

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision Application No.S-05 of 2022

Sher Khan s/o Liaquat Ali Jakhrani

v.

Federation of Pakistan and others

Applicant : Sher Khan s/o Liaquat Ali Jakhrani
through Mr. Abdul Rehman A. Bhutto,
Advocate.

Respondent Nos.1, 2
& 3 : Deputy Assistant Manager, NADRA
Kashmore (Respondent No.1);
Deputy General Manager, NADRA
Sukkur (Respondent No.2); and
Chairman, NADRA, Islamabad
(Respondent No.3), NADRA through Mr.
Safdar Kamal, Advocate.

Respondent No.4 : Head Master, Ali Bux Jakhrani
Government Primary School. Nemo.

Respondent No.5 : Principal Government Higher Secondary
School, Buxapur. Nemo.

Respondent No.6 : Province of Sindh through Mr. Munwar
Ali Abbasi, Assistant Advocate General,
Sindh.

Date of Hearing : 01.02.2024

Date of Judgment : 15.02.2024

J U D G M E N T

JAWAD AKBAR SARWANA: Sher Khan s/o Liaquat Ali Jakhrani
(hereinafter referred to as "SK Jakhrani") is aggrieved by the
Judgment dated 21.04.2021 passed by the learned District
Judge/MCAC Kashmore at Kandhkot setting aside the Judgment and

Decree dated 30.01.2021 passed in favor of SK Jakhrani by the IIInd Civil Judge Kashmore (“trial court”). He filed this Civil Revision No.5/2022 on 12.01.2022 after a lapse of more than eight (8) months from the date of the appellate Court’s Judgment along with an application under Section 5 of the Limitation Act, 1908 (CMA No.76/2022) supported by his affidavit seeking condonation of delay in the filing of the revision.

2. The brief facts of the matter are that SK Jakhrani had filed Suit No.87/2020 before the IIInd Civil Judge, Kashmore essentially seeking an order from the Court to direct NADRA to correct his date of birth from 01.01.1988 to read as 03.03.1994. During the trial, it emerged that five years before the filing of Suit No.87/2020, SK Jakhrani had filed Suit No.42/2015 before Senior Civil Judge Kashmore. After recording evidence and hearing arguments, the trial court passed judgment and decree in Suit No.87/2020 in favour of SK Jakhrani, directing NADRA to make the necessary corrections in NADRA’s records. Aggrieved by the Judgment and Decree, NADRA filed an Appeal arguing that SK Jakhrani’s two suits were based on the same cause of action, and after the first suit was dismissed on merits, the second suit was barred under the principles of *res judicata*. The learned District Court set aside the trial court’s Judgment and decree, and SK Jakhrani has now filed this time-barred revision.

3. The learned Counsel for SK Jakhrani argued that although the revision is barred by time, he has filed an application for condonation of delay. Further, in the event that the court finds that section 5 of the Limitation Act, 1908 is not applicable in the case of Section 115 CPC, then he would plead that the two courts have passed void Orders contrary to law, and hence, no limitation runs against void orders. Next, he contended that the two suits are totally different because the Government of Pakistan was impleaded as a Defendant in the first but not in the second suit. Further, neither the Head Master,

Government Primary School Ali Bux Jakhrani and Principal Government Higher Secondary School Buxapur were impleaded in the first suit, whereas both parties are impleaded in the second suit. Additionally, he contended that the first suit was a 1st Class Suit filed before the Senior Civil Judge, whereas the second was a 3rd Class Suit filed before the 11nd Civil Judge. Hence, the two Courts were different. Any principle of *res judicata* which could bar the second suit was not applicable in the facts and circumstances of the case. Finally, each time that NADRA denied SK Jakhrani's application to correct his date of birth filed by him with NADRA, it constituted a fresh (different) cause of action (with each application). Hence, the second suit filed on a fresh application to NADRA accrued a fresh cause of action. The trial court had passed Judgment and Decree in Suit No.87/2020 after proper appreciation of facts and law and the evidence brought on record; therefore, it was liable to be upheld in Revision as the Appellate Court had misread the evidence and passed the impugned Judgment illegally and with material irregularity.

4. The learned Counsel for NADRA submitted that the Revision was barred by *res judicata* as the Plaint filed in Suit No.87/2020 was the same as the Plaint filed in Suit No.42/2015. The Counsel for NADRA further submitted that the evidence produced at the trial by NADRA was unrebutted and, the CNIC, being a public document issued on the applicant's request filed by SK Jakhrani himself, had a presumption of truth, in the first instance and carried greater weight compared to any other document such as the Primary and Intermediate School Certificates. Finally, the revision was hopelessly time-barred and was filed without submitting an explanation showing sufficient cause for such delay in the filing. A valuable statutory right had accrued to NADRA. He urged this Court to dismiss the Revision with costs.

5. I have heard the learned Counsels, the learned AAG and perused the Revision file along with the documents attached to the same.

6. First, to determine if Suit No.87/2020 was liable to be rejected on the principles of *res judicata*, I prepared a table setting out the two suits filed by SK Jakhrani, both the old suit (filed in 2015) and the new suit (filed in 2020), comparing the title of the two complaints, their prayer clauses, issues settled in the two suits, and evidence deposited by the parties, each category set out in juxtaposition of each other in tabular format. The following position emerged after the completion of the exercise:

SK Jakhrani	First Suit – 42/2015	Second Suit – 87/2020
FC Suit Title	Suit for Declaration and Mandatory Injunction	Suit for Declaration and Mandatory Injunction
Parties impleaded	<ol style="list-style-type: none"> 1. Federation of Pakistan 2. Chairman Nadra Head Office 3. D/G/ Nadra Sukkur 4. Incharge Nadra Office Kahmore 	<ol style="list-style-type: none"> 1. Deputy Assistant Manager, NADRA, Kashmore 2. Deputy General Manager NADRA, Sukkur 3. Chairman Nadra Islamabad 4. Head Master Ali Bux, Jakhrani Govt Primary School 5. Principal Govt. Higher Secondary School, Buxapur
Prayer Clause	<ol style="list-style-type: none"> i. To declare that the plaintiff is entitled for issuance of fresh CNIC as per Matriculation Certificate. Further to declare that acts and actions of defendants for non issuance of correct CNIC are illegal and unlawful. ii. To direct the defendants to issue CNIC to the plaintiff as per record of Matriculation Certificate. iii. To award any other relief. iv. To grant costs. 	<ol style="list-style-type: none"> A. To declare that as per educational record/certificates, actual and real date of birth of plaintiff is 03.03.1994, but in CNIC No.43504-0416616-1, issued in the name of plaintiff, due to oversight/mistake his date of birth is shown as 01.01.1988, which is absolutely wrong and incorrect. B. To direct the NADRA authority/defendants to issue a fresh CNIC to the plaintiff mentioning his date of birth as 03.03.1994. C. To award costs this suit. D. To grant any other relief, which the Honourable Court

		deems fit and proper under the circumstances of the case.
Issues Settled By trial court	<ol style="list-style-type: none"> 1. Whether the suit of plaintiff is not maintainable under the law? 2. Whether the date of birth of Plaintiff is 03.03.1933 and NADRA has wrongly written the date of birth as 01.01.1988 in CNIC card? 3. Whether the date of birth of plaintiff is liable to be corrected to 03.03.1994 in the CNIC card No.43504-0416616-1? 4. Whether the plaintiff is entitled to the relief as claimed? 5. What should the decree be? 	<ol style="list-style-type: none"> 1. Whether the suit of the Plaintiff is maintainable under the law? 2. Whether the Suit of the Plaintiff is hit by principles of Res Judicata Section 11 CPC? 3. Whether the actual date of birth of Plaintiff is 03.03.1986? 4. Whether the date of birth of plaintiff is liable to be corrected in his CNIC 5. Whether the plaintiff is entitled to the relief as claimed? 6. What should the decree be?
Evidence Produced	<ul style="list-style-type: none"> • Plaintiff/SK Jakhrani examined himself (Ex.8) • Matriculation certificate (Ex.8/A) • Birth Certificate issued dated 25.02.2015 (Ex.8/B) • Defendant Dpty Asst. Dir. NADRA Kashmore (Ex.11) • Computer Generated Registration Form (Ex.11/A) 	<ul style="list-style-type: none"> • Plaintiff/SK Jakhrani examined himself (Ex.14) • CNIC (Ex.14/A) • Ali Bux Jakhrani Primary School leaving certificate(Ex.14/B) • Matriculation certificate (Ex.7/C) • Birth Certificate issued dated 25.02.2015 (Ex.14/D) • Defendant. NADRA (Ex.16) • Authority letter (Ex.16/A)
Outcome on the trial side	Suit dismissed	Suit decreed
Appeal filed and outcome	No appeal filed	Appeal filed. Judgment and Decree set aside

7. The above tabular analysis shows that Suit No.42/2015, filed earlier in time, was dismissed by the Civil Court after consideration of the same facts and virtually the same evidence. The only additional evidence produced in the subsequent suit was the Ali Bux Jakhrani Primary School Leaving Certificate. The learned Judge in Suit No.42/2015, after considering the facts and law and giving an opportunity of hearing to the parties, dismissed the suit. SK Jakhrani

did not file an appeal against the said Judgment, and it attained finality. Accordingly, SK Jakhrani cannot agitate the same cause subsequently in a fresh suit. He should have filed an appeal against Suit No.42/2015, which he did not. He must now face the consequences of non-filing of appeal, in the shape of the bar of *res judicata* of Suit No.87/2020.

8. The learned Counsel for SK Jakhrani argued that (i) the parties in the two suits were different, (ii) that a fresh cause of action had accrued because SK Jakhrani had filed a fresh application for correction of date, and, (iii) further evidence available in the second suit which the court did not consider in the first suit. Unfortunately, none of the arguments carry any weight. In the case of point (i), SK Jakhrani filed the first suit seeking a declaration of change of date of birth in his CNIC and impleaded several officers of NADRA. It makes no difference if the Government of Pakistan was impleaded in the second suit because NADRA, being an autonomous statutory body, could be sued independently. The relief sought was from NADRA. The relief sought did not require the intervention of the Federation. As such, the presence of the Government of Pakistan was neither necessary nor proper for the adjudication of the first civil suit. Further, SK Jakhrani impleaded the Head Master of the Ali Bux Jakhrani Government Primary School, and the Principal of the Government Higher Secondary School, Buxapur as a party in his second suit. The two educational institutions were not impleaded as a party in the first suit. The learned Counsel for SK Jakhrani argued that the two were necessary parties as he proposed to produce evidence through them in support of his claim. The plea is of no help to SK Jakhrani as he could have called the representatives from the two educational institutions in his first suit. The mere presence of the two educational institutions did not change the nature of the suit and his claim. The parties being sued in the two suits being different could not dislodge the applicability of the principles of *res judicata*. The

point (ii) the Counsel for SK Jakhrani raised is a novel argument but, once again, of no assistance to him. SK Jakhrani's cause of action was the alleged incorrect entry of his date of birth by NADRA. This was his cause for initiating legal proceedings. The cause of action was not reoccurring or tied to every application whereby SK Jakhrani requested NADRA to correct the entry. It did not accrue each time he filed an application to correct his entry. The cause of action and the subject matter of the second suit were the same as the first suit. The principles of *res judicata* applied to the case at hand. As a matter of fact, even if the principles of *res judicata* were not applicable, which is not the case, even if this bench assumes otherwise, SK Jakhrani's second suit, i.e. Civil Suit No.87/2020 seeking a declaration was hopelessly time-barred in the year 2020 having been filed almost ten years after the impugned entry was made by NADRA in 2010.¹ Finally, concerning point (iii), the Plaintiff could not be allowed to retrace his steps and side-step the right of appeal by filing a second suit. He did not appeal the Judgment in Suit No.42/2015; and hence the subject matter stood decided. The dispute concluded. SK Jakhrani could not file a second suit to overcome his non-filing of an appeal to the first suit. Even otherwise, a fresh piece of evidence in the second suit, in the present case, apparently the original primary school leaving certificate, which, although available at the time the first suit was filed, was not produced in evidence, could not make a valid ground to file a subsequent suit. Additionally, while it is not entirely clear from the trial court's judgment in Civil Suit No.87/2020 if the Head Master of the Village Ali Bux Jakhrani Government Primary School and the Principal Government Higher Secondary School, Buxapur, in fact, stepped into the witness box and were cross-examined (it appears that they did not), yet even if they did, then it is apparent that SK Jakhrani made them a party in Civil Suit No.87/2020 to overcome the lacunas, shortcomings and fill in the gaps in the recording of evidence in Suit No.42/2015 when they were not

¹ *Mst. Shahida v. NADRA through Director National Database*, 2014 MLD 1411

impleaded in the first suit. The Plaintiff could not be allowed to retrace his steps and make multiple attempts to improve his case. If this is allowed, then there will be no end to the finality of any judgment. Clearly, this bench cannot be a facilitator of such alleged mischief. Notwithstanding the foregoing, the birth certificate (Ex.8/B in the old suit and Ex.14/D in the new suit) being relied upon by the Plaintiff/Applicant was issued on 25.02.2015, a week prior to the filing of Suit No.42/2015 (02.03.2015). This, too, created doubts. These were no grounds for vitiating (read: impair) the principles of *res judicata*.

9. The learned Counsel for SK Jakhrani also argued that Suit No.42/2015 was filed as a first-class suit before the Senior Civil Judge Kashmore; whereas Suit No.87/2020 was filed as a third class suit before the IInd Court of Civil Judge Kashmore. Therefore, *res judicata* principles did not apply as the two civil courts differed in terms of class. The contention is not valid. Section 3 of the West Pakistan Civil Courts Ordinance, 1962 ("1962 Ordinance") lists the classes of civil courts in the Interior of Sindh. Section 9 of the 1962 Ordinance states that the jurisdiction to be exercised in original suits as regards the value by any person appointed to be a Civil Judge shall be determined by the High Court. It is, to some extent, the prerogative of the Plaintiff to assign a pecuniary value to the lis. To that extent, in Section 11 of the Suit Valuation Act, such pecuniary value ends up providing jurisdiction to the lis to be put up before the concerned Court having pecuniary and territorial jurisdiction under the 1962 Ordinance. In the instant case, only the pecuniary limits of the two Civil Courts were different. In an unreported Judgement dated 11.01.2024 in High Court Appeal No. 129 of 2017, Nooruddin & others Versus M/s Sindh Industrial Trading Estate & others, the learned Division Bench observed the following regarding the applicability of pecuniary jurisdiction on the principle of *res judicata*:

“20. The principle of estoppel, waiver and acquiescence or even resjudicata which are procedural in nature would have no application in a case where an order has been passed by the tribunal/court which has no authority in that behalf i.e. total lack of inherent jurisdiction as far as subject matter is concerned, however, decree passed by court which has no territorial/local jurisdiction or pecuniary jurisdiction and the decree passed by the court having no inherent jurisdiction as far as the subject is concerned has marked distinctions; in the first instance when such decree was passed by a court which lacks only local and pecuniary jurisdiction, the appellate court may not interfere with the decree as the action complained of has not defeated the interest of justice whereas second category of cases where the court lacks the jurisdiction in its totality i.e. inherent lack of jurisdiction on the subject, the appellate court must interfere as such the decree is a nullity in the eyes of law. Such principles were drawn in the case of Faqir² and Malik Khan³.”

In view of the above observations of the Division Bench in the case of Nooruddin-SITE (supra) , the Counsel for SK Jakhrani’s arguments to dislodge the applicability of the principles of res judicata on the ground that the pecuniary jurisdiction of the civil court which passed the judgment in the first suit is different from the pecuniary jurisdiction of the civil court in the subsequent suit, is reduced to a cipher.

10. There is another legal impediment which comes in the way of SK Jakhrani seeking relief as claimed in the first suit that his date of birth was not 01.01.1988 but 03.03.1994, which is that when SK Jakhrani submitted a signed and duly attested Form-A applying for CNIC with NADRA on 03.03.2010, he was 22 years 2 months old on 03.03.2010,. If SK Jakhrani’s contentions were to be believed that

² Faqir Muhammad v. Pakistan through Secretary, Ministry of Interior & Kashmir Affairs Division, Islamabad, 2000 SCMR 1312.

³ Malik Khan Muhammad Tareen v. M/s Nasir & Brother Coal Co, & Others, 2018 SCMR 2121.

his birth date is 03.03.1994, then he would have been 16 years old on 03.03.2010 when he applied for CNIC. This could not be possible. NADRA issues CNICs to only 18-year-olds. Thus, NADRA could not issue CNIC to an underage minor, and certainly, a Court of Law cannot pass any judgment which is contrary to law. Even otherwise if there was an error in recording the date of birth on the part of NADRA, SK Jakhrani should have approached NADRA within a reasonable time and not slept over his rights for almost five (5) years and filed the first Suit initially, Suit No.42/2015, a suit for declaration in 2015.

11. There is another aspect in this matter: SK Jakhrani allegation against NADRA that they had incorrectly recorded his date of birth was not agitated by him only. His brother, Mir Khan Jakhrani, also claimed the same in a separate suit. Although not twins, both the brothers have been/were pursuing similar reliefs from NADRA in separate suits. The fate of his brother's old suit was also the same as SK Jakhrani's – dismissed on merits. It is most unusual and does not inspire confidence that NADRA should make the same mistake with both brothers' differing dates of birth. It is somewhat odd that both the brothers allege that NADRA has made the same mistake twice. This is in spite of NADRA claiming that the date of birth entry was given by the brothers to NADRA on Form-A. Thus, it is surprising that both the brothers simultaneously submitted an apparently erroneous date of birth, which led to NADRA updating allegedly the incorrect date of birth. At present, this bench will proceed to decide his brother, Mir Khan's Revision No.S-06/2022, along with this Revision, thus settling both cases.

12. This bench has taken pains to decide the Revision on merits as above, notwithstanding that the Civil Revision is hopelessly time-barred. No reasonable explanation has been submitted for each day of delay in filing the Civil Revision – almost 8 months of delay. The

Supreme Court of Pakistan has consistently held that limitation cannot be considered a mere formality, and valuable vested rights have accrued to NADRA.⁴ In the circumstances, this Revision is also barred by time, whereas the application seeking condonation of delay is misconceived and is also dismissed.

13. Last but not least, this bench also has to deal with another matter, that is, there is a Statement filed by the Head Master Haji Ali Bux Jakhrani, Government Primary School, on 28.02.2022 attaching a document in Sindh language bearing the stamp of the Taluka Education Officer (Male) Primary Kashmore pertaining to Sher Khan Jakhrani. As this document apparently was filed for the first time in the Revision and was not produced in evidence during trial and has not been subjected to any cross-examination anywhere, the same is discarded.

14. In view of the above analysis, no jurisdictional error or irregularity in the concurrent findings of facts or on the point of law has been identified in the impugned judgment and decree of the District Court that could justify this Court's interference under Section 115 CPC which revision being barred by time is also liable to be dismissed.

15. Accordingly, the impugned Judgment dated 21.04.2021 passed by the learned District Judge/MCAS Kashmore at Kandhkot is hereby confirmed, and the Revision along with all pending applications is dismissed with no order as to costs.

J U D G E

⁴ Allah Dino and Another v. Muhammad Shah and Others, 2001 SCMR 286 and Lahore Development Authority v. Mst Sharifan Bibi and Another, PLD 2010 SC 705