

(25)

IN THE COURT OF REHMAT ULLAH WAZIR,
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Civil Suit No. 32/1 (neem) of 2022
Date of Original Institution: 30.05.2022
Date of Restoration 15.09.2022
Date of Decision: 10.11.2022

**1. Mian Khel s/o Zari Bat Khan, R/O Qoum Mandra Khel,
Lagharnay, Tehsil Lower, District Orakzai.**

(Plaintiff)

VERSUS

- 1. Chairman NADRA, Islamabad, Pakistan.**
- 2. Director General NADRA, KPK, Peshawar.**
- 3. Assistant Director, NADRA, District Orakzai.**

(Defendants)

**SUIT FOR DECLARATION-CUM-PERPETUAL AND
MANDATORY INJUNCTION**

JUDGEMENT:

1. Plaintiff Mian Khel has brought the instant suit for declaration-cum-permanent and mandatory injunction against the defendants against the defendants to the effect that the correct date of birth of the plaintiff is 01.01.1965 according to his Service Record, whereas, defendants have wrongly entered the same as 1961 in their record, which is wrong and ineffective upon the rights of the plaintiff and is liable to correction. That the defendants were asked time and again for correction of date of birth of the plaintiff but they refused to do so, hence the present suit;

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2. Defendants were summoned, who appeared before the court through their representative and contested the suit by filing their written statement.

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

Issues:

1. *Whether the plaintiff has got cause of action?*
2. *Whether the plaintiff is estopped to sue?*
3. *Whether the suit of the plaintiff is time barred?*
4. *Whether the correct date of birth of the plaintiff is 01.01.1965 while defendants have wrongly mentioned the same as 1961 in their record?*
5. *Whether the plaintiff is entitled to the decree as prayed for?*
6. *Relief?*

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

Issue wise findings of this court are as under: -

Issue No. 02:

The defendants in their written statement raised the objection that the plaintiff is estopped to sue but later on failed to prove the same, hence, the issue is decided in negative.

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Issues No. 03:

The representative of defendants in his written statement raised his objection that suit of the plaintiff is time barred but I am 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 but the aforesaid Limitation Act, 1908 is extended to the erstwhile FATA on 31/05/2018 through the 25th constitutional amendment and the same has become operational from the aforesaid date while the instant suit has been filed on **30.05.2022**. Thus, the same is well within time. The issue is decided in negative.

Issue No. 04:

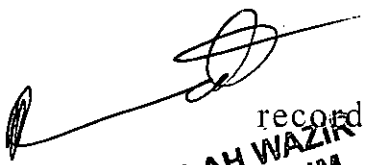
4. The plaintiff alleged in his plaint that correct date of birth of the plaintiff is 01.01.1965 according to his Service Record, whereas, defendants have wrongly entered the same as 1961 in their record, which is wrong and ineffective upon the rights of the plaintiff and is liable to correction. That the defendants were asked time and again for correction of date of birth of the plaintiff but they refused to do so, hence the present suit;

Plaintiff in support of his contention produced witnesses, in whom the one Mr. Atif Ullah, record keeper of

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Police Department, District Orakzai, appeared as PW-01 and stated that the correct date of birth of the plaintiff according to Service Book record and Medical Record is 1965 and produced the Service Book and Medical Certificate of the plaintiff, which are Ex.PW-1/1 and Ex.PW-1/2 respectively. Further, Mr. Mian Khel, the plaintiff himself appeared as PW-02 and narrated the same story as in the plaint and produced his own CNIC which is Ex.PW-2/1. Further, Malak Rustam Khan, brother of the plaintiff appeared as PW-03 and supported the stance of the plaintiff by narrating the same story as in the plaint and produced his CNIC, the copy of which is Ex.PW-3/1. All these witnesses have been cross-examined but nothing tangible have been extracted out of them during cross-examination.

The defendants produced only one witness as the record keeper of NADRA, Orakzai appeared as DW-01, who produced the Family Tree and CNIC Processing Form of the plaintiff which are Ex.DW-1/1 and Ex.DW-1/2 respectively and according to these, the date of birth of the plaintiff is 1961, but admitted in his cross examination that the plaintiff is mentioned as illiterate according to their record and admitted that the Family Tree of the plaintiff will not be


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effected if his date of birth is changed to 1965.

Arguments heard and record perused.

After hearing of arguments and perusal of record I am of the opinion that the plaintiff established his case through oral and documentary evidence. Also, the plaintiff is not changing his date of birth in his service record which would have been against the terms and conditions of service and which might have affected the rights of any third person. Also the defendants have not produced any solid piece of evidence to counter the claim of the plaintiff; therefore, the issue is decided in positive.

Issue No. 01 & 05:

Both these issues are interlinked, hence, taken together for discussion.

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

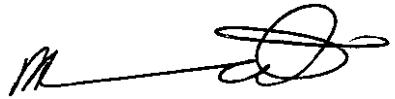
RELIEF:

As sequel to my above issue wise findings, the suit of the plaintiff is hereby **decreed as prayed for with costs.**


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

Announced
10.11.2022


(Rehmat Ullah Wazir)
Senior Civil Judge,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this judgment of mine consists of six (06) pages, each has been checked, corrected where necessary and signed by me.


(Rehmat Ullah Wazir)
Senior Civil Judge,
Orakzai (at Baber Mela)