

IN THE COURT OF ADDITIONAL DISTRICT JUDGE-X, QUETTA
Civil Appeal No.26/2024

Hassam Shah son of Muhammad Anwar Shah,
 Residing at Zarghoon Road Quetta

..... APPELLANT.

VERSUS

The Chairman,
 Balochistan Board of Intermediate &
 Secondary Education (BBISE),
 Quetta

..... RESPONDENT.

**APPEAL U/S 96 CPC AGAINST THE JUDGMENT
 AND DECREE DATED 30-04-2024, PASSED BY
 LEARNED CIVIL JUDGE-II, QUETTA, WHEREBY
 THE SUIT FILED BY THE APPELLANT HAS BEEN
 DISMISSED**

For appellant: Asiya Naz, Advocate for appellant.

For Respondent: Aster Mehak, Advocate for respondent.

JUDGMENT:-

17.08.2024


1. This judgment shall dispose of the above-titled appeal, which is directed against the Judgment/Decree dated 30-04-2024; (hereinafter referred to as impugned judgment and decree) passed by learned Civil Judge-II, Quetta (hereinafter referred to as trial court), whereby suit for "Declaration & Correction of date of birth and mandatory injunction" filed by appellant/plaintiff was dismissed. Plaintiff filed his suit with following prayers:-



- a) Declaration be made that the correct/actual date of birth of plaintiff is "14.02.2005" instead of "14.02.2003".
- b) Declaration be made that the date of birth of plaintiff in the defendants record (SSC Certificate of plaintiff) as 14.02.2003, is incorrect and contradictory to all other credential of plaintiff.
- c) By way of passing decree for mandatory injunction, the defendant be directed to correct /rectify the date of birth of plaintiff in his SSC certificate/ BBISE record mentioning/incorporating the date of birth of plaintiff as "14.02.2005", in the interest of justice, equity and fairplay.

2. After the service of notice, the respondent /defendant made its appearance and filed his written statement, whereas, contested the suit of plaintiff on legal cum factual grounds.

3. Out of the divergent pleadings of the parties, the learned trial court framed the following issues:-

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1. *Whether the correct date of birth of plaintiff is 14-02-2005 instead of 14-02-2003?*
 2. *Whether the date of birth of plaintiff is incorrectly recorded as 14-02-2003 in the SSC by the defendant instead of 14-02-2005?*
 3. *Whether the plaintiff is entitled to the relief claimed for?*
 4. *Relief?*

4. After framing of issues the counsel of parties were directed to produce their respective evidence, whereas appellant/plaintiff produced following witnesses:-

- (i) PW-1 Muhammad Awais Shah (private witness)
- (ii) Anwar Shah (private witness)
- (iii) Asadullah Musakhail (private witness)
- (iv) Asadullah (representative of BISE Quetta)
- (v) Ghous Bakhsh (representative of NADRA)
- (vi) Hassam-ud-Din (plaintiff)

5. In rebuttal the respondent/defendant not opted to lead any evidence.

6. After conclusion of evidence and hearing the arguments from counsels of both parties heard and learned trial court after hearing the parties, the suit of appellant/plaintiff is dismissed vide judgment and decree dated 30.04.2024.

7. Being aggrieved and dissatisfied from the impugned judgment and decree dated 30-04-2024, the appellant filed the instant appeal Under Section 96 of CPC, after service of notice respondent through his counsel appeared.

8. Learned counsel for the appellant Miss. Asia Naz Advocate inter alia contended that is suit filed by plaintiff is not decided as per law, but the evidence produced and material available was not properly considered and there are other illegalities and irregularities in the impugned judgment/decree dated 30th April, 2024 and lastly prayed for setting aside the impugned judgment/decree.



9. On the other hand learned counsel for respondent Miss. Aster Mehak Advocate opposed the contention so raised by counsel for appellant and contended that the impugned judgment and decree dated 30th April, 2024 passed based on factual grounds and merit and prayed for dismissal of instant appeal being devoid of any merit.

10. I have heard learned counsels for both the parties and gone through each and every piece of evidence available on the record in the light of relevant provision of law, minutely in the light of heated arguments advanced by both parties and formulated following point for determination.

1. *Whether the correct date of birth of appellant /plaintiff is 14-02-2005 instead of 14-02-2003 and it is wrongly recorded in his SSC certificate?*
3. *Whether the appellant is entitled to the relief claimed for?*
4. *Relief?*

11. My finding on the aforementioned points are as under:-

POINT. NO.1.

Whether the correct date of birth of appellant /plaintiff is 14-02-2005 instead of 14-02-2003 and it is wrongly recorded in his SSC certificate ?

12. Perusal of the record reveals that the plaintiff / appellant filed suit for declaration, correction of date of birth and mandatory injunction against the respondent, wherein he asserted that his correct date of birth is 14.02.2005 but it was incorrectly recorded in his SSC certificate as 14.02.2003, he further narrated that he was not in knowledge of the said wrong entry, and in all his other documents i.e B-



Form, CNIC and Local certificate it is entered as 14.02.2005, finally in prayer clause he sought correction of the date of birth as 14.02.2005 instead of 14.02.2003, on the other hand respondent in his written statement denied the assertions of appellant by contending that the appellant / plaintiff himself provided his date of birth at the time of registration for metric and later on he re-verified the same at the time of filling 9th and 10th examination form with the same date of birth i.e 14.02.2003.

13. Appellant / plaintiff in discharge of burden to prove his date of birth as 14.02.2005 and to establish his claim for making him entitle for the relief, produced his real younger brother (Muhammad Owais Shah) as Pw-1 and his father (Anwar Shah) as PW-2, who both deposed the same version that defendant mistakenly and wrongly entered the date of birth of appellant as 14.02.2003 but father of appellant admitted in cross-examination that appellant himself submitted his examination form and his mother signed the same as his guardian, the appellant in his statement also himself admitted that he himself filled and submitted his metric examination form, hence he provided himself information about his date of birth. Now the question is whether in examination forms for the exam the appellant mentioned his date of birth as 14.02.2205 and it was wrongly or mistakenly recorded by the defendants in his metric certificate could only be determined by calling or producing the said examination form in evidence, but plaintiff/ appellant failed to produce or call the same during evidence, which would have been the best evidence has been withheld by the appellant. Consequently, in accordance with Article 129(g) of the Qanun-e-Shahadat Order, 1984,

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an adverse inference can also be drawn against him. However he produced his B form as Ex-P/4-A but the same is also issued on 26.12.2019, subsequently after issuance of appellant's SSC certificate i.e on 21.06.2019 ,except B-Form, no other authentic document was produced by the appellant/plaintiff to corroborate his stance in comparison of his SSC certificate form 'B' which could not have been given preference over the date of birth recorded in appellant's SSC/ matriculation certificate, further reliance is place here on P L D 2022 Supreme Court (AJ&K) 49,

Where the Honorable court held as under :-

".....In the given circumstances, the only remaining document before the concerned authorities was the Matriculation Certificate of private respondent issued by the Board of Intermediate and Secondary Education, Lahore, which is of great importance. In this document, the date of birth of private respondent is recorded as 23.03.1959. In our opinion, the Matriculation Certificate is the basic document from which all the other relevant documents emanate....."

14. Thus in view of the above, the appellant failed to prove that his correct date of birth is 14.02.2005 instead of 14.02.2003 and I have no hesitation to decide point No.1 in negative and against the appellant.

POINT NO.2& 3.

Whether the appellant is entitled for the relief claimed for?

Relief?

15. Since the crucial point No.1 decided against appellant/plaintiff, the point No.2 and 3 cannot be decided in his favour,



learned trial court rightly dismissed the suit of the plaintiff / appellant , which requires no any interference.

16. Accordingly, the appeal referred by appellant/plaintiff being devoid of any merit is hereby dismissed and the judgment/decree dated 30.04.2024 passed by the learned Civil Judge-II, Quetta is upheld. The certified copy of this judgment be sent to the learned trial court along with the requisitioned record. Decree sheet be drawn with no order as to cost. File be consigned to record after its due compilation and completion.

Announced in the open court on this 17th day of August, 2024.

Prepared by
Section Writer
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23-08-2024

Scdka
(SHAIKH JAVED)
Additional District Judge-X,
Quetta
23/08/2024

DECREE IN APPEAL**IN THE COURT OF ADDL: DISTRICT JUDGE-X, QUETTA.****Civil Appeal No.26/2024**

Hassam Shah son of Muhammad Anwar Shah,
Residing at Zarghoon Road Quetta

.....APPELLANT.**VERSUS**

The Chairman,
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DISMISSED**

For appellant: Asiya Naz, Advocate for appellant.

For Respondent: Aster Mehak, Advocate for respondent.

DECREE SHEET.

Appeal No. 26 of 2024 from the judgment dated 30.04.2024 of the Court of learned Civil Judge-II, Quetta. The appellant named above appealed to Additional District Judge-X, Quetta against the judgment and decree passed by Civil Judge-II, Quetta, vide judgment dated 30-04-2024.

This appeal coming for hearing on this 17th day of August, 2024, in presence of Asiya Naz, Advocate for appellant and Mr. Aster Mehak Advocate for respondent.

It is ordered:-

The appeal referred by appellant/plaintiff being devoid of any merit is hereby dismissed and the judgment/decree dated 30.04.2024 passed by the learned Civil Judge-II, Quetta is upheld. There is no order as to cost.

Given under my hand and seal of the court on this 17th day of

August, 2024.

(SHAHID JAVED)

ADDL. DISTRICT JUDGE-X, QUETTA

COST OF APPEAL

S#	Appellant	Amount	Respondent	Amount
1	Stamp for memo of appeal	Rs.85/-	Stamp for power	Rs.00/-
2	Stamp for power	Rs.04/-	Service of process	Rs.00/-
3	Service of process	Rs.05/-	Miscellaneous	Rs.00/-
4	Miscellaneous	Rs.10/-		RS.00/-
	Total	Rs.109/-		Rs.00/-

(SHAHID JAVED)

ADDL. DISTRICT JUDGE-X, QUETTA

Compared by
Section Writer

23/08/2024

23/08/2024