

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A.No.296 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on CMA-2261/2017
2. For hearing of main case.

22.11.2023

Mr. Aghis-u-Salam Tahirzada, advocate for appellant.

This Revision is pending since 2017 and even notice has not been sought / issued till date.

Briefly stated, the applicant had sought for change of his birth date and filed F.C.Suit No.319 of 2016 before the 1st. Senior Civil Judge, Tando Allahyar, in such regard; the same was dismissed vide judgment dated 30.01.2017. The operative part of the judgment is reproduced herein below:

"It is case of plaintiff that his actual date of birth is 03.05.1986 but NADRA authorities have wrongly written it in his present disputed CNIC as 1982. Here it is for plaintiff to prove his version. He in evidence on record at exhibit-18 supported the contents of plaint and deposed that defendants have wrongly written his date of birth in his CNIC but correct date is 03.05.1986. Plaintiff in support of his version produced his original high school leaving certificate at exhibit-19. From perusal of school leaving certificate it reveals that it was issued on 03.12.2012 and its authenticity is in question because it was not proved by plaintiff by calling general register of school even its issuing authority was also not called as witness before the court for confirmation of its contents that it is original or otherwise thus this document is not helpful for him. On other hand defendant No 1 to 3 in evidence on record at exhibit-23 deposed that plaintiff received his CNIC in the month of December 2004 and in the year 2016 he approached NADRA for its correction but as per policy they refused him. Admittedly plaintiff got his first CNIC in the year 2004 with same date and year of birth but he did not raise any objection on collection of that card at relevant time of 2004 before NADRA officers. In para No.08 of plaint, plaintiff alleged that when CNIC issued to him, he approached to defendants for such correction but they refused from doing so and cause of action accrued to him. Here I am not agree with his contention that why he sit silent for period of more than ten years, therefore, I am of the view that plaintiff has miserably failed to prove his claim and this issue is answered negative."

Civil Appeal No.20 of 2017 was then filed before the Court of Additional District Judge, Tando Allahyar and the same was also dismissed vide judgment dated 13.11.2017. The operative part is reproduced herein below:

"The appellant/plaintiff suppressed the real fact that firstly he obtained his first CNIC No. 41307-7437771-1 in the year 2004 by submitting form in which he put his signature and photograph and in the same he mentioned his date of birth as 1982. Admittedly, in the year 2015 he applied for renewal of his card by submitting form and in the same also he himself mentioned his date of birth as 1982. The appellant/plaintiff has not challenged his first CNIC bearing issued in the year 2004 in which his date of birth was mentioned as 1982. The appellant/plaintiff used his CNIC from 2004 to 2015 for many purposes and also obtained driving license bearing No. 41307-7437771-1 # 925 on 19.10.2015, from License Branch, Karachi. The present suit is filed on 06.09.2016 i.e. after more than 11 years of obtaining first CNIC and no plausible explanation has been given for such delay. According to Article-120 of Limitation Act, 1908, limitation of filing of suit for declaration, is six years from the accrual of cause of action. If in his first CNIC his date of birth was wrongly mentioned then why he remained silent for sufficient period in which also his date of birth was mentioned as 1982 while the present suit was filed in the year 2016, hence the suit of the appellant/plaintiff is also barred Under Article-120 of Limitation Act. The appellant/plaintiff has produced his birth certificate and from perusal of the same it appears that the same was issued by secretary union council bukara sharif on 16-11-2015 i.e some month prior to filing of present suit. It is settled law that age of a person can be proved by the opinion of the radiologist and the evidence of radiologist is to be preferred over the school certificate but in the instant case appellant/plaintiff neither produced report of radiologist nor examined radiologist to prove that his date of birth is 03.05.1986. In the light of above discussion, I am of the humble opinion that trial court has not committed any illegally or irregularity while passing impugned Judgment and Decree. Hence, the same requires no interference."

Learned counsel submits that the evidence was not appreciated in its proper prospective by the respective forums, hence, this revision.

Heard and perused. It is considered imperative to record at the very onset that the learned counsel has not controverted the narrative / record

delineated in the respective judgments. The counsel was queried as to veracity with respect to each factual detail, recorded supra, and he responded in the affirmative. Under such circumstances, it could not be suggested the impugned findings could not reasonable be rested upon the rationale relied upon.

Notwithstanding the foregoing, learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that either order is either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity.

In view hereof, this revision is found to be devoid of merit, hence, hereby dismissed *in limine* along with listed applications.

Judge

Ahmed/Pa,