

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

Civil Suit No. 160/1 of 2022
Date of Original Institution: 15.11.2022
Date of Decision: 30.11.2022

Selab Khan son of Marwat Khan, resident of Qaum Utman Khel, Tapa Bazran Khel, Shangrrian, 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 **Selab Khan** 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 **01.01.2003**, while it has been wrongly entered as 01.01.1992. He also sought correction of father name as **Marwat Khan** and mother name as **Qabil Khela** while defendants have wrongly entered the same as Nokar Khan and Qabil Khela Bibi in their record, which are wrong, ineffective upon the rights of the plaintiff and liable to correction. That the defendants were asked

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time and again to do the aforesaid correction but they refused, hence, the present suit;

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?
4. Whether the correct date of birth of the plaintiff is **01.01.2003** while defendants have entered the same as 01.01.1992 and correct father name of plaintiff is **Marwat Khan** and correct mother name is **Qabil Khela** while defendants have wrongly entered the same as Nokar Khan and Qabil Khela Bibi in their record and in the CNIC of plaintiff?
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.

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Issue No. 03:

The defendants in their written statements raised their 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 15.11.2022. 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 01.01.2003 while defendants have wrongly entered the same as 01.01.1992, correct father name of plaintiff is **Marwat Khan** and correct mother name is **Qabil Khela** while defendants have wrongly entered the same as Nokar Khan and Qabil Khela Bibi in their record and in the CNIC of the plaintiff which are wrong, ineffective upon the right of the plaintiff and liable to be corrected.

The plaintiff produced witnesses in whom Mr. Selab Khan, the plaintiff himself, appeared as PW-01, who

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produced copy of his CNIC which is Ex. PW-1/1. He stated that his correct date of birth is **01.01.2003**, correct father name is **Marwat Khan** and correct mother name is **Qabil Khela**. He further stated that there comes an unnatural gap of 7 and 12 years with his parents which is against the SOP of NADRA. He further produced copies of his parents CNICs which are Ex. PW-1/2 & Ex. PW-1/3 respectively. He lastly requested for the decree of the suit as prayed for. During cross examination he stated that he is the student of Madrasa and he is Hafiz Quran. The one Nokar Khan is his father's cousin. He further stated in his cross examination that **Marwat Khan** is ^{his} ~~my~~ real father. Nama Khan son of Khalwat Khan, uncle of plaintiff, appeared as PW-02, who produced his CNIC which is Ex. PW-2/1. He supported the stance of the plaintiff. During cross examination nothing tangible extracted out of him.

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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 plaintiff which is Ex. DW-1/1 and Family Tree of father of plaintiff which is Ex. DW-1/2. According to the above documents date of birth of plaintiff is 01.01.1992, date of birth of his

father is 1980 and date of birth of his mother is 1985, according to which ^{there is an} unnatural gap of 07 and 12 years between plaintiff and his parents which is against the SOP of NADRA. He lastly requested for dismissal of the suit. During cross examination he admitted that there is unnatural gap of 07 years between plaintiff and his mother which is against the SOP of NADRA.

Arguments heard and record perused.

Perusal of record reveals that the plaintiff mainly relies on his parent CNICs, in which there is unnatural gap of 07 and 12 years between plaintiff and his parents. Further, plaintiff produced oral and documentary 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.

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Issue No. 01 & 05:

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

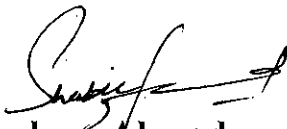
As sequel to my findings on issue No. 04 the plaintiff has got a cause of action and therefore entitled to the decree as prayed for. Thus, both these issues are decided in positive.

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 **01.01.2003**, correct father name as **Marwat Khan** and correct mother name as **Qabil Khela** in their record and in the CNIC of the plaintiff. This decree shall not effect to rights of other person or service record if any.

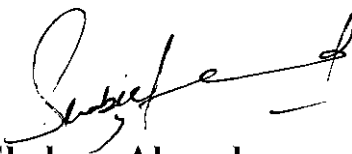
File be consigned to the District Record Room, Orakzai after its completion and compilation.

Announced
30.11.2022


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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.


Shabeer Ahmad
Civil Judge-II,
Tehsil Court, Kalaya, Orakzai