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

Civil Suit No. : 12/1 of 2023
Date of Original Institution : 03.06.2020
Date of Transfer In : 03.01.2023
Date of Decision : 20.03.2023

Nowroz Ali s/o Sardar Ali and 08 others
All R/O Qoum Sepoy, Tappa Metha Khan Khel, Tehsil: Lower,
District: Orakzai

(Plaintiffs)

VERSUS

Wajid Ali s/o Awan Ali and 07 others
All R/O Qoum Sepoy, Tappa Metha Khan Khel, Tehsil: Lower,
District: Orakzai

(Defendants)

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

JUDGEMENT:

Plaintiffs Nowroz Ali s/o Sardar Ali and 08 others have brought the instant suit for declaration-cum-perpetual & mandatory injunction and possession against the defendants, seeking therein that the plaintiffs are the owners of the suit property, the boundaries of which are fully mentioned in the head note of the plaint but after the death of the father of the plaintiffs, the defendant No. 01 took illegal possession of the same on the pretext that the father of the plaintiffs have sold out the same to the father of the defendants No. 01 to 04 through a sale deed, Dated: 25.02.1967, but this sale deed is fake, forged, factitious, ineffective upon the rights of the

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plaintiffs and liable to cancellation. That the defendants were asked time and again not to assert themselves as owners of the suit property and not to interfere in the same and hand over possession of the suit property to the plaintiffs, but they 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 who submitted their written statement in which they denied not only the claim of the plaintiff but also raised various legal and factual objections.

It is pertinent to mention here that the defendants No 05 to 08 were added in the column of the defendants in appeal vide order, Dated: 24.01.2023 by the learned ADJ,

Orakzai as proforma defendants on apprehension of them that their rights in the property contiguous to the suit property may be damaged in case of decree in favour of the plaintiffs that is why they may have an opportunity to protect the same.

But these defendants were placed and proceeded ex-parte vide order No. 59, Dated: 09.02.2023 by this court on account of their non-appearance before this court. But during full arguments on 15.03.2023, these defendants filed an application for setting aside ex-parte proceedings initiated against them but today the counsel for the plaintiffs recorded no objection on the said petition and accordingly the same is


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accepted and the ex-parte proceedings initiated against these proforma defendants are hereby set aside. Also today the special attorney for these defendants and the special attorney for the plaintiffs recorded joint statement whereby they entered into a compromise that the plaintiffs would not interfere in the property of these defendants which is contiguous to the suit property in case, the instant suit is decreed in favour of the plaintiffs.

Also, it is pertinent to mention here that on 28.02.2023, after closing the evidence by the contesting defendants, the counsel for the plaintiffs submitted an application for verification of the alleged thumb impression impressed upon the Ex.DW-4/1 by the father of the plaintiffs namely Sardar Ali, the late through FSL. The counsel for the

contest. contesting defendants also submitted replication to this


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Also, both the counsel for the parties argued the said petition today.

After hearing of arguments and perusal of the record, I am of the opinion that admittedly, the father of the plaintiffs namely Sardar Ali is dead now and there is no availability of the fresh thumb impressions of the said Sardar Ali which could be compared with the one on the alleged sale

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deed, therefore, in these circumstances, the petition in hand is non-maintainable, hence, **dismissed**.

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

Issues:

1. Whether the plaintiff has got a cause of action?
2. Whether the plaintiff is estopped to sue?
3. Whether the suit of the plaintiff is time barred?
4. Whether the plaintiff is the exclusive owner of the suit property and the defendants have nothing to do with the same?
5. Whether the plaintiff is entitled to the possession of the suit property?
6. Whether the defendants are the owners in possession of the suit property vide sale deed, Dated: 25.02.1967, through which they have purchased the suit property from the predecessor of the plaintiff?
7. Whether the plaintiff is entitled to the decree as prayed for?
8. Relief.

My issue-wise findings are as under;

Issues No. 02

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

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Issues No. 03:

The contesting defendants in their written statement raised the objection that suit of the plaintiff 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 **03.06.2020**. Thus, the same is well within time. The issue is decided in negative.

Issues No. 04, 05 & 06:

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

The plaintiffs alleged in their plaint that they are the owners of the suit property, the boundaries of which are fully mentioned in the head note of the plaint but after the death of the father of the plaintiffs, the defendant No. 01 took illegal possession of the same on the pretext that the father of the plaintiffs have sold out the same to the father of the defendants No. 01 to 04 through a sale deed, Dated: 25.02.1967, but this sale deed is fake, forged, factitious,


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ineffective upon the rights of the plaintiffs and liable to cancellation. That the defendants were asked time and again not to assert themselves as owners of the suit property and not to interfere in the same and hand over possession of the suit property to the plaintiffs, but they refused, hence, the present suit.

In order to prove their claim, the plaintiffs produced witnesses, in whom the one Muhammad Shifa, a jirga member, appeared as PW-01, who stated that he was a member of the jirga constituted by the AC, L/Orakzai on the application of the plaintiff. That the jirga recorded statements of the parties and witnesses, wherein one of the alive witnesses of the alleged sale deed namely Atta Hussain

recorded his statement that he has neither thumb impressed the sale deed nor any sale deed has been written in his

presence and then we submitted report before the AC, L/Orakzai. Further, Mr. Aziz Khan, a jirga member, appeared

as PW-02, who stated that he was a member of the jirga constituted by the AC, L/Orakzai on the application of the

plaintiff. That the jirga recorded statements of the parties and witnesses, wherein one of the alive witnesses of the alleged

sale deed namely Atta Hussain recorded his statement that he has neither thumb impressed the sale deed nor any sale deed

has been written in his presence and then we submitted report

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before the AC, L/Orakzai. Further, Mr. Ikhtiar Ali, a jirga member, appeared as PW-03, who stated that he was a member of the jirga constituted by the AC, L/Orakzai on the application of the plaintiff. That the jirga recorded statements of the parties and witnesses, wherein one of the alive witnesses of the alleged sale deed namely Atta Hussain recorded his statement that he has neither thumb impressed the sale deed nor any sale deed has been written in his presence and then we submitted report before the AC, L/Orakzai. All these 03 witnesses admitted in their cross-examination that the suit property is in the possession of the contesting defendants. Further, the plaintiff No. 01 for himself and as a special attorney for the rest of the plaintiffs, appeared as PW-04, who fully narrated the same story as in the plaint but admitted in his cross-examination that the suit property is in the possession of the defendants and that the jirga did not decide the issue between the parties. Further, Mr. Atta Hussain, appeared as PW-06, who stated that neither he has thumb impressed the alleged sale deed nor the sale deed was written in his presence. He has been cross-examined but nothing tangible in favour of the alleged sale deed has been extracted out of him during cross-examination. Further, Mr. Shawsawar Ali, one of the plaintiffs, appeared as PW-07, who fully narrated the same story as in the plaint.

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In order to counter down the claim of the plaintiffs, the contesting defendants produced witnesses in whom, the one Khadim Hussain, a paternal cousin of the father of the plaintiffs, appeared as DW-01, who stated that he was told by the father of the plaintiffs that he has sold the suit property to the contesting defendants. Further, Mr. Syed Zamin Askar, the son of the one of the alleged witness of the sale deed namely Syed Muhammad Askar, appeared as DW-02, who endorsed the thumb impression of his father on the alleged sale deed as a witness. But admitted in his cross-examination that he has not seen the sale deed and that the defendants are his distant relatives. Further, Mr. Syed Awaz Hussain the son of the one alleged witness of the sale deed namely Syed Zamin Hussain, appeared as DW-03 who endorsed the thumb impression of his father on the alleged sale deed as a witness. But admitted in his cross-examination that a thumb impression can't be identified without computer. Further, Mr. Wajid Hussain, the contesting defendant No. 01 for himself and as a special attorney for the rest of the contesting defendants, appeared as DW-04, who produced the alleged sale deed through which his father purchased the suit property from the father of the plaintiffs as Ex.DW-4/1 and further fully narrated the same story as in the written statement. But admitted in his cross-examination that there is


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no mention of the outstanding payment in the alleged sale deed.

Arguments heard and record perused.

After hearing of arguments and perusal of the record, I am of the opinion that it is an admitted fact that the suit property was the ownership of the father of the plaintiffs and the only plea taken by the contesting defendants is the alleged sale deed, which is Ex.DW-4/1 and that the same was executed by the father of the plaintiffs in favour of the father of the contesting defendants on 25.02.1967 but as per the CNIC of this Sardar Ali, which is Ex.PW-7/1, his year of birth is 1954, meaning thereby that he was a minor of almost

13 years plus age when he entered into the alleged sale deed

as per the law, a minor cannot enter into such like

agreements. Further, the only alive witness of the alleged

sale deed is Mr. Atta Hussain, who appeared as PW-06 and

who denied the alleged sale deed. Also, the sale deed is not a

registered one rather it is only a piece of paper which cannot

be relied upon unless corroborated by a strong and

unimpeachable evidence which is lacking in the present case.

Thus, the burden of proof shifted to the contesting defendants

but they failed to discharge the same. Therefore, in the light

of the aforesaid findings, the issue no. 04 and 05 are decided

in positive while the issue no. 06 is decided in negative.


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Issues No. 01 & 07:

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


As sequel to my findings on issue no. 04, 05 & 06, the plaintiff has got a cause of action and thus, he is entitled to the decree as prayed for. Hence, both these issues are decided in positive.

Relief

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


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

Announced
20.03.2023


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

CERTIFICATE

Certified that this judgment of mine consists of ten (10) pages, each has been checked, corrected where necessary and signed by me.


(Rehmat Ullah Wazir)
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Orakzai (at Baber Mela)