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IN THE COURT OF ABDUL BASIT
ADDITIONAL DISTRICT JUDGE-II, ORAKZAI

Civil Appeal No. 23/13 of 2024

Date of institution: 28.08.2024

Date of decision: 16.09.2024

Date of consignment:

Amin Khan son of Ameer Muhammad resident of Quom Uthman Khel Tappa Fateh Khan Khel, Tehsil & District, Orakzai (appellant/plaintiff)

Versus

Chairman Nadra, Islamabad and two others (respondents/defendants)

APPEAL U/S 96 CPC, 1908 AGAINST JUDGMENT,
DECREE AND ORDER OF LEARNED CIVIL JUDGE-I, KALAYA
ORAKZAI

JUDGMENT

Through this judgment I shall decide appeal preferred by appellant against respondents impugning herein the judgment, decree and order of the court of learned Civil Judge-I, Kalaya Orakzai dated 21.08.2024, whereby, he has dismissed the suit no. 28/1 of 2024 of the appellant.

Amin Khan, the appellant, brought a civil suit, wherein, contended that his correct date of birth is 05.05.2001 that is correctly entered in his school record; however, alleged that it is entered wrong by respondents in record with them as 01.01.1987, which is wrong, illegal, against the facts and inoperative upon his rights; that he has contacted respondents time and again for correction of his date of birth but they have refused the correction two months ago; therefore, appellant has prayed for declaration that his correct date of birth is 05.05.2001 coupled with prayer for permanent & mandatory injunctions so as to direct the respondents to make correction of the same in record with them.

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Respondents were summoned by the learned trial court. Respondents appeared through representative and filed joint written statement and raised therein various legal and factual objections, which were reduced into issues by the learned trial court as below;

1. *Whether the plaintiff has got cause of action? OPP*
 2. *Whether suit of the plaintiff is within time?*
 3. *Whether correct date of birth of plaintiff is 05.05.2001 and defendants have incorrectly and wrongly entered the same as 01.01.1987 in their official record? OPP*
 4. *Whether plaintiff is entitled to the decree as prayed for? OPP*
- Relief?*

Parties were offered opportunity to produce evidence in support of their pleas. Resultantly, they had recorded statements of as many witnesses as they wished. On conclusion of evidence, arguments of learned counsel for parties were heard and learned trial court dismissed the suit of appellant.

The appellant feeling aggrieved impugned the order through this appeal with request to set-aside the judgment, decree and order of learned trial court being wrong, illegal, against the law, result of misreading and non-reading of evidence. The learned counsel for appellant argued that the learned trial court has ignored the school record, which as per settled law is more authentic document than Nadra record being older in time. He has also referred the medical certificate obtained from a doctor; however, admitted that he had not submitted/produced the same before the learned trial court at the time of recording of evidence being not demanded. Finally, he argued that precious rights of the appellant are at stake; therefore, prayed to set-aside the impugned order and remand the case with permission to adduce the additional evidence.

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Respondents appeared and contested the appeal, refuted arguments of learned counsel for appellant and prayed for dismissal of appeal and to uphold the order of learned trial court.

Arguments heard and record perused.

I have gone through the evidence led by parties, records placed on file and conclude that appellant/plaintiff contended that his correct date of birth is 05.05.2001, which is correctly entered in his school record but that has been entered wrong by respondents/defendants in records with them. To prove his plea, he mainly relied on the statement of his cousin and appeared himself in the witness box as PW-1, wherein, supported his claim by producing detailed marks certificate, Exh.PW 1/1, which though supports the claim of appellant; however, this document was not relied by learned trial court being not produced from concerned office. Admittedly, appellant was burdened to prove his case by producing complete evidence on record leaving no stone unturned but he has badly failed to shift the burden and the learned trial court on its own made effort to summon the principal of the concerned school, where the appellant had allegedly attained his primary education; however, the principal of the school reported that the appellant had never been remained student in the said school, thus, no record of the appellant was found there. Contention of appellant that the school record of said school had destroyed/burnt due to operation in 2008, which appeals to mind; therefore, learned trial court was supposed to summon the principal of said school in person and record his statement by affording the appellant an opportunity to cross-examine him to unearth the true facts.

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Besides, the learned trial court in his detailed judgment justifiably hold that appellant has not produced the school leaving certificate; did not record statements of his father, elder brothers or uncles; did not produce

other documentary evidence including the Nadra record/family tree of his siblings with their identity cards. Similarly, the observation of learned trial court that the appellant did not appear him to be a person of 23 years of age cannot be ruled out because the facial features and body structure speaks volume about the age of a person but in my view, the learned trial court should have given the appellant a chance to do away with the lacunae by offering him an opportunity to produce medical evidence because personal observation does not carry weight unless supported by an expert opinion especially when the precious rights of appellant are attached with it and he cannot be deprived from the same if he be given full opportunity.

More so, non-production of documents by unauthorized person alone was not sufficient to knock out the claim of appellant as his valuable rights were attached with it, which may affect his studies, career and future too. As the school record is very reliable and authentic document especially for verification of one's date of birth; therefore, the learned trial court before disbelieving those documents in the cursory manner, should have exercised its inherent powers and asked the appellant to produce the record keeper of school and education department/or officer from the concerned office as his witnesses in support of his claim, where after, it would have become more convenient for the learned trial court to pass a judgment based on solid reasoning by checking the veracity of those documents.

Additionally, learned trial court could have also asked respondents/defendants to produce the original Nadra application form/record etc. on strength of which they had entered particulars furnished by the appellant in record with them and issued the computerized national identity card to appellant because endorsement thereat would further help the court to reach to logical conclusion in corroboration with other documents.

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Similarly, the learned trial court may direct appellant for his medical examination and conducting the ossification test for determination of his age from standing medical board/government authorized hospital & submission of the report duly signed by the medical board/authorized doctors, which will further help the court to reach to just conclusion of the case.

In view of above facts and without touching the merits of the case, the appeal in hands is allowed, the impugned judgment, decree and order dated 21.08.2024 of the learned trial court is set-aside and by allowing the request of learned counsel for the appellant pertaining to permission to lead the additional evidence, the case in hands is remanded to the learned trial court with direction to offer opportunity to appellant to produce additional evidence in support of his case by producing his father, elder brothers, uncles, if any, with copies of their identity cards, as witnesses of the fact before him; to produce concerned custodians of the records of school and education department/office along with original records; to ask appellant/plaintiff to produce his passport for court perusal and if he has not made the passport, then, submit clearance certificate from Passport Department about fact that no passport had been issued in his name/against his computerized national identity card; to direct the respondents/defendants to bring attested copy of application form along with relevant data, if any, on strength of which they had entered particulars of appellant/plaintiff in the computerized national identity card of appellant; to summon the principal of Shaheen Islamia Public School and College Orakzai and record his statement as court witness and direct the appellant to appear before standing medical board/government authorized hospital for medical examination and ossification test for determination of his real age, hear the parties and decide the case afresh in accordance with law.

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Parties have to bear costs of their proceedings because none of them has specifically proved the cost incurred on the case. Parties present before the court are directed to appear before the Court of learned Civil Judge-I, Kalaya Orakzai on 19.09.2024.

The requisitioned record along with copy of this order sent to the learned trial court and file of this court consigned to record room after necessary completion and compilation.

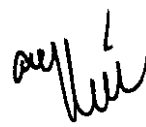


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CERTIFICATE

Certified that this judgment consists of six (06) pages, those are signed by me after necessary corrections.



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