissory estoppel, estoppel by matter of record and estoppel by Judgement. Estoppel by Judgement is that type of estoppel which has been attracted by the learned Trial Judge for rejecting the plaint. It has been observed by the learned Trial Judge that Assistant Political Agent Lower Orakzai has once corrected the date of birth of the plaintiff which cannot be reopened again and thus rejected the plaint. To comprehension of this Court, estoppel being an equitable doctrine is not applicable against the question of law or statute. Reference can be made to a case reported as 1998 PLC page 183 where it has been held that estoppel would not be operative in respect of question of law and against statute. The single

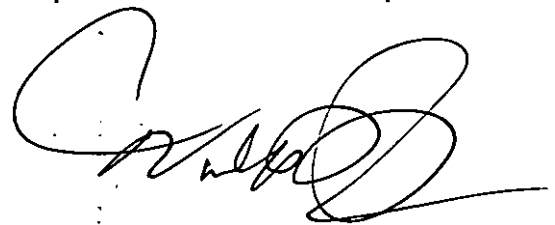
  
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Additional District & Sessions Judge  
Orakzai, Balochistan

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 articulated under 2.1 when consulted reflects that second time age change is allowed if applicant possesses Matric Certificate. The same is the case of plaintiff; therefore, as per policy of the respondents, he cannot be deprived of correction for second time.

9. For what has been discussed above, the appeal in hand is accepted; the impugned Judgment, Order and Decree dated 21.09.2023 is set aside; consequently, the case is remanded back with the direction to proceed with the trial of the case in accordance with law as estoppel by Judgement is not attracted. Cost shall follow the events.

10. 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



Sayed Fazal Wadood,  
ADJ, Orakzai at Baber Mela

**CERTIFICATE.**

Certified that this Judgment consists of four (04) 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