64

IN THE COURT OF SAMI ULLAH,

Civil Judge-I, Orakzai at Baber Mela

Civil Suit No.	40/1 Neem
Date of Original Institution:	25/03/2023
Date of Transfer-in:	24/06/2023
Date of Decision:	29/11/2023

Shah Noor S/O Rafiq Ali
R/O Qoam Mani Khel, Tappa Mast Ali Khel, PO Kalaya, Tehsil Lower, District Orakzai.

.....**(Plaintiff)**

VERSUS

1. **Chairman Nadra, Islamabad**
2. **Assistant Director Nadra, District Orakzai.**
3. **Secretary Village Council of Qoam Mani Khel, Ahmad Khel, Lower Orakzai.**
4. **Assistant Director Local Government, District Orakzai.**

..... **(Defendants)**

SUIT FOR DECLARATION & PERMANENT INJUNCTION

JUDGEMENT:

1. Plaintiff has brought the instant suit for declaration-cum-permanent injunction against defendants, seeking therein that correct date of birth of plaintiff is **01.01.2004** which have correctly incorporated in School Record and Form "B" issued on 27.04.2021. Plaintiff asserted in her plaint that the form "B" which was made on 27.04.2021 be retained while the form "B" which was made on 09.05.2022 and Birth Registration Certificate on the name of Komal Batool issued by Local Government are liable to be cancelled. That the defendants were asked time and again for retention of first

29.11.2023
Sami Ullah
Civil Judge/JM-I
Orakzai at (Babar Mela)

Form "B" of plaintiff and cancelled birth registration certificate issued in the name of Komal Batool issued by Local Government but they refused to do so, hence the present suit.

2. Defendants were summoned, they appeared before the court through their representatives and contested the suit by filing their written statement, wherein various legal and factual objections were raised.

3. Divergent pleadings of the parties were reduced into the following issues;

Issues:

1. ***Whether plaintiff has got cause of action? OPP***
2. ***Whether suit of the plaintiff is within time? OPP***
3. ***Whether the correct date of the plaintiff is 01.01.2004 instead of 10.03.2007? OPP***
4. ***Whether Form "B" issued on 09.05.2022 by defendant No. 1 & 2 and birth registration certificate issued by defendant No.3 are liable to be cancelled? OPP***
5. ***Whether suit of the plaintiff is bad due to non-joinder and mis-joinder of the parties? OPD***
6. ***Whether the plaintiff is entitled to the decree as prayed for? OPP***
7. ***Relief.***

29.11.2023
Sami Ullah
Civil Judge/JM-I
Orakzai at (Baber Mela)

4. Parties were given ample opportunity to produce evidence which they did accordingly.

5. Issue wise findings of this court are as under: -

Issue No. 02:

Whether suit of the plaintiff is within time?

6. The defendants in their written statement raised the objection that suit of the plaintiff is time barred but this court is of the opinion that as per Article 120 of the Limitation Act, 1908 there is a period of 06 years for the institution of such like suits. Cause of action arose after issuance of 2nd Form B on 09.05.2022 while the instant suit has been filed on **25.03.2023**. Thus, the same is well within time. The issue is decided in positive.

Issue 05:

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

7. The issued was framed keeping in view the pleadings in the instant case. Perusal of case file reveals that Assistant Director local government was impleaded in the panel of defendants vide order dated 19.06.2023 in the instant case.

8. Besides, no other necessary party deem appropriate by the court is left out in the instant case. Moreover, the defendants have also not agitated non-joinder of any other party. Therefore, the issue is decided in negative.

29.11.2023
Sami Ullah
Civil Judge/JM-I
Orakzai at (Babar Mela)

Issue 03 and 04:

Whether the correct date of birth of the plaintiff is 01.01.2004 instead of 10.03.2007? OPP

Whether Form "B" issued on 09.05.2022 by defendant No. 1 & 2 and birth registration certificate issued by defendant No.3 are liable to be cancelled? OPP

9. The plaintiff alleged in her plaint that the correct date of birth of plaintiff is **01.01.2004**. Plaintiff further alleged in her plaint that 1st form "B" which was made on 27.04.2021 be retained while the 2nd form "B" which was inadvertently made on 09.05.2022 by defendant No.01 and Birth Registration Certificate on the name of Komal Batool issued by Local Government (defendant No.04) are liable to be cancelled. The Burdon of proof regarding the instant issues were on the plaintiff.

10. The plaintiff produced three witnesses in her favour who recorded their statements and testified that the correct date of birth of the plaintiff is **01.01.2004**.

11. Mohabat Khan recorded his statement as PW-1 and stated that the plaintiff is his relative and her correct date of birth of plaintiff is **01.01.2004** according to her entry in Dakhil Kharij Register of her school and first Form "B". Copy of relevant page of the said register, birth certificate and First Form "B" of plaintiff are Ex.PW-1/1 to Ex.PW-1/3. He further stated that the 2nd form "B" which was issued on 09.05.2022 is wrong and liable to cancelled. Copy of 2nd Form "B" of plaintiff and his power of attorney and copy of martyr certificate of father of plaintiff are Ex.PW-1/4 to Ex.PW-1/6 respectively. The said PW admitted in his cross examination that Form B of the plaintiff was made by her mother who is illiterate.

29.11.2023
Sami Ullah
Civil Judge/JM-I
Orakzai

12. PW-02 namely Fazal Nabi said in his statement that correct

date of birth of plaintiff is **01.01.2004** which is correctly incorporated in 1st Form "B" and liable to retention. He further stated that the form "B" which was made on 09.05.2022 is wrong and are liable to cancelled. The said PW recorded in his cross examination that the mother of the plaintiff has never been remarried after demise of her husband and the plaintiff don't have any other sibling.

13. PW-03 namely Mst. Ilam Jan (Mother of plaintiff) recorded in her statement that the correct date of birth of plaintiff is **01.01.2004.** She further stated that the 1st Form "B" which was made on 27.04.2021 is correct and be retained while the 2nd Form "B" which was made on 09.05.2022 and Birth Registration Certificate on the name of Komal Batool be cancelled. Copy of her CNIC is Ex.PW-3/1. She also stated that in order to reduce age of her daughter (plaintiff) in record, she has made 2nd form "B" which is incorrect. Further stated that inconsequence's thereof, the pension of her husband has stopped which his created financial problems for her and her daughter. The defendants have not cross examined the said PW despite opportunity been granted and despite their representative been present on the said date.

Sami Ullah 29.11.2023 Civil Judge/JM-I Orakzai at (Babar Mela)

14. In order to counter the claim of the plaintiff, the defendants produced only one witness, Mr. Irfan Hussain, the representative of the defendants appeared as DW-01. He produced family tree, Nadra birth certificate, affidavit of dead certificate and processing form, according to these

documents the date of birth of plaintiff is correctly incorporated. He placed reliance on these documents. Moreover, Shafiq Hassan Village Secretary of Ahmad Khel, recorded his statement that birth certificate was issued to the plaintiff, according to which her date of birth is 10.03.2007 and according to the plaint, her father died in 2004.

15. Furthermore, representative of defendant No.04 namely Muhammad Waqas recorded his statement that they have no relevant record in their office which was processed before merger of the District. He also stated that he has no objection if the suit is decreed or dismissed. In this respect his CNIC is Ex.PA.

16. Arguments heard and record perused.

17. After hearing of arguments and perusal of record I am of the opinion that the stance of the plaintiff is supported by the documents and evidence which they produced. Nothing incriminating was recorded in cross examination of the PWs. Moreover, plaintiff has annexed with her plaint, entry registration form, attested birth certificate and Form "B" according to which her correct date of birth is 01.01.2004. Furthermore, record reveals that the 1st form "B" of plaintiff is correct and be retained. It is pertinent to mention here that as recorded in evidence of PW-1 and DW-01, the mother of the plaintiff is illiterate and as admitted by her in her statement, she has made 2nd Form "B" in order to reduce the age of the plaintiff. PW-02 in his statement has recorded that

29.11.2023
Sami Ullah
Civil Judge/JM-I
Orakzai at (Babar Mela)

mother of the plaintiff has not married again after the demise of her husband and the plaintiff don't have any other sibling. Martyr certificate of father of the plaintiff is also exhibited in course of his evidence as Ex.PW-1/6. It is pertinent to mention here that in 2nd form "B" another daughter of late Rafiq Ali was registered and her date of birth is shown as 01.01.2011. Moreover, in 2nd Form "B" date of birth of the plaintiff is also shown as 10.03.2007. Thus, both the entries are not correct on the face of record as Rafiq Ali (their Father, as shown in record) died in 2004.

18. After keeping in consideration, the aforementioned points and available evidence, this court is of the view that the record of defendants relating to the plaintiff is liable to correction and the 2nd Form "B" alongwith birth registration certificate issued in the name of Komal Batool is liable to cancellation.

19. Thus, in the light of the aforesaid findings, the issue is decided in positive.

29.11.2023
Sami Ullah
Civil Judge/JM-I
Orakzai at (Babar Mela)

Issue No. 01 &06:

Whether plaintiff has got cause of action?

Whether the plaintiff is entitled to the decree as prayed for.

20. Both these issues are interlinked, hence, taken together for discussion. As sequel to my findings on issue No. 03 and 04, plaintiff has got cause of action and therefore entitled to the decree as prayed for. Both these issues are decided in positive.

RELIEF:

21. As sequel to my above issue wise findings, the suit of the plaintiff is hereby decreed as prayed for, defendants are directed to cancel the 2nd Form "B" issued subsequently on 09.05.2022 alongwith birth registration certificate issued in the name of Komal Batool.

22. Parties are left to bear their own cost.

23. Decree sheet be drawn up accordingly.

24. File be consigned to the Record Room after its necessary completion and compilation.

Announced
29.11.2023

Sami Ullah
Civil Judge-I,
Orakzai at Baber Mela.

CERTIFICATE

Certified that this judgment consists of Eight **(08)** pages, each has been checked, corrected where necessary and signed by me.

Sami Ullah
Civil Judge-I,
Orakzai at Baber Mela.