

83

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

Civil Suit No. 1/1 of 2023
Date of Original Institution: 08.07.2019
Date of Transfer In: 03.01.2023
Date of Decision: 31.01.2023

1. Wazir Khan and 05 others,

R/O Qoum Sheikhan, Tappa Bazid Khel, Tehsil Central, District:
Orakzai, presently R/O Shahu Khel, District: Hangu.

(Plaintiffs)

VERSUS

1. Muhammad Azam Khan and 14 others,


R/O Qoum Mishti Bazar, Mama Khel Kandi, Tehsil, District:
Orakzai

(Defendants)

**SUIT FOR DECLARATION-CUM-PERPETUAL &
MANDATORY INJUNCTION AND POSESSION IN THE
ALTERNATE**

JUDGEMENT:

The Plaintiffs have brought the instant suit for
Declaration-cum-Perpetual & mandatory injunction and
possession in the alternate against the defendants, seeking
therein that the suit property was in the ownership of the
predecessor of the plaintiffs namely Raza Khan, on whose
death the same devolved upon the plaintiffs. That the suit
property was in the possession of the defendants as
neemkaran, who paid regularly the neemkara to the father of
the plaintiffs. That after his death, the defendants stopped
paying neemkara. That the defendants have got no right to


REHMAT ULLAH WAZIR
Senior Civil Judge
Orakzai at Baber Mela

84

retain the illegal possession of the suit property after the death of the predecessor of the plaintiffs and assert themselves as owners of the same. That the defendants were asked time and again not to assert themselves as owners of the property and return its possession but he refused, hence, the present suit.

Defendants were summoned through the process of the court, in whom, the defendant No. 01 to 04 appeared before the court and contested the suit by filing written statement, wherein he raised some factual and legal objections while the rest of the defendants failed to appear before the court, hence, placed and proceeded ex-parte.

Divergent pleadings of the parties were reduced

into the following issues;

1. Whether the plaintiffs have got a cause of action?
2. Whether the suit of the plaintiffs is time barred?
3. Whether the plaintiffs are estopped to sue?
4. Whether the suit property is the ownership in possession of the plaintiffs while the defendants are only the neemkaran of the same and they were paying the neemkara regularly till the death of the predecessor of the plaintiffs?
5. Whether the plaintiffs are entitled to the decree as prayed for?
6. Relief.

85

Parties were given ample opportunity to produce their evidence, which they accordingly availed.

Arguments heard and record perused.

My issue-wise findings are as under;

Issues No. 02:

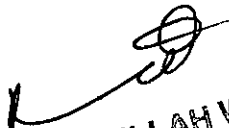
The contesting defendants in their written statement raised the objection that suit of the plaintiffs is time barred but I am the opinion that as per Article 120 of the Limitation Act, 1908 there is a period of 06 years for the institution of such like suits but the aforesaid Limitation Act, 1908 is extended to the erstwhile FATA on 31/05/2018 through the 25th constitutional amendment and the same has become operational from the aforesaid date while the instant suit has been filed on 08.07.2019. Thus, the same is well within time. The issue is decided in negative.

Issues No. 03:

The contesting defendants alleged in their written statement that the plaintiffs are estopped to sue but later on failed to prove the same, hence, the issue is decided in negative.

Issues No. 04:

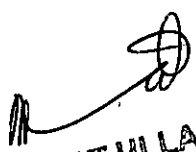
The plaintiffs alleged in their plaint that the suit property was in the ownership of the predecessor of the


REHMAT ULLAH WAZIR
Senior Civil Judge
Orakzai at Baber tiela

186

plaintiffs namely Raza Khan, on whose death the same devolved upon the plaintiffs. That the suit property was in the possession of the defendants as neemkaran, who paid regularly the neemkara to the father of the plaintiffs. That after his death, the defendants stopped paying neemkara. That the defendants have got no right to retain the illegal possession of the suit property after the death of the predecessor of the plaintiffs and assert themselves as owners of the same. That the defendants were asked time and again not to assert themselves as owners of the property and return its possession but he refused, hence, the present suit.

In order to prove their claim, the plaintiffs produced witnesses in whom the one Khan Bahadur, a jirga member, appeared as PW-01, who produced the Jirga decision Dated: 10.12.2017, which is Ex.PW-1/1 and claimed that through this decision, it was decided that the defendants would hand over the suit property to the plaintiffs but admitted in his cross-examination that the said jirga decision is not a registered deed and the same does not bear the signatures of either party. Further, that there is no mention of neemkara in the said decision and that the suit property is in the possession of the defendants. Further, Mr. Zaar Khan, also a jirga member, appeared PW-02, who also endorsed the aforesaid Ex.PW-1/1 but admitted in his cross-examination



REHMAT ULLAH WAZIR
Senior Civil Judge/JM,
Orakzai at Buner

(87)

that there is no signature of either party on the said deed and that the suit property is in the possession of the defendants. That the plaintiffs are residing in Shahu Khel, Hangu while the defendants are residing in Qoum Mishti, Orakzai, where the suit property is situated and that the defendants have a graveyard in the suit property. Further, Haji Noor Muhammad, also a jirga member, appeared as PW-03 and who also endorsed the Ex.PW-1/1 but admitted in his cross-examination that the same is not signed by the either party. Further, Mr. Jameel Khan, the plaintiff No. 02, appeared as PW-04, who fully narrated the same story as in the plaint with one addition that he also asserted the jirga decision which is Ex.PW-1/1 but admitted in his cross-examination that the jirga decision which is Ex.PW-1/1 has not been mentioned by them in the plaint and further that he has no proof regarding ownership of the suit property and regarding payment of the neemkara.

In order to counter down the claim of the plaintiffs, the contesting defendants produced witnesses who appeared as DW-01 to DW-04, who all fully denied the claim of the plaintiffs and also even refused to identify the plaintiffs. Noting tangible in favour of the plaint has been extracted out of them during cross examination.

Arguments heard and record perused.


PEHMAT ULLAH WAZIR
Senior Civil Judge/JM,
Orakzai at Sabar Mandi

88


After hearing of arguments and perusal of the record, I am of the opinion that, **Firstly**; the plaintiffs failed to produce any appealing proof regarding the ownership of the suit property, **Secondly**, they also failed to suggest and to prove the fact that the defendants are neemkaran of the suit property since long and **Thirdly**, so far as the jirga deed: 10.12.2017 which is Ex.PW-1/1 is concerned, the same has not been proved because admittedly none of the parties have put signatures on the same and because the same has been asserted not in plaint but during evidence, which has no legal value. Thus, in the light of the aforesaid findings, the issue is decided in negative.

Relief

As sequel to my above issue-wise findings, suit of the plaintiffs is hereby **dismissed** with costs.

File be consigned to the Record Room after its necessary completion and compilation.

Announced
31.01.2023


(Rehmat Ullah Wazir)
Senior Civil Judge,
Orakzai (at Baber Mela)