

IN THE COURT OF SHAUKAT AHMAD KHAN
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 4/13 OF 2023
DATE OF INSTITUTION : 21.02.2023
DATE OF DECISION : 28.03.2023

1. WAZIR KHAN
2. JAMIL KHAN
3. RASOOL KHAN
4. AYYUB KHAN
5. MST. JAAN FEROZA D/O RAZA KHAN
ALL R/O CASTE SHEIKHAN, BAZID KHEL, TEHSIL CENTRAL,
DISTRICT ORAKZAI
.....(APPELLANTS)

-VERSUS-

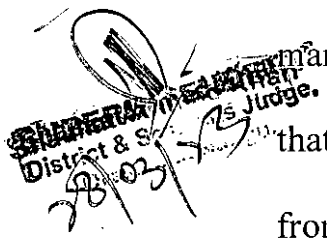
1. MUHAMMAD AZAM S/O QALANDAR SHAH
2. QABIL SHAH S/O YOUSAF KHAN
3. SHAFIQ ULLAH S/O QUWAT SHAH
4. QUWAT SHAH S/O QALANDAR SHAH
5. MUHABBAT SHAH S/O QALANDAR SHAH
ALL R/O MISHTI BAZAR, MAMA KHEL KANDEY, DISTRICT
ORAKZAI
6. MST. NEK AMAL JAAN,
HER SONS KHALID NAWAZ, SAMI ULLAH, SAFI ULLAH,
REHMAT ULLAH AND HER DAUGHTERS AKHBAR BIBI,
ZAITOON BIBI, GULNAZ BIBI, ALIA BIBI, PANJA BIBI
..... (RESPONDENTS)

Present: Insaf Ali Advocate, the counsel for appellants.
: Muhammad Rehman Zaib and Jamshid Alam Advocates, the
counsel for respondents.

JUDGEMENT
28.03.2023

Impugned herein is the judgement/decreed dated 31.01.2023 of learned Senior Civil Judge, Orakzai vide which suit of the appellants/plaintiffs has been dismissed.

- (2). The appellants/plaintiffs through a suit before the learned trial court sought declaration-cum-perpetual and mandatory injunctions with possession as alternate to the fact that they are owners of the suit property devolved upon them from their predecessor Raza Khan while the


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respondents/defendants as neemkaran (tenants), having got no concern with the same, have illegally occupied the suit property. It is alleged in the plaint that the respondents/defendants as neemkaran used to pay neemkara to the predecessor of appellants/plaintiffs, but after his death the respondents/defendants stopped to pay the same and assert themselves as owners in possession of the suit property. The respondents/defendants were summoned, out of whom, respondents/defendants no. 1 to 4 appeared before the court and submitted written statement wherein they besides raising various legal and factual objections contented that they are permanent residents of the locality and owners in possession of the suit property while the appellants/plaintiffs are the residents of Hangu have got no concern whatsoever with the suit property.

Pleading of the parties were culminated by the trial court 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.

Parties were given opportunity to produce evidence.

Accordingly, the appellants/plaintiffs examined Khan Bahadar,

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Zaar Khan, Haji Noor Muhammad as PW-1 to PW-3 respectively while Jameel Khan, the appellant/plaintiff no. 2 being attorney for rest of the appellants/plaintiffs appeared in the witness box as PW-4 in support of their contention. On the other hand, respondents/defendants examined Khial Farhan, Muhammad Shabbar, Muhammad Yousaf and Shafi Ullah as DW-1 to DW-4 respectively. All of them supported the version of respondents/defendants and denied the claim of appellants/plaintiffs.

After conclusion of evidence of both the parties, the learned trial heard the arguments and dismissed the suit of the appellants/plaintiffs. The appellants/plaintiffs, being aggrieved of the impugned judgement/decreed filed the instant appeal.

- (3). I heard arguments and perused the record.
- (4). Perusal of case file shows that as per pleadings coupled with the evidence led by the parties in support of their respective contentions, the following facts are admitted on record i.e.,

That the suit property is situated at village Mishti District Orakzai, that the respondents/defendants are Mishti by caste residing in the locality where the suit property is situated, that the appellants/plaintiffs are Karigar by caste residing at District Hangu and that the suit property is in possession of the respondents/defendants. The claim of the appellants/plaintiffs is, that the respondents/defendants were neemkaran (tenants) of the suit property having regularly paid the amount of rent during the

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lifetime of their predecessor; however, after the death of their predecessor they have stopped the payment of rent and illegally occupied the suit property. In these circumstances the appellants/plaintiffs were required to prove the fact that they have ever resided in village Mishti, the fact that the suit property was given to the respondents/defendants on neemkara and the factum of payment of rent by the respondents/defendants to the predecessor of appellants/plaintiffs. In this respect, I went through the pleadings of appellants/plaintiffs and the statements of witnesses produced by them but unable to figure out as to when the appellants/plaintiffs or their predecessor was residing in the locality and as to when and how much prior, the appellants/plaintiffs or their predecessor have migrated to the District Hangu. Similarly, not a single document could be produced by the appellants/plaintiffs regarding the factum of neemkara or the payment of rent by the respondents/defendants. The witnesses of the appellants/plaintiffs have also not spoken a single word regarding this fact even attorney for the appellants/plaintiffs in his examination-in-chief as PW-4 has not spoken a single word regarding these facts.

With respect to Ex. PW 1/1, the alleged jirga decision

in favour of appellants/plaintiffs, this fact is not mentioned by appellants/plaintiffs in their plaint and so the same is beyond the pleadings. Even otherwise the alleged decision of jirga is scribed on a simple paper neither stamped nor notarized. The alleged

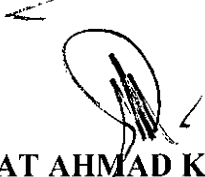
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jirga decision also does not bear the signature of any of the respondents/defendants rather the decision cannot even be termed as a jirga decision in any form as the so-called jirga members are neither appointed by the respondents/defendants nor they have consented to conduct a jirga between the parties for, even in the contents of Ex. PW 1/1 it is mentioned that the respondents/defendants are not ready to conduct a jirga with the appellants/plaintiffs. Hence, this document cannot be relied upon as proof of the ownership of the suit property of the appellants/plaintiffs.

(5). Hence, in view of what is discussed above, it is held that the learned trial court has rightly dismissed the suit of the appellants/plaintiffs. The impugned judgement and decree of the trial court in the circumstances is unexceptional and not open to any interference by this court. Accordingly, the appeal in hand resultantly stands dismissed being meritless with cost. Copy of this judgment be sent to learned trial court for information.

Consign.


Pronounced
28.03.2023


(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 28.03.2023


(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela

