

**IN THE COURT OF ZAHIR KHAN
CIVIL JUDGE-I, TEHSIL KALAYA, ORAKZAI**

Suit No.....104/1 of 2022.

Date of Institution.....12.10.2022.

Date of Decision.....10.11.2022.

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Zalay Khan S/O Anar Khan, R/O Qaum Mishti, Tappa Darwi Khel,
Mishti Bazar, Tehsil Lower, District Orakzai.

.....(Plaintiff)

VERSUS

- 1. Chairman NADRA, Islamabad.
- 2. Director General NADRA, Khyber Pakhtunkhwa, Peshawar.
- 3. Assistant Director NADRA, Orakzai.


..... (Defendants)

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SUIT FOR DECLARATION & PERMANENT INJUNCTION
=====

JUDGEMENT
10.11.2022

Through this judgement, I am going to dispose of the instant suit filed by plaintiff namely Zalay Khan against 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 true and correct date of birth of plaintiff is 01.01.1988, but defendants have incorrectly entered date of birth of plaintiff as 1984 which is wrong, illegal, ineffective upon the rights of plaintiff and liable to be rectified.


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That due to this wrong entry, there is unnatural age difference of about 14 years between plaintiff and his mother. 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.


From divergent pleadings of the parties, the following issues were framed for adjudication of real controversy between the parties.

ISSUES

1. Whether plaintiff has got cause of action? OPP
2. Whether suit is within time? OPP
3. Whether correct date of birth of plaintiff is 01.01.1988 instead of 1984? 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.

After the 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.


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During course of recording evidence, plaintiff produced two witnesses.

Plaintiff himself appeared and deposed as PW-01. Copy of his CNIC is Ex. PW-1/1. He reiterated the averments of plaint. Copy of mother's CNIC of plaintiff is Ex. PW-1/2. He lastly requested for decree of suit in his favour.

Rehmat Khan, brother of plaintiff appeared and deposed as PW-02. He supported the claim of plaintiff.


Thereafter, evidence of plaintiff was closed.

Irfan Hussain (Representative of NADRA, Orakzai) appeared as DW-01. He produced Family tree and RTS data of plaintiff 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.

My issue wise findings are as under: -

ISSUE NO.2:

Record shows that plaintiff was issued CNIC by defendants on 17.02.2003 with expiry date 31.01.2014 while suit in hand was filed on 12.10.2022. In plethora of judgements of the apex superior courts it is held that every wrong entry will accrue fresh cause of action. As period of limitation under Article 120 of



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Limitation Act is six years, therefore, suit of plaintiff is held to be within time. Issued decided in affirmative.

ISSUE NO.3:

Claim of plaintiff is that his true and correct date of birth is 01.01.1988 but defendants have incorrectly recorded the same as 1984 in their record, which is wrong, illegal, ineffective upon the rights of plaintiff and liable to be rectified. That due to this wrong entry, there is unnatural age difference of about 14 years between plaintiff and his mother.

Burdon of proof was on plaintiff to establish that his true and correct date of birth is 01.01.1988 instead of 1984. Plaintiff is alleging unrealistic age difference with his mother namely Hassan Bibi. Per Ex. PW-1/2, date of birth of mother of plaintiff is recorded as 01.01.1970 while date of birth of plaintiff per Ex. PW-1/1 is recorded as 01.01.1984. Admittedly, there is unnatural age difference of about 14 years between plaintiff and his mother but plaintiff failed to produce a single documentary proof which could show that his true and correct date of birth is 01.01.1988. No age assessment certificate/medical document is produced by plaintiff in support of his claim. As per Ex. DW-1/1 and Ex. DW-1/2, plaintiff has been issued CNIC on the basis of MNIC bearing No. 147-84-123001. Fourth and fifth digit of MNIC suggest year of birth of plaintiff which is 1984. CNIC of plaintiff was issued on 17.02.2003 with expiry date of 31.01.2014. CNIC of plaintiff was renewed on 20.07.2012 with expiry date of 20.07.2022. Each time


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plaintiff received CNIC from defendants without any objection on his date of birth. Furthermore, plaintiff in his cross examination admitted that he is a passport holder but neither that record was produced before the court nor passport office through official concerned has been arrayed as party to the suit.

Representative of defendant contended that modification of date of birth of plaintiff will disturb the family tree of plaintiff. If date of birth of plaintiff is modified from 01.01.1984 to 01.01.1988, it will result into unnatural age difference between plaintiff and his elder son. Date of birth of plaintiff is correctly recorded as 01.01.1984 in MNIC and CNIC of plaintiff by defendants. As far as unnatural age difference between plaintiff and his mother is concerned, mother of plaintiff may approach the authorities concerned or court for modification in her date of birth in order to avoid this unnatural age difference.

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.

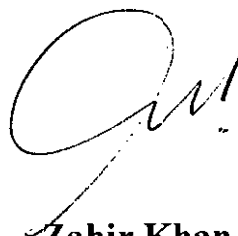

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RELIEF.

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. No order as to cost.

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

ANNOUNCED
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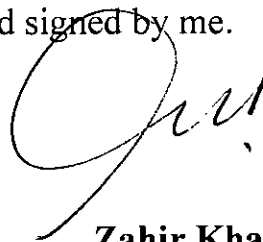


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CERTIFICATE

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



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