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

Civil Suit No.	155/1 of 2022
Date of Original Institution:	12.11.2022
Date of Decision:	07.12.2022

1. Iftikhar Hussain son of Arif Ullah and
2. Mst. Kashmeena wife of Arif Ullah, Both residents of Qaum Bar Muhammad Khel, Tapa Abdul Aziz Khel, Merazai, Tehsil Lower, District Orakzai.

.....(Plaintiffs)

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 plaintiffs have 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 No. 1 is **10.11.1981**, according to his Service Book and Medical Certificate while it has been wrongly entered as 01.01.1988 in his CNIC and that of plaintiff No. 2 is **01.01.1963** while it has been wrongly entered as 1979 in her CNIC by the defendants, which are wrong, ineffective upon the right of the plaintiffs 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 plaintiffs have got a cause of action?
2. Whether the plaintiffs are estopped to sue?
3. Whether the suit of the plaintiffs is within time?
4. Whether the correct date of birth of the plaintiff No. 1 is **10.11.1981** while it has been wrongly entered as 01.01.1988 in his CNIC and that of plaintiff No. 2 is **01.01.1963** while it has been wrongly entered as 1979 in her CNIC by defendants?
5. Whether the plaintiffs are entitled to the decree as prayed for?
6. Relief?

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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 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 **12.11.2022**. Thus, the same is well within time. The issue is decided in positive.

Issue No. 04:

The plaintiffs alleged in their plaint that the correct date of birth of the plaintiff No. 1 is **10.11.1981**, according to his Service Book and Medical Certificate while, defendants have wrongly entered the same as 01.01.1988 and that of plaintiff No. 2 is **01.01.1963,** while it has been wrongly entered as 1979 in her CNIC which are wrong, ineffective upon the right of the plaintiffs and liable to be corrected.

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The plaintiff produced witnesses in whom Mr. Iftikhar Hussain son of Arif Ullah, plaintiff No. 1 himself and as attorney for plaintiff No. 2, appeared and deposed as PW-01. He stated that his correct date

of birth is **10.11.1981** according to service record while it has been wrongly entered as 01.01.1988 by defendants. He produce his CNIC and his mother CNIC (plaintiff No. 2) which are Ex. PW-1/1 & Ex. PW-1/2 respectively. He further stated that correct date of birth of plaintiff No. 2 is **01.01.1963** while it has been wrongly entered as 1979 in her CNIC due to which there comes an unnatural gap of 09 years between plaintiff No. 1 and plaintiff No. 2 which is against SOP of NADRA. Special power of attorney is Ex. PW-1/3. He lastly requested for decree of the suit as prayed for. During cross examination he stated that he was recruited in 1999 on the post of Behshti. Mr. Hameed Khan son of Muhammad Khan, Record Keeper of Government Higher Secondary School Kalaya, appeared as PW-02. He produced copy of Service Book of plaintiff No. 1(original seen and returned), which is Ex. PW-2/1, wherein date of birth of plaintiff No. 1 is mentioned as **10.11.1981**. He further produced copy of Medical Certificate of plaintiff No. 1(original seen and returned), which is Ex. PW-2/2, wherein date of birth of plaintiff No. 1 is also mentioned as **10.11.1981**. Copy of CNIC of PW-02 is Ex. PW-2/3. During cross examination he stated

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that he is clerk at GHSS Kalaya and plaintiff No. 1 is posted as Behshti in GHSS Kalaya.

In order to counter the claim of the plaintiffs, the defendants produced only one witness, the representative of the defendants appeared as DW-1, who produced Family Trees of plaintiffs which are Ex. DW-1/1 & Ex. DW-1/2 respectively. According to these exhibits, the dates of birth of plaintiff No. 1 is 01.01.1988 and that of plaintiff No. 2 is 1979. He lastly requested for dismissal of the suit. During cross examination he admitted that plaintiff No.1 and plaintiff No. 2 are son and mother and according to NADRA SOP there must be a difference of 16 years between son and mother. Further in his cross examination he admitted that there is an unnatural gap of 09 years between plaintiff No. 1 and plaintiff No. 2 and stated that they will have no objection if dates of birth of the plaintiffs are changed,.

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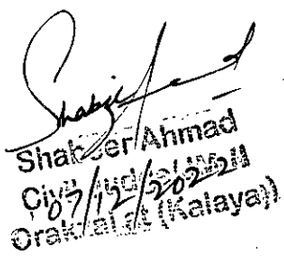
Perusal of record reveals that the plaintiff No. 1 mainly rely on his Service Book and Medical Certificate, in which correct date of birth of plaintiff No. 1 is mentioned as **10.11.1981** and plaintiff No. 2 rely on unnatural gap of 09 years between plaintiff No. 2 and her son. Service Record is a public document and presumption of truth is attached to it

unless rebutted. Further plaintiff No. 1 was recruited on the post of Behshti at GHSS Kalaya on 01.11.1999 which means that according to present CNIC he was recruited at the age of 11 years, which is not possible. Therefore, it is held that correct date of birth of plaintiff No. 1 is **10.11.1981**. Further there is an unnatural gap of 09 years between plaintiff No. 1 and his mother (plaintiff No. 2) which is against the SOP of NADRA and liable to be rectified.

On what has been discussed above, plaintiffs established their claim through cogent, convincing and reliable oral and documentary evidence, 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. 4, the plaintiffs have 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 plaintiffs is hereby decreed as prayed for. Defendants are directed to correct the dates of birth of the plaintiff No. 1 as **10.11.1981** and that of

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plaintiff No. 2 as **01.01.1963** in their record and in the CNICs of plaintiffs. This decree shall not effect the rights of other person or service record if any.

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

Announced
07.12.2022

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CERTIFICATE

Certified that this judgment consists of seven (**07**) pages, each has been checked, corrected where necessary and signed by me.

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Tehsil Courts, Kalaya, Orakzai