

(19)

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

CIVIL APPEAL NO. : 5/13 OF 2022
DATE OF INSTITUTION : 12.05.2022
DATE OF DECISION : 25.05.2022

CHAIRMAN NADRA THROUGH SYSTEM ENGINEER DISTRICT
ORAKZAI

.....(APPELLANT)

-VERSUS-

DAOOD S/O LATIF KHAN, R/O BALYANAYI, DISTRICT ORAKZAI

.... (RESPONDENT)

Present: Syed Farhat Abbas, representative of appellant.
: Khursheed Alam Advocate for respondent.

JUDGEMENT
25.05.2022

Impugned herein is the judgment/decree dated 13.04.2022 of learned Senior Civil Judge, Orakzai passed in civil suit no. 77/1 dated: 21.12.2021 decided on 13.04.2022 vide which decree has been passed in favour of plaintiff/respondent.

- (2). In a suit before the trial court, the claim of the plaintiff/respondent is that his correct date of birth according to his Matric Certificate is 15.03.2006, that defendants/appellants in their record have incorrectly incorporated the date of birth of plaintiff/respondent as 21.09.2003.

The defendants/appellants were summoned who attended the court and contested the suit on various legal and factual grounds. Pleadings of the parties were culminated into following

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Issues;

1. Whether plaintiffs have got cause of actions?

2. Whether the correct date of birth of the plaintiff is "15.03.2006" while defendants have wrongly mentioned the date of birth of the plaintiff as 21.09.2003 in their record?
3. Whether plaintiff is entitled to the decree as prayed for?
4. Relief?

Parties were given opportunities to produce pro and contra evidence. Accordingly, plaintiff/respondent produced and examined Latif Khan, the father of plaintiff/respondent as PW-1, Manzoor Ahmad as PW-2 and the plaintiff himself as PW-3 and the case was fixed for evidence of defendants/appellants; however, the defendants/appellants failed to attend the court on date fixed, therefore, they were proceeded ex-parte. The learned trial court heard arguments and passed a decree in favour of plaintiff/respondent.

Defendants/appellants being aggrieved of the impugned judgment and decree filed the instant appeal.

- (3). I heard arguments heard and record perused.
- (4). It is evident from the record that as the defendants/appellants have attended the court, they have also submitted written statement and contested the suit on various factual grounds and the witnesses of the plaintiff/respondent have also been cross examined; therefore, in the course of evidence, the absence of the defendants/appellants from proceedings of the court on a single date cannot be termed as a wilful absence. Moreover, it is a well settled principle of law that cases should be decided on merits avoiding technicalities. Furthermore, the issue involved in the instant


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case is of technical nature involving question of the issuance of overseas CNIC to plaintiff/respondent and in these circumstances giving opportunity to the defendants/appellants to bring on file the relevant record would be more helpful to the court to arrive at the just conclusion of the case. When counsel for the plaintiff/respondent was confronted with the aforementioned situation, he conceded the point and raised no objection if the case is remanded bac to the learned trial court.

- (5). Hence, in view of what is discussed above, the impugned judgment/decree of the learned trial court dated 13.04.2022 is set aside. The case is remanded back to the learned trial court to provide a single opportunity to the defendants/appellants to produce their evidence and thereafter decide the case on the basis of merits. Parties are directed to appear before the learned trial court on date 31.05.2022. Record be returned forthwith with copy of this judgment while file of this court be consigned to record room.


Pronounced
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CERTIFICATE

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 25.05.2022


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District Judge, Orakzai
at Baber Mela

