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In the name of almighty Allah who has got unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL DISTRICT JUDGE, ORAKZAI AT BABER MELA

Civil Appeal No. CA-19/13 of 2022

Date of institution: 16.11.2022

Date of decision: 16.01.2023

1. Ghazi Marjan son of Rehmat Gull, resident of Ghundaki Qaum Shekhan, District Orakzai.
2. Khayal Man Shah son of Peer Badshah, resident of Ghondaki, Qaum Sada Khel, District Orakzai
3. Sharbat Khan son of Nek, resident of Qaum Mala Khel, District Orakzai

..... (**Appellants**)

...**Versus**...

1. Khawidad Khan son of Jafar Khan
2. Gulab Khan son of Khayal Shah
3. Meena Jab Khan son of Muhabat Khan
4. Haji Khayal Shah son of Mena Jab Khan
5. Haji Jaffar Khan son of Muhabat Khan
6. Muhabat Khan son of Mena Jab Khan

(All residents of Qaum Mishti, Tappa Char Khela, Kandi Nazar Khel, Oat Mela, Toorkot, PO Ghiljo, Tehsil upper, District Orakzai).

7. Haji Mena Dar son of Sher Haider
8. Fazal Akbar son of Naseel Khan
9. Man Khan son of Bait ullah

(All residents of Qaum Mishti, Tappa Mamozai, Kandi Nazar Khel, Oat Mela, Toorkot, PO Ghiljo, Tehsil upper, District Orakzai)

..... (**Respondents**)

Appeal against Judgement, Decree and Order dated 08.10.2022 in Civil Suit No. 30/1 of 2022.

JUDGMENT

Instant Civil Appeal has been preferred by the appellants against the Judgment and Decree dated 08.10.2022, passed by learned Civil Judge-I, Orakzai in Civil Suit bearing No.30/1 of 2022; whereby, the suit of the

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plaintiffs/respondents with the title of "Khwaidad Khan etc. Vs Ghazi Marjan etc." was decreed.

2. Briefly stated facts of the case are such that the plaintiffs Khawidad Khan etc. (respondents herein) have filed suit against the defendants (appellants herein) for declaration and injunction of the landed property measuring 10 Jerib, situated in Tor Coat Ghiljo. The disputed property has been purchased by the predecessors in interest of the plaintiff from predecessors in the interest of defendant No. 4 to 6 in the year 1978. Later on, the person hailing from Sada Khel Qaum has disputed its ownership which was resolved in favour of plaintiffs on administration of special oath by 10 persons. Since that, the land in dispute is in exclusive ownership and possession of the plaintiffs. The defendants have restrained the process of cultivation in the property which necessitated presentation of suit. Possession in alternative was sought in case of dispossession during pendency of suit.

3. Defendants/appellants on appearance objected the suit on various legal as well as factual grounds in their written statement. It was specifically pleaded that they are in possession of the property since long and are owners as well.

4. The material preposition of facts and law asserted by one party and denied by other have separately been put into following issues by the then learned Trial Judge.

- i. Whether plaintiff has got a cause of action?
- ii. Whether plaintiffs are owner in possession of disputed property which their predecessors purchased from predecessors of defendants No. 4 to 6?
- iii. Whether defendants No. 1 to 3 are owner in possession of disputed property since long time?


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iv. Whether plaintiffs are entitled to the decree as prayed for?

v. Relief?

5. Opportunity of leading evidence was accorded to both the parties. Seizing the opportunity, plaintiff produced as much as eight persons in evidence exhibited Iqrar Nama and Jirge Deed as Ex. PW-2/1 and 3/1; where after closed it. On turn, defendants had also produced three persons in support of their plea taken in defense. Learned counsel representing parties have been heard and suit was decreed which is impugned by the defendants in instant civil appeal.

6. Mr. Noor Kareem Khan Orakzai Advocate for appellants argued that disputed land is joint lot of the defendants and they are in possession since long. The evidence of the plaintiffs was deficient and grant of decree was result of non-reading and misreading of evidence. The impugned Judgement is based on non-appreciation of evidence and wrong application of law. He concluded that the Judgment in question may be set aside for being illegal and appeal in hand may be allowed.

7. Mr. Abid Ali Advocate representing respondents resisted the stance of opponent by stating that the predecessors of the defendants have handed over the vacant possession of the suit property to the predecessor of the plaintiffs on completion of a valid sale transaction concluded some five decades back. The right of the plaintiffs was initially denied in 1982/83 which was referred to Jirga for its resolution. Ten male members of the family have been presented for administration of special oath. Four out of ten have been administered oath and rest of the members have been restrained not to take oath as the opposite party was satisfied from the proceedings. Documentary evidence in shape of Ex.PW-1/2 and 1/3 is also available on file. The defendants have neither oral evidence nor documentary evidence in support


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of their plea and their denial is evasive. The plaintiffs have rightly approached the competent forum of Civil Court Orakzai for redressing grievances which was allowed in shape of decree. The appellants have indulged the plaintiffs in rounds of litigation and protracting it for no justifiable reason with mala fide. He prayed for dismissal of appeal.

8. Whether plaintiffs have no nexus with the ownership of the disputed property which has wrongly been granted decree is the prime point of determination in pending Civil Appeal.

9. The pleadings of the parties; issues framed and evidence adduced thereon, when assessed in light of the professional assistance of the counsel representing parties, are reflecting that the ownership of plaintiffs is proved through direct oral evidence of independent witnesses. They have categorically testified that the property in dispute is ownership of the forefathers of the plaintiffs which devolved upon the plaintiffs as inherited legacy. It is worth mentioned that both the witnesses have been given positive suggestions in cross examination which confirms the ownership of the plaintiffs and thus operate as admission on part of defendants. This direct evidence of the plaintiffs is supported by documentary evidence in shape of Iqrar Nama and Jirga Deed Ex.PW-2/1 and 3/1 clubbed with conceding statement of defendants No. 4 to 6 recorded before the Court on 06-01-2021, had sufficiently established probability in favor of plaintiffs and successfully shifted the onus of proof to defendants. The defendants have produced three witnesses including the defendant himself but none of them could have shattered the probability so established as this is the matter of preponderance of probability where the weight of the defendants' evidence is far below.

Furthermore, the possession of plaintiffs over the disputed land is admitted fact and was not required to be proved at all. Hence, it is very clear to hold


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that the probability established by the plaintiffs has not been shattered and the plea taken in defense has not been proved. As far as legal questions raised in Appeal are concerned, the question of limitation is out of question at all that has mechanically been inserted without justification. Similarly, question of non-joinder or misjoinder is not fatal per se. The Court is empowered by law to add or delete the person wrongly impleaded or not arrayed as party. There was no need of either adding or deleting any party as all the necessary parties are on panel and objection so raised is liable to be over ruled. More so, every material preposition of fact and law asserted by one party and denied by other has separately been put into issue and determined by learned Trial Judge and thus ground of Appeal regarding non-determination of every issue is just fabrication of paper having no factual and legal background.

10. For what has been above, it can safely be concluded that the learned Trial Court has properly appreciated the evidence and rightly passed the impugned Judgement and Decree dated 08.10.2022. Consequently, as the Judgement under appeal does not warrant interference; therefore, the appeal in hand stands dismissed. Costs shall follow the events. Requisitioned record be returned with copy of this Judgement; whereas, File of this Court be consigned to District Record Room, Orakzai as prescribed within span allowed for.

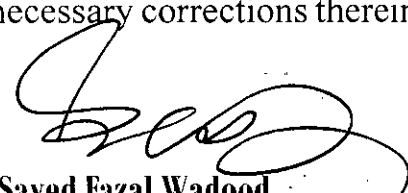
11. Announced in the open Court
16-01-2023



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ADJ, Orakzai at Baber Mela

CERTIFICATE.

Certified that this Judgment consists of five (05) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.



Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela