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

Civil Suit No. 05/1 of 2023
Date of Original Institution: 26.06.2019
Date of Decision: 16.03.2023

Inaz Ali s/o Gul Khan Ali

R/O Qoum Mani Khel, Village Ahmad Khel, Tehsil Lower,
District Orakzai

(Plaintiff)

VERSUS

Ilham Ali s/o Ikram Ali


R/O Qoum Mani Khel, Village Ahmad Khel, Tehsil Lower,
District Orakzai

(Defendant)

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

JUDGEMENT:

The Plaintiff has brought the instant suit for declaration-cum-Perpetual & mandatory injunction and possession in the alternate against the defendant, seeking therein that plaintiff has been using the suit pathway passing through the fields of defendant as the only access to his residential house since 2006 and defendant has got no right to block the same. That the matter in controversy was resolved with the father of defendant through a Jirga held in the year 2012. The Jirga members delivered their verdict and it was reduced into writing on 31.08.2012. As per Jirga decision, plaintiff was allowed to use the pathway free of any


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encumbrance and obstruction forever and defendant was restrained from blocking/making hindrance in the pathway. That defendant was asked time and again to admit the claim of plaintiff but in vain, hence, the present suit.

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

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

Issues:

1. *Whether the plaintiff has got a cause of action?*
2. *Whether disputed path is the exclusive ownership of plaintiff? OPP*
3. *Whether plaintiff has affected an agreement with the father of the defendant through Jirga verdict in year 2012 regarding the use of disputed path free of any encumbrance and obstruction forever and its affect? OPP*
4. *Whether the disputed path is the only pathway for access and exit to the plaintiff's house? OPP*
5. *Whether suit of the plaintiff is competent in its present form? OPD*
6. *Whether plaintiff is entitled to the decree as prayed for? OPP*
7. *Relief?*

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

Arguments heard and record perused.

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It is pertinent to mention here that the instant suit was decreed by my learned predecessor vide judgment Dated: 21.09.2022. Against the said judgment, the defendant filed an appeal before the court of Worthy District & Sessions Judge, Orakzai, who vide his judgment Dated: 10.11.2022, set aside the judgment of my learned predecessor and remanded the case back to this court with directions to issue a local commission for making investigation on the spot on the point of availability of alternate pathway for the approach of the present defendant to his house and to decide the case afresh on the basis of merits.

Accordingly, a local commission was appointed by my learned predecessor vide order No. 02, Dated: 03.12.2022 and the local commissioner submitted his report on 16.12.2022. The counsel for the plaintiff did not file any objection on the report while the counsel for the defendant filed an objection on the commission report. Accordingly, the statement of local commissioner was recorded as CW. The counsel for the defendant cross examined the said CW.

My issue-wise findings are as under;

Issues No. 02 to 05:


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


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The plaintiff alleged in his plaint that he has been using the suit pathway passing through the fields of defendant as the only access to his residential house since 2006 and defendant has got no right to block the same. That the matter in controversy was resolved with the father of defendant through a Jirga held in the year 2012. The Jirga members delivered their verdict and it was reduced into writing on 31.08.2012. As per Jirga decision, plaintiff was allowed to use the pathway free of any encumbrance and obstruction forever and defendant was restrained from blocking/making hindrance in the pathway. That defendant was asked time and again to admit the claim of plaintiff but in vain, hence, the present suit.

In order to prove his claim, the plaintiff produced witnesses in whom the one Inaz Ali, the plaintiff himself, appeared as PW-01, who narrated the same story as in his plaint and produced a Google Map of the houses of the parties and the suit thoroughfare and also produced the alleged jirga deed, Dated: 31.08.2012 as Ex.PW-1/2, whereby the plaintiff was allowed to use the suit thoroughfare by some third person namely Hashim Jan with the alleged permission of the father of the defendant namely Ikram Ali. But admitted in his cross-examination that there is no specification of the measurement of the suit thoroughfare in the Ex.PW-1/2 and


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further that his field is connected to the pukhta road which is shown as "F" in the Ex.PW-1/1 but he has planted trees over the connecting portion of his field. Further, that the points "A" & "B" is a field which is owned by the defendant as per the Ex.PW-1/1. Further, Mr. Syed Khaziq Ali Shah, a jirga member of the Ex.PW-1/2, appeared as PW-02, who fully endorsed the contents of the Ex. PW-1/2 and further narrated the same story as in the plaint. But admitted in his cross-examination that there is no details and specifications of the suit thoroughfare in the said deed and also there was no pointation of the suit thoroughfare done on the spot and also that there is no mention of the regional customs and traditions in the said deed. Further, Mr. Mustafa Hassan, a witness to the Ex.PW-1/2, appeared PW-03, who also fully endorsed the said jirga deed. But admitted in his cross-examination that there is no mention of the specifications of the suit thoroughfare in the said deed. Further admitted that as per the Ex.PW-1/1, there is a way attached to the field of the plaintiff. At the end, he admitted that the one Ikram Ali did not grant permission for the suit thoroughfare.

In order to counter down the claim of the plaintiff, the defendant produced only one witness as he himself appeared as DW-01 who narrated the same story as in the

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written statement. Nothing tangible in favour of the pliant has been extracted out of him during cross-examination.

As per the directions of the Worthy court of the D&SJ, Orakzai, a local commission as discussed earlier submitted its report, wherein it is mentioned that there is no alternate thoroughfare available for the use of the plaintiff except the suit thoroughfare but at the same time, it is mentioned in the report that there is a thoroughfare leading towards the house of Shahab Ali but the plaintiff cannot use the same as he has constructed a wall towards its access. But admitted in his cross-examination that as per Ex.CW-1/2 i.e the site plan, there is a pukhta thoroughfare adjacent to the field of the plaintiff and a wall towards the said thoroughfare has been constructed by the plaintiff himself and also as per the site plan there is a kacha rasta which leads to other fields adjacent to the plaintiff's house which is in continuation of the pukhta rasta and the hedge mentioned in the site plan is erected by the plaintiff himself.

Arguments heard and record perused.

After hearing of arguments and perusal of the record, I am of the opinion that the plaintiff relies on a so called jirga decision which is Ex.PW-1/2 but the same is firstly without any consideration which is always a life blood for a contract and secondly the same is not proved as per the

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requirements of the law. Also, the local commissioner have shown in his site plan produced as Ex.CW-1/1 that there is a paved way adjacent to the house of the plaintiff but he is not using the same as he has erected a wall towards its access which is very unreasonable and not appealing to the prudent mind and the same is also admitted by the local commissioner in his cross-examination as CW.

Thus, in the light of the aforesaid findings, the report of the local commission is confirmed and all 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. 02 to 05, the plaintiff has got no cause of action and thus, he is 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 plaintiff is hereby **dismissed** with costs.

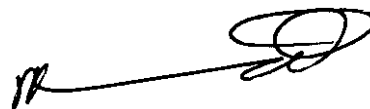
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File be consigned to the Record Room after its necessary completion and compilation.

Announced

16.03.2023



(Rehmat Ullah Wazir)
Senior Civil Judge,
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CERTIFICATE

Certified that this judgment of mine consists of eight (08) pages, each has been checked, corrected where necessary and signed by me.



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