

64

IN THE COURT OF ZAHIR KHAN,
Civil Judge-I, Kalaya, Orakzai.

Suit No.....12/1 Neem OF 2019.
Date of Original Institution.....19.12.2019.
Date of Restoration.....03.10.2022.
Date of decision.....18.10.2022.
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Zarmat Khan S/O Abdul Saeed Shah, R/O Qaum Bezote, Tappa Qambar
Khel, Village Star Bezote, Tehsil Lower, District Orakzai.
..... (Plaintiff)

Versus

1. Chairman NADRA, Islamabad.
2. Director General NADRA, KPK, Hayatabad, Peshawar.
3. Assistant Director, NADRA, District Orakzai.


..... (Defendants)

SUIT FOR DECLARATION & PERMANENT INJUNCTION.

JUDGEMENT
18.10.2022

Through this judgement, I am going to dispose of the instant suit filed by plaintiff namely Zarmat Khan against the defendants Chairman NADRA, Islamabad and two others for declaration and permanent injunction.

Brief facts in the backdrop are that plaintiff has filed the instant suit against the defendants for declaration and permanent injunction to the effect that as per middle school certificate, true and correct date of birth of plaintiff is 03.05.1999, however, defendants have incorrectly entered date of birth of plaintiff as 01.01.1990 which is wrong, illegal and liable to be


ZAHIR KHAN
Civil Judge-I
Kalaya Orakzai
18/10/22

rectified. That defendants were asked time and again to rectify date of birth of plaintiff but in vain hence, the present suit.

After institution of the suit, defendants were summoned, who marked their attendance through representative and contested the suit by filing authority letter and written statement. In the written statement, the defendants have raised several legal and factual objections.


From divergent pleadings of the parties, the followings issues were framed for adjudication of real controversy between the parties by learned predecessor of the court.

ISSUES

1. Whether plaintiff has got cause of action? OPP
2. Whether suit of plaintiff is within time? OPP
3. Whether correct date of birth of plaintiff is 03.05.1999 while it has been wrongly entered in his CNIC as 01.01.1990? OPP
4. Whether plaintiff is entitled to the decree as prayed for? OPP
5. Relief?

Upon submission of list of witnesses, both the parties on being provided with an opportunity to adduce their desired evidence, the parties produced their respective evidence.

During course of recording evidence, plaintiff produced two witnesses in support of his claim while defendants produced one witness in their defence.


ZAHIR KHAN
Civil Judge-III
Kalaya Orakzai

18/10/02


Zareef Khan, uncle of plaintiff was examined as PW-01 on 13.01.2021. Copy of his CNIC is Ex. PW-1/1. He supported plea of plaintiff.

Plaintiff himself appeared and deposed as PW-02. He reiterated the averments of plaint. Copy of his Matric Detailed Marks Certificate is Ex. PW-2/1 and copy of his CNIC is Ex. PW-2/2. He lastly requested for decree of suit against the defendants as prayed for. Thereafter, evidence of plaintiff was closed.

Irfan Hussain (Representative of NADRA, Orakzai) appeared as DW-01. He produced Family Tree and RTS data which are Ex. DW-1/1 and Ex. DW-1/2. He stated that plaintiff has been issued CNIC as per information provided by plaintiff and that he has got no cause of action and lastly requested for dismissal of suit. Thereafter, evidence of defendants was closed.

Principal Government High School, Khwa, Stori Khel was summoned as CW. Resultantly, Inayat Ullah Khan, Principal Government High School, Khwa, Stori Khel appeared and deposed as CW-01. He produced admission and withdrawal register. He stated that as per admission and withdrawal register, there is no record available in the name of plaintiff. He further stated that the certificate placed on file has not been issued by his school. Extract of admission and withdrawal register is Ex. CW-1/1. Copy of his CNIC is Ex. CW-1/2.

Opportunity of cross examination of CW was given to the parties and CW was cross examined accordingly.


ZAHIR KHAN
Civil Judge/Judicial Officer
Kalaya Orakzai

18/10/22

After completion of evidence, arguments of the learned counsel for the parties were heard and record of the case file was gone through with their valuable assistance.

The above discussion boils down to my following issue-wise findings.


ISSUE NO.2:

Plaintiff has been issued CNIC by defendants on **17.02.2009** with expiry date of 31.01.2020 while suit in hand was filed on **19.12.2019**. Every wrong entry will accrue fresh cause of action. Period of limitation for filing declaratory suit under Article 120 of Limitation Act, is six years therefore, suit of plaintiff is held to be within time. Issue decided in affirmative.

ISSUE NO.03.

Claim of plaintiff is that his true and correct date of birth is **03.05.1999** but defendant have incorrectly and wrongly recorded the same as **01.01.1990** in his CNIC which is wrong, illegal and ineffective upon the rights of plaintiff and liable to be rectified. Burdon of proof was on plaintiff to establish that his true and correct date of birth is **03.05.1999** instead of **01.01.1990**. Plaintiff has placed reliance on Matric DMC exhibited as Ex-PW-2/1.

As per Ex. PW-2/1, plaintiff appeared in Secondary School Examination, Session 2021 (annual) as private candidate. Record keeper of BISE, Kohat was not produced as witness during course of trial. Mere exhibition of a document does not mean that the document is proved. Ex.


ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai


18/10/22

PW-2/1 cannot safely be relied upon. Principal, Government High School, Khwa, Stori Khel was summoned as CW. He appeared and produced the relevant record as Ex. CW-1/1. He stated that plaintiff has no record in the said school and that the school certificate annexed with the plaint has not been issued by the said school. He further stated that the school leaving certificate, annexed with the plaint has not been attested by him or by any other official of the school. As per school leaving certificate, admission number of plaintiff is 1532 while as per Ex. CW-1/1, the last student admitted in middle section on 10.09.2022 shows admission number as 1176. Plea of plaintiff is not supported by Ex. CW-1/1. As per Ex. DW-1/1, plaintiff was first issued CNIC on 17.02.2009 and he received his CNIC from defendants without any objection on date of birth recorded therein. Furthermore, none from the parents, brothers and sisters appeared before the court to support plea of plaintiff. Oral evidence is also insufficient to prove claim of plaintiff.

Keeping in view the above discussion, documentary as well as oral evidence available on file, issue No. 3 is decided in negative and against the plaintiff.

ISSUES NO.1 & 4.

In the light of foregoing discussion, it is held that plaintiff failed to prove his claim through cogent, convincing and reliable documentary and oral evidence; therefore, he has got no cause of action and he is not entitled to the decree, as prayed for. Both these issues are decided in negative and against the plaintiff.


ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai
18/10/22

697

RELIEF.

Crux of my issue wise discussion is that as plaintiff failed to prove his claim through cogent, convincing and reliable documentary and oral evidence, therefore, suit of the plaintiff is hereby dismissed with the cost of Rs. 15000/-.

File be consigned to record room after its necessary completion and compilation.

ANNOUNCED
18.10.2022



Zahir Khan
Civil Judge-I, Kalaya,
District Orakzai

CERTIFICATE

It is certified that this judgment consists of **06** pages. Each page has been dictated, read, corrected and signed by me.



Zahir Khan
Civil Judge-I, Kalaya,
District Orakzai