

IN THE COURT OF FARMAN ULLAH,
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

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Civil Suit No. 262/1 of 2020
Date of Institution: 11/02/2020
Date of Decision: 22/09/2020

Qabil Asghar s/o Shekh Hassan

Section Ali Khel Sub Section Jasrat Khel village Chinar, Tehsil upper & District Orakzai..... (Plaintiff)

VERSUS

1. **Chairman, NADRA, Islamabad.**
2. **Director, General NADRA Hayatabad KP.**
3. **Assistant Director, Registration NADRA District Orakzai.**

(Defendants)

SUIT FOR DECLARATION, PERMANENT & MANDATORY INJUNCTION

JUDGEMENT:

22.09.2020

Brief facts of case in hand are that the plaintiff, **Qabil Asghar s/o Shekh Hassan**, has brought the instant suit for declaration, permanent and mandatory injunction against the defendants, referred hereinabove, seeking declaration, therein, that his correct date of birth is **06.01.1985** while defendants have wrongly mentioned his date of birth as **1975** in their record, which is incorrect and liable to be corrected. Hence, the present suit.

Defendants were summoned, who appeared through attorney namely Syed Farhat Abbas and submitted written statement, wherein they contested the suit of plaintiff on various grounds.

Divergent pleadings of the parties were reduced into the following issues;

Issues:

1. Whether plaintiff has got cause of action?
2. Whether suit of the plaintiff is within time?
3. Whether plaintiff is estopped to file instant suit?
4. Whether the correct date of birth of the plaintiff is **06.01.1985** whereas defendants have wrongly recorded the same in their record as **1975**?
5. Whether plaintiff is entitled to the decree as prayed for?
6. Relief?
7. Parties were provided opportunity to produce evidence in support of their respective contention, which they did. Plaintiff produced his witnesses as PW-1 to PW-2.
8. In rebuttal defendants produced their sole witness namely Syed Farhat Abbas, representative, as DW-1. He produced the registration record of the plaintiff and exhibited the same as Ex. DW-1/1 to Ex. DW-1/3.

After conclusion of the evidence arguments pro and contra heard. Case file is gone through.

10. My issues wise findings are as under:

Issue No. 4

Plaintiff contended in his plaint that his correct date of birth is **16.01.1985** but inadvertently his date of birth is erroneously recorded as **1975** in NADRA record. Hence, the record is liable to be corrected.

Plaintiff in support of his contention produced his attorney as PW-1, who repeated the contents of plaint in his examination in chief. He produced his CNIC as Ex.PW-1/1, plaintiff's CNIC as Ex.PW-1/2, birth certificate of the plaintiff as Ex.PW-1/3.

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During the cross-examination PW-1 stated that he has no knowledge about the issuance of manual card to the plaintiff. He further stated that he has also no knowledge about the school record of plaintiff.

PW-2, Hussain Asghar, stated in his examination in chief that he is elder brother of the plaintiff and correct date of birth of the plaintiff is 06.01.1985. He produced his CNIC as Ex.PW-2/1. PW-2. During the cross examination stated that plaintiff has obtained manual card. He also stated that Khadeja Bibi is his sister and she is older than plaintiff and her date of birth is of year 1984. However, the family tree of plaintiff produced by the defendants as Ex. DW-1/2 reveals the date of birth of Khadeja Bibi as 01.01.1985. So, the facts stated by the PW-2 regarding the date of birth of Khadeja Bibi (sister of plaintiff and PW-2) is negated by Ex. DW-1/2. Furthermore, plaintiff is claiming his correct age as 06.01.1985 through instant suit but as per Ex. DW-1/2 the age of his sister namely Khadeja Bibi is 01.01.1985. So, the difference between the age of plaintiff and her sister comes to be of 05 days, which is unnatural and such a difference itself not only shatter the testimony of PW-2 but also shatter the entire stance of the plaintiff in the instant suit. Being such a position the testimony of PW-2 cannot be held as credible and confidence inspiring. Record also shows that plaintiff applied for issuance of manual ID Card vide application form Ex. DW-1/3 in year 1993 and

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thus manual card was issued to him. Ex. DW-1/3 depicts that his date of birth was mentioned as 1975. Record also reflects that later on plaintiff also applied for issuance of CNIC in year 2005 through "Form-A" Ex. DW-1/1 and in the same form his date of birth was again also mentioned as 1975. Thus, CNIC was issued to the plaintiff in year 2005, wherein his date of birth was mentioned as 1975. Plaintiff has challenged the same through instant suit by claiming that his correct date of birth is 06.01.1985. If the correct date of birth of plaintiff is 06.01.1985 then how he applied for issuance of man ID card in year 1993 as at that time his age if calculated is hardly of 08 years? It does not appeal to common sense and prudent mind that a person can apply for ID card at the age of 08 years. Even the photograph of plaintiff on his form applied for issuance of manual card Ex. DW-1/3 does not show that plaintiff is of tender age rather it shows a picture of grown up person and this fact further negates the entire claim of plaintiff in the instant suit. Though, PW-1 has produced date of birth certificate of plaintiff as Ex. PW-1/3 yet failed to produce custodian of this record and the relevant register. Even Ex. DW-1/3 clearly show entry of date of birth of plaintiff is not normal entry rather such entry was made in year 2015. Being such a position the Ex. PW-1/3 is not credible document regarding the age of plaintiff. So, the available record does not establish the fact that the correct date of birth of the plaintiff is 06.01.1985 rather the

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available record negates the stance of plaintiff. Hence, issue No.4 is decided in negative.

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Issue No. 02:

Perusal of the Ex. DW-1/3 manifests that plaintiff applied for issuance of manual ID card in year 1993 and the same was issued to him in the same year. Ex. DW-1/1 reflects that later on plaintiff applied for CNIC in year 2005 and thus CNIC was issued to the plaintiff on 18.11.2005. The year of birth in both the ID card was recorded as 1975. But plaintiff has challenged his date of birth recorded in his ID card through instant suit on 11.02.2020. Period provided for declaratory suit under Article-120 of Limitation Act, is 06 years while the suit of plaintiff has been filed beyond the said period. Hence, suit of plaintiff is badly time barred. Issue is decided in negative.

Issue No. 03:

Record shows that plaintiff applied for ID card in year 1993 through Form-A Ex. DW-1/3, wherein his date of birth was mentioned 1975. The same form was duly thumb impressed by the plaintiff as well as attested by elder of locality. Later on, plaintiff applied for issuance of CNIC in year 2005 through form-A, wherein the date of birth of plaintiff was again mentioned as 1975 and plaintiff did not object his date of birth recorded in his manual ID card as well as in CNIC for more than 25 years. So, if the plaintiff has any right for correction of his

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date of birth recorded in his ID cards then due to his own conduct he is estopped to file instant suit for correction of his date of birth. Hence, the issue is decided in positive.

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Issue No. 01 & 5:

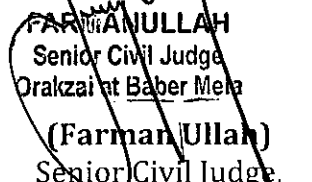
In the light of above issue wise discussion plaintiff has got neither any cause of action to file instant suit nor he is entitled to a decree as prayed for. Hence, both the issues are decided in negative.

Relief:

As sequel to above discussion it is held that plaintiff failed to prove his stance through cogent, reliable and confidence inspiring evidence and plaintiff is also precluded to file instant suit due to his own conduct. Similarly, the suit of the plaintiff is also badly time barred. Hence, the suit of plaintiff is dismissed. No order as to costs.

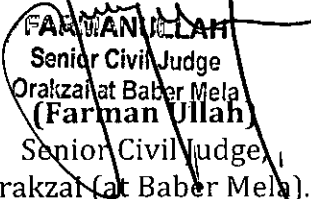
11. File be consigned to the record room after its completion and compilation.

Announced
22/09/2020


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CERTIFICATE

Certified that this judgment of mine consists of 06 (six) pages, each page has been check--ed, corrected where necessary and signed by me.


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(Farman Ullah)
Senior Civil Judge,
Orakzai (at Baber Mela).