

IN THE COURT OF SHAUKAT AHMAD KHAN
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 7/13 OF 2022
DATE OF INSTITUTION : 22.06.2022
DATE OF DECISION : 06.07.2022

CHAIRMAN, NADRA ISLAMABAD THROUGH SYSTEM ENGINEER
DISTRICT ORAKZAI

.....(APPELLANT)

-VERSUS-

KHIWA GUL S/O NAZAR GUL, R/O CASTE RABIA KHEL, TAPA
PIYAO KHEL, SAIFAL DARA, TEHSIL ISMAILZAI, DISTRICT
ORAKZAI

..... (RESPONDENT)

Present: Syed Farhat Abbas, the representative of appellant.
: Sana Ullah Khan Advocate for respondent.

JUDGEMENT
06.07.2022

Impugned herein is the judgment dated 27.05.2022 of the learned Senior Civil Judge, Orakzai passed in civil suit no. 70/1 vide which suit of the respondent/plaintiff was decreed as prayed for.

(2). In a suit before the trial court, respondent/plaintiff claimed that his correct date of birth is 07.03.1997 but the appellants/defendants have wrongly incorporated the same as 1962 in their record. Appellant/defendant contested the suit by submission of written statement. The learned trial court incorporated the pleadings of the parties into the following issues;

1. *Whether plaintiff has got cause of action?*
2. *Whether the correct date of birth of the plaintiff is 07.03.1977 while defendants have wrongly mentioned the same as 1962 in their record?*
3. *Whether the plaintiff is entitled to the decree as prayed for?*
4. *Relief*

(3). Parties were given opportunity to produce pro and contra evidence in support of their respective contentions. Accordingly,

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respondent/plaintiff produced Haji Muhammad (relative of the plaintiff), Mian Gul (cousin of the plaintiff), Muhammad Zahid (son/special attorney of the plaintiff) and Atif Ullah (record keeper of police department) as PW-1 to PW-4. On the other hand, appellants/defendants remained contented with the sole statement of their representative as DW-1. After having heard the arguments, the learned trial court decreed the suit. The appellant/defendants being aggrieved of the impugned judgement and decree, filed the instant appeal.

- (4). Arguments heard. Record perused.
- (5). Perusal of case file shows that as per averments of plaintiff the plaintiff/respondent has relied upon the entry of his date of birth recorded in his service record as 07.03.1977, the record of which has been produced by PW-4 Atif Ullah, Record Keeper Police Department. Plaintiff/respondent has also produced Haji Muhammad s/o Muhammad Hussain as PW-1, who is relative of plaintiff/respondent. In his examination in chief, he has supported the version of the plaintiff/respondent that the correct date of birth of the plaintiff/respondent is 07.03.1977 while 1962 recorded in the record of defendants/appellants is incorrect; however, in his cross examination he has stated that his own date of birth is 1971 and he does not know that how older plaintiff/respondent is, than him which contradicts his examination in chief regarding the date of birth of the plaintiff/respondent as 1977 according to which plaintiff/respondent is younger than the said PW. Similarly, PW-2 Mian Gul is also the relative of plaintiff/respondent. He has also supported the contention of plaintiff/respondent in his examination in chief, but this PW has

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also contradicted his examination in chief where in his cross examination he has admitted that the plaintiff/respondent and he are of the same age. In this respect, the scanning of record shows that the date of birth of the said PW is 1962 as per his CNIC available on file as Ex. PW 2/1 while as per record of defendants/appellants, the date of birth of the plaintiff/respondent is also 1962. In view of what is discussed above, as both the above-named PWs have contradicted their statements in examination in chief and indirectly made admissions of the version of defendants/appellants; therefore, the oral evidence produced by plaintiff/respondent cannot be relied upon in support of the contention of plaintiff/respondent.

So far documentary evidence is concerned, PW-4, the Record Keeper has produced the service record of the plaintiff/respondent according to which the date of birth of the plaintiff/respondent is recorded as 07.03.1977 but as the entry of the date of birth of the plaintiff/respondent in his service record being made in 2006, is later in time as compared to the entry of the date of birth of the plaintiff/respondent in the record of defendants/appellants having been made in 2004 on the basis of MNIC issued to the plaintiff/respondent in 1981, therefore the entry of the date of birth of the plaintiff/respondent in his service record cannot be relied upon in absence of any corroborative evidence. Furthermore, it is evident from the MNIC Form produced by the defendants/appellants, the plaintiff/respondent has applied for MNIC in 1981 at the time when according to his alleged date of birth, the age of the plaintiff/respondent was about 04/05 years, which is not believable.

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(6). In view of what is discussed above, it is held that the plaintiff/respondent has failed to prove its case through any oral or documentary evidence and the learned trial court while passing the impugned judgement has failed to appreciate the evidence available on file in its true prospects; therefore, the impugned judgement and decree cannot be maintained in the eyes of law. Hence, upon the acceptance of the instant appeal, the impugned judgement/decreed dated 27.05.2022 passed by the court of learned Senior Civil Judge, Orakzai, is set aside and the suit of the plaintiff/respondent is dismissed with cost. Consign.

Pronounced:
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CERTIFICATE

Certified that this judgment consists of four (04) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 06.07.2022



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District Judge, Orakzai
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