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IN THE COURT OF SHABEER AHMAD,
CIVIL JUDGE-II, TEHSIL COURTS, KALAYA, ORAKZAI

Civil Suit No. 147/1 of 2022
Date of Original Institution: 29.10.2022
Date of Decision: 16.11.2022

Gulmin Khan son of Samin Ali, resident of Qaum Mani Khel,
Tapa Sabzi Khel, Kalaya, Tehsil Lower, District Orakzai.
.....(Plaintiff)

VERSUS

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

.....(Defendants)

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

JUDGMENT

1. Brief facts of the case in hand are that the plaintiff **Gulmin Khan son of Samin Ali** has brought the instant suit for declaration, permanent and mandatory injunction against the defendants, referred hereinabove, seeking declaration therein that correct date of birth of plaintiff is **01.01.1985**, correct father name is **Samin Ali** and correct mother name is **Wahida Jan** while defendants have wrongly entered date of birth of plaintiff as 1978, father name as Samin Khan and mother name as Bisma Jan in their record, which are wrong, ineffective upon the right of the plaintiff and liable to correction. That the defendants were asked time and again to do the aforesaid correction but they refused, hence, the present suit;

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- 2. Defendants were summoned, they appeared through their representative and filed written statement whereby they objected the suit on factual and legal grounds.
- 3. Divergent pleadings of the parties were reduced into the following issues;

Issues:

- 1. Whether the plaintiff has got a cause of action?
- 2. Whether the plaintiff is estopped to sue?
- 3. Whether the suit of the plaintiff is within time? OPD
- 4. Whether the correct date of birth of the plaintiff is **01.01.1985**, correct father name is **Samin Ali** and correct mother name is **Wahida Jan** while defendants have wrongly entered the date of birth of the plaintiff as 1978, father name as Samin Khan and mother name is Bisma Jan in his CNIC? OPP
- 5. Whether the plaintiff is entitled to the decree as prayed for?
- 6. Relief?

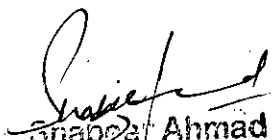
Issue wise findings of this court are as under: -

Issue No. 02:

Burden of proof regarding this issue was on defendants. Estoppel needs cogent, convincing and reliable evidence which is lacking on part of defendants, therefore, the issue is decided in negative and against the defendants.

Issue No. 03:

The defendants in their written statements raised their objection that suit of the plaintiffs is time barred but I am the opinion that as per Article 120 of the Limitation

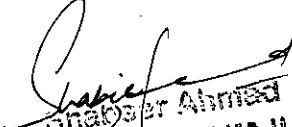

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Act, 1908 there is a period of 06 years for the institution of such like suits but the aforesaid Limitation Act, 1908 is extended to the erstwhile FATA on 31/05/2018 through the 25th constitutional amendment and the same has become operational from the aforesaid date while the instant suit has been filed on 29.10.2022. Thus, the same is well within time. The issue is decided in positive.

Issue No. 04:

The plaintiff alleged in his plaint that the correct date of birth of the plaintiff is **01.01.1985**, correct father name is **Samin Ali** and correct mother name is **Wahida Jan**, while defendants have wrongly entered the date of birth of plaintiff as 1978, father name as Samin Khan and mother name as Bisma Jan in his CNIC which are wrong, ineffective upon the right of the plaintiff and liable to be corrected.

The plaintiff produced witnesses in whom Mr. Gulmin Khan son of Samin Ali, plaintiff himself appeared as PW-01. He stated that his correct date of birth is **01.01.1985**, correct father name is **Samin Ali** and correct mother name is **Wahida Jan** while defendants have wrongly entered the date of birth of plaintiff as 1978, father name as Samin Khan and mother name as Bisma Jan in his CNIC. He further stated that his mother date of birth is 01.01.1968 in the defendants


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record while his date of birth is 1978 and due to which there comes an unnatural gap of 10 years between the plaintiff and his mother which is against the SOP of NADRA. He produced his CNIC, his mother CNIC and his father CNIC which are Ex. PW-1/1 to Ex. PW-1/3 respectively. During cross examination he stated that he is elder among his brothers. He further stated in his cross examination that he does not know that when he made 1st CNIC. He further stated that his old MNIC is not available and might be misplaced. Muhammad Nawaz son of Ali Raaz, the villager of the plaintiff, appeared as PW-02, who produced his CNIC which is Ex. PW-2/1 and further fully supported the stance of the plaintiff as in the plaint. During cross examination he stated that plaintiff is elder amongst his brothers but one sister is elder than plaintiff. He further stated that mother name of plaintiff is **Wahida jan** and Baisam is the step mother of the plaintiff. Further Mr. Jamal Hussain son of Muhammad Ameer, relative of the plaintiff appeared and deposed as PW-03. He produced his CNIC which is Ex. PW-3/1. He supported the stance of the plaintiff as in the plaintiff. During cross examination he stated that plaintiff is his closed relative and that he is married and has one little daughter. That the correct father name is **Samin Ali** and his age is about 35/36 years.

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In order to counter the claim of the plaintiff, the defendants produced only one witness, the representative of the defendants who appeared as DW-1, who produced Family Tree of the plaintiff which is Ex. DW-1/1 and RTS Form of plaintiff which is Ex. DW-1/2. He stated that plaintiff has made his 1st CNIC on 14.04.2004 and before that he also made MNIC bearing no. 147-79107204. But during cross examination, he stated that according to NADRA SOP there must be a gap of 17 years between mother and his son. He further stated that the plaintiff is illiterate. He further stated that they will have no objection if date of birth and other entry of the plaintiff is corrected.

Arguments heard and record perused.

Perusal of record reveals that the plaintiff mainly rely on his mother CNIC wherein the date of birth of the mother of the plaintiff is 1968 and according to which plaintiff has gap of 10 years with his mother which is un-natural and against the SOP of NADRA. The aforesaid document is public document and presumption of truth is attached to it. Plaintiff also produced oral evidence which fully supported the claim of the plaintiff. Thus, the plaintiff established his claim through cogent and reliable evidence, therefore, the issue is decided in positive.

Issue No. 01 &02:

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


As sequel to my findings on issue No. 4, the plaintiff has got a cause of action and therefore entitled to the decree as prayed for. Thus, 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. Defendants are directed to correct the date of birth of the plaintiff as **01.01.1985**, correct father name as **Samin Ali** and correct mother name as **Wahida Jan** in their record and in the CNIC of the plaintiff. This decree shall not effect the right of other person(s) or service record if any.

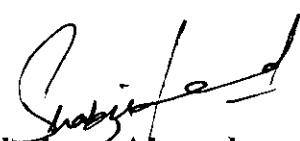
File be consigned to the District Record Room, Orakzai after its completion and compilation.

Announced
16.11.2022


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CERTIFICATE

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


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Tehsil Court, Kalaya, Orakzai