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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-11/13 of 2022

Date of institution: 18.05.2022

Date of decision: 22.06.2022

Rahmat Ullah son of Naimat Shah, resident of Qaum Ali Khel, Tappa
Aimal Khan khel, Tehsil Upper, District Orakzai. (Appellant)

...Versus...

1. The Registrar General, NADRA, Islamabad.
2. Director General NADRA, KPK, Peshawar.
3. Assistant Director, NADRA, District Orakzai
4. The Principal Islamia Public School, Zargeri.
5. The Principal Al Qalam Public School, Zargari.
6. The Chairman, Board of Intermediate and Secondary Education Kohat.
7. The Secretary, Board of Intermediate and Secondary Education Kohat.

..... (Respondents)

**Appeal against Judgement, Decree and Order dated 19.04.2022 in Civil
Suit No. 74/1 of 2021.**

JUDGMENT

Instant Civil Appeal has been preferred by the appellant against the Judgment/Decree & Order dated 19.04.2022, passed by learned Civil Judge, Orakzai in Civil Suit bearing No.74/1 of 2021; whereby, the suit of plaintiff (appellant herein) with the title of Rehmat Ullah Vs NADRA etc. was dismissed.

2. The brief facts of the case are such that plaintiff Rehmat Ullah has brought suit for declaration-cum-perpetual and mandatory injunction against the defendants to the effect that his correct date of birth is 11.10.2003; whereas, defendants (respondents herein) have wrongly entered the same as

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11.10.2006 in the Computerized National Identity Card and school record. The suit was dismissed by the learned Trial Judge vide Judgement and Decree dated 19.04.2022. Feeling aggrieved, the appellant/plaintiff has presented instant civil appeal, which is under consideration.

3. The respondents/defendants were summoned out of whom defendants (respondents herein) No.1 to 3 through their representative Syed Farhat Abbas and defendants No. 06 & 07 appeared through their legal advisor Mr. Shaheen Advocate who contested the suit by filing written statement while defendants No. 04 & 05 were failed to appear before the Court; hence, were proceeded ex-parte. The learned trial court framed the following issues from divergent pleadings of the parties.

ISSUES:

- i. *Whether plaintiff has got a cause of action?*
- ii. *Whether the correct date of birth of the plaintiff is "11.10.2003? While defendants have wrongly mentioned the date of birth of the plaintiff as 11.10.2006 in their record?*
- iii. *Whether the plaintiff is entitled to the decree as prayed for?*
- iv. *Relief*

4. After framing of issues, the parties were given full opportunity to produce their respective pro & contra evidence in support of their claim. Accordingly, plaintiff himself appeared and recorded his statement as PW-1 and produced his father Naimat Shah as PW-2. His brother namely Abdul Wakeel was examined as PW-3 while school record keeper namely Khanwada deposed as PW-4. On turn, the defendants have produced record keeper NADRA Orakzai as DW-1 and Shaheen Muhammad being legal advisor of BISEK as DW-2. Both sets of defendants had closed their evidence and after hearing the arguments of the learned counsel for the

parties, the learned Trial Court had dismissed the suit of the plaintiff vide impugned Judgment & decree dated 19.04.2022. Feeling aggrieved, the appellant has preferred instant appeal, which was contested by the defendants/respondents.

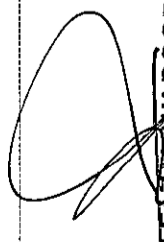
5. Mr. Noor Kareem Orakzai Advocate while representing appellant argued that the impugned judgement is result of misreading and non-reading of record available on file which is passed in this regard of law and facts of the case. Acceptance the appeal followed by grant of decree has been prayed for.

6. Syed Farhat Abbas being representative of NADRA (respondents' No. 1 to 3) was 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. Mr. Shaheen Muhammad Advocate representing respondents' No. 4 to 7 stated that their record is based on input of the plaintiff which is consistent and thus plea of granting decree was rightly declined by Hon'ble the Trial Court.

8. The matter agitated in appeal is being determined on the basis of memorandum of appeal, the arguments and record in the following terms as refusing declaration of the date of birth as 11-10-2003 was illegal and based on improper application of law and non-reading of evidence, is point for determination in appeal.

9. It is the main contention of the appellant/plaintiff that his correct date of birth is 11-10-2003 that has wrongly been recorded as 11-10-2006. Plaintiff appeared as PW-1 and stated that the recorded date of birth is not actual and real date of birth. He produced diary of his father Mark-A which is consisting upon eighteen pages where all the details of the property,


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business, debts, date of birth of all his siblings have been recorded by his father in different dates. The date of birth of the plaintiff has been recorded as 11-10-2003 in the list of his siblings available on Page No.2 of Mark-A. The first entry in such document is that of Abdul Wakeel entered in 1997 and last entry is that of Afia Bibi made in 2005. This document is carrying all the details of important events and maintained for decades by the father of plaintiff which is in consonance with the family tree presented by the defendants as Ex.DW-1/2. This document has also been produced from proper custody; that too, without objection on part of defendants. The date of birth is obviously a family matter and the diary maintained for decades has completely been ignored by the learned Trial Court while deciding the case. This is further been verified by the statement by father recorded as PW-2 and the statement of brother as PW-3. In such like family matters, both the statements are having good evidentiary value that cannot be deprecated marginally. The plaintiff has also moved the Court with application of constitution of Medical Board with the object of determination of accurate age of the plaintiff which was deferred for disposal to the conclusion of trial but was not decided. This shows the clean hand of the plaintiff in approaching the Court. The evidence so produced by the plaintiff has successfully established the preponderance of probability in line with Article-117 of the Qanoon-e-Shahadat Order, 1984. The burden is therefore shifted to the defendants to rebut the probability so establish and to prove the specific plea taken in defense.


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10. Defendant produced processing form and family tree of plaintiff as Ex.DW-1/1 to Ex.DW-1/2. Representative of NADRA is the sole witness of the defendants as rest of the defendants has also relied on such evidence in the statement recorded as DW-2. The family tree is in line with the Mark-A

to the extent of all siblings except plaintiff. DW has categorically admitted the fact that if the proposed and agitated date of birth of the plaintiff is allowed, no adverse effect or technical defect in shape of unnatural gap etc. is expected.

11. Another area that has been focused in the pleadings, evidence and arguments by defendants/respondents is limitation. The plaintiff has applied for CNIC for the first time in 2020 which has been issued in the same year. Similarly, the plaintiff has passed SSC examination in year 2021; whereas, date of institution of the case is 06-12-2021 while law provides span of six years for suit of declaration. Therefore, the question of limitation is out of question at all and the objection so raised is mechanically inserted.

12. For what has been discussed above, the appeal in hand is accepted; the impugned Judgment, Order and Decree dated 19-04-2022 is set aside; consequently, suit of the appellant (plaintiff) stands decreed as prayed for. Cost shall follow the events.

13. Requisitioned record be returned back with the copy of this Judgment; 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
22.06.2022



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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