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

Civil Suit No. 10/1 of 2023
Date of Original Institution: 16.12.2019
Date of Transfer In: 03.01.2023
Date of Decision: 27.02.2023

1. Sajjad Ali s/o Mashhad Ali and 04 others
R/O Qoum Bar Muhammad Khel, Tappa Khwaidad Khel, Balkot,
Tehsil Lower, District Orakzai

(Plaintiffs)

VERSUS

1. Nowroz Ali s/o Noor Ali and 03 others,
R/O Qoum Mani Khel, District Orakzai

(Defendants)

**SUIT FOR DECLARATION-CUM-PERPETUAL &
MANDATORY INJUNCTION**

JUDGEMENT:

The Plaintiffs have brought the instant suit for declaration-cum-Perpetual & mandatory injunction against the defendants, seeking therein that they belong to Qoum Bar Muhammad Khel alias Fareed Nawasi, which consists upon many a persons. That the Qoum Bar Muhammad Khel is mainly residing at Kurez Darra, wherein a mountain range is situated, the top of which is called Landoka Ghar and on the East of which, the Qoum Bar Muhammad Khel is residing and on the West of which, the Qoum Mani Khel, the defendants is residing. That the paani daal of the said Landoka Ghar is working as boundary between the said 02 Qoum since long.

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That many a jirgas have been conducted between the parties regarding the boundary line, in which the paani daal was fixed as boundary line between the parties. That the defendants in violation of the paani daal are interfering in the property of the plaintiffs by cutting trees over the same and by stopping the plaintiffs from work over the same. That a metaled road has gone through the aforesaid Kurez Darra and Landoka Top and the plaintiffs have received compensation for the same. That the defendants were asked time and again to admit the Landoka Top as the boundary between the parties and not to interfere in the property which is the ownership of the plaintiffs but he refused, hence, the present suit.

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Defendants were summoned through the process of the court, who appeared before the court and contested the suit by filing written statement, wherein they raised some factual and legal objections.

Divergent pleadings of the parties were reduced into the following issues;

Issues:

1. Whether the plaintiffs have got a cause of action?
2. Whether the plaintiffs are estopped to sue?
3. Whether the suit of the plaintiffs is time barred?

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4. Whether the suit property is the exclusive ownership of the plaintiffs and the defendants have got nothing to do with the same?
5. Whether the defendants are illegally interfering in the suit property?
6. Whether the plaintiffs are entitled to the decree as prayed for?
7. Relief.

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 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. 03:

The defendants in their written statement raised the objection that suit of the plaintiffs is time barred but I am of 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

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operational from the aforesaid date while the instant suit has been filed on 16.12.2019. Thus, the same is well within time. The issue is decided in negative.

Issues No. 04 & 05:

Both these issues are interlinked, hence, taken together for discussion.

The plaintiffs alleged in their plaint that they belong to Qoum Bar Muhammad Khel alias Fareed Nawasi, which consists upon many a persons. That the Qoum Bar Muhammad Khel is mainly residing at Kurez Darra, wherein a mountain range is situated, the top of which is called Landoka Ghar and on the East of which, the Qoum Bar Muhammad Khel is residing and on the West of which, the Qoum Mani Khel, the defendants is residing. That the paani daal of the said Landoka Ghar is working as boundary between the said 02 Qoum since long. That many a jirgas have been conducted between the parties regarding the boundary line, in which the paani daal was fixed as boundary line between the parties. That the defendants in violation of the paani daal are interfering in the property of the plaintiffs by cutting trees over the same and by stopping the plaintiffs from work over the same. That a metaled road has gone through the aforesaid Kurez Darra and Landoka Top and the plaintiffs have received compensation for the same. That the

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defendants were asked time and again to admit the Landoka Top as the boundary between the parties and not to interfere in the property which is the ownership of the plaintiffs but he refused, hence, the present suit.

In order to prove their claim, the plaintiffs produced witnesses in whom the one Surat Khan, a jirga member, appeared as PW-01, wherein he stated that they decided the issue between the parties as 04 persons of each of the parties would have taken special oath and in case of default of anyone of the parties, the property would be given to the other party but admitted in his cross-examination that he has no written proof in this respect and he has not produced any document in his statement regarding the said jirga. That he also belongs to Qoum Bar Muhammad Khel but he has not filed any suit against the defendants. The one Mr. Yaqoot, another jirga member, appeared as PW-02, who also narrated the same story as PW-01 but admitted in his cross-examination that neither he has any written proof regarding the said jirga nor he has produced the same in his statement. Further, that he cannot do pointation and does not know the boundaries of the suit property. Further, Mr. Raswan Ali, a jirga member, appeared PW-03, who also narrated the same story as PW-01. But admitted in his cross-examination that he also belongs to Qoum Bar Muhammad Khel and he has not

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filed any suit against the defendants. Further, Mr. Sajjad Ali, the plaintiff No. 01 for himself and as a special attorney for the other plaintiffs, appeared as PW-04, who narrated the same story as in the plaint but admitted in his cross-examination that he belongs to Qoum Bar Muhammad Khel while the defendants belong to Qoum Mani Khel. That many a sections are there in Qoum Bar Muhammad Khel but except plaintiffs, none of the persons of Bar Muhammad Khel have filed a suit against the defendants. That he has not produced any person of any section of the Qoum Bar Muhammad Khel in support of the plaint and that none of the other sections of Bar Muhammad Khel have filed the instant suit and even none of the other person of the sub-section Khwaidad Khel, Bar Muhammad Khel have a filed a suit against the defendants.

In order to counter down the claim of the plaintiffs, the defendants produced witnesses in whom, the one Itbar Ali, appeared as DW-01 who narrated the same story as in the written statement. Nothing in favour of the pliant has been extracted out of him during cross-examination. Further, Mr. Moeen Hassan and Shamsheer Ali appeared as DW-02 and DW-03 respectively, who also narrated the same story as in the written statement. They have been cross-examined but nothing tangible in favour of the

REHMAT ALI ANWAR MAZIR
Senior Advocate
Qoum Bar Muhammad Khel

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plaint has been extracted out of them during cross-examination.

Arguments heard and record perused.

After hearing of arguments and perusal of the record, I am of the opinion that the present suit is not a representative suit in its true spirit because 02 of the witnesses of the plaintiffs belong to the Qoum Bar Muhammad Khel, the tribe of the plaintiffs but they have categorically stated that they have not filed any suit against the defendants. Also, the PW-04, the plaintiff No. 01 for himself and as a special attorney for the rest of the plaintiffs has admitted in his cross-examination that except the plaintiffs, none of the other persons of Qoum Bar Muhammad Khel tribe have sued the defendants and that even none of the other persons of the sub-tribe Khwaidad Khel amongst the

Qoum Bar Muhammad Khel have filed any suit against the defendants. Though there is an application u/o 1-R-8 CPC, filed by the plaintiffs but the same has not been pressed till date by the plaintiffs that is why the court has not allowed the plaintiffs to sue in a representative capacity. Also, the plaintiffs have alleged a jirga decision regarding the suit property in their favour but nothing tangible in the shape of any document has been produced in this respect. Further, there is no other tangible piece of evidence from which it can

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be established that plaintiffs are the owners of the suit property. Resultantly, in the light of the aforesaid findings, both these issues are decided accordingly.

Issues No. 01 & 06:

Both these issues are interlinked, hence, taken together for discussion.

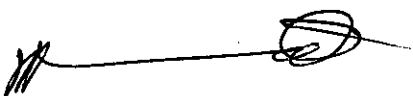
As sequel to my findings on issue no. 04 & 05, the plaintiffs have got no cause of action and thus, they are not entitled to the decree as prayed for. Hence, both these issues are decided in negative.

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
27.02.2023


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

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CERTIFICATE

Certified that this judgment of mine consists of nine (09) pages,
each has been checked, corrected where necessary and signed by me.


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