

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE-II,
ORAKZAI AT BABER MELA, HANGU**

Complaint No: 01 of 2020
Date of Institution: 10.06.2020
Date of Decision: 12.10.2020

Khadim Gul s/o Badshah Gul r/o Tribe Sada Khel, Tappa Suliman

Khel village Ghondaki Tehsil upper District Orakzai

.....(*complainant*)

VERSUS

Watan Khan s/o Ghafoor Khan r/o Tribe Sada Khel, Village

Ghondaki Tehsil upper District Orakzai (Respondent)

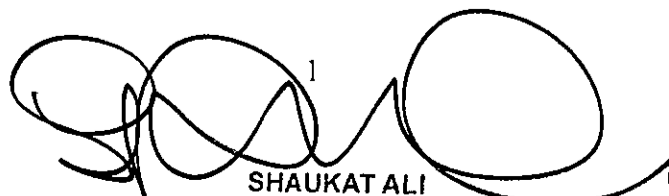
Present:

Mr. Sanna Ullah Khan Advocate, counsel for complainant
Mr. Abid Ali Advocate, counsel for respondent

Complaint u/s 3/4 Illegal Dispossession Act, 2005

JUDGMENT

The complainant Khadim Gul instituted complaint u/s 3/4 of the Illegal Dispossession Act 2005 against the respondent in respect of property situated in Village: Ghondaki bounded to the East by the Main Dabori road to Hangu, to the West agriculture property of Haider Gul, to the North agriculture property of Soocha Gul and to the South the house and agriculture property of complainant, that the disputed property was purchased by the complainant in the year 1985 from Ghafoor s/o Khan Zada on sale consideration of Rs.50,000/- , that the complainant is owner in possession for 35 years, that the complainant on 01-06-2020 at 11:00 hours at day time when he visited the disputed property along with his son Muhammad Qasim, he found that someone had ploughed his



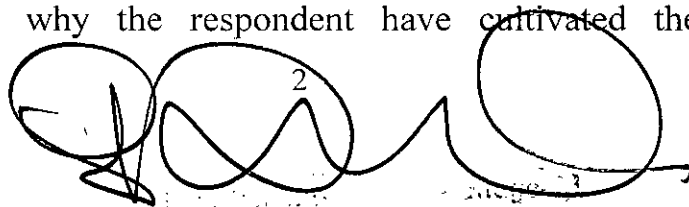
SHAUKAT ALI
Addl: District & Sessions Judge-II,
Orakzai at Hangu

fields through tractor and when the complainant inquired there then the respondent came there and told him that he took the possession of the disputed property and cultivated the same, that the complainant reported the occurrence to the police and also submitted application to DPO Orakzai but no action was taken against the respondent, that the complainant also sent Jirga to the respondent to restore the possession to the complainant but the respondent refused the Jirga, that the respondent without any legal justification forcefully occupied the disputed property and dispossessed the complainant. The complainant submitted in his complaint that the respondent may be proceeded under the Illegal Dispossession Act who have forcefully occupied the property of the complainant.

After institution of the complaint, the statement of the complainant was recorded on 10.06.2020 u/s 200 Cr.P.C. and notice was issued to the SHO concerned with the direction to visit the spot and investigate the matter and submit his report before the Court. The SHO of PS concerned submitted his report on 25.06.2020 and after perusal of investigation report notice was issued to the respondent to proceed with the case against him. On 01.07.2020, the respondent appeared before the court and after compliance of section 265-C Cr.P.C, charge was framed on 08.07.2020, to which the respondent pleaded not guilty and claimed trial. During the trial, statements of five PWs were recorded.

The gist of the complainant evidence is as under:

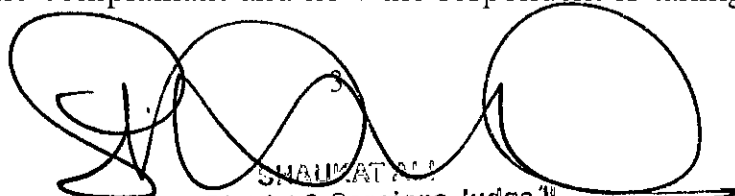
PW.01 is the statement of Muhammad Haneef who stated that "I being elder of the locality was asked by the complainant to ask the respondent that why the respondent have cultivated the land of


Muhammad Haneef

complainant. When I visited the respondents and asked about the cultivation of land by them of the complainant the respondents replied that my land has been cultivated by Jumma Gul who is the brother of Khadim Gul and in lieu of that land they have cultivated/ploughed the disputed land. I am witness only of the aforementioned fact.”

PW.02 is the statement of Sabz Ali Khan who stated that “On 02-06-2020 the brother of respondent namely Soocha Gul along with son of the complainant came to me and asked me that respondent has ploughed their land. I being elder of the locality was asked by them to ask the respondent that why the respondent have cultivated the land of complainant. When I along with Soocha Gul and son of the complainant visited the house of respondent and asked about the cultivation of land by them of the complainant the respondents replied that my land has been cultivated by Jumma Gul who is the brother of Khadim Gul and in lieu of that land they have cultivated/ploughed the disputed land.”

PW.03 is the statement of Jahan Zeb Reader to DSP Headquarter who stated that “The inquiry of the instant case has been conducted by me after receiving notice from the court. During the course of inquiry I visited the disputed property and prepared the site plan Ex. PB at the instance of complainant. I inquired about the dispute in the locality. During investigation I find out that the disputed land is cultivated by the complainant since long however no one from the locality was willing to record their statement. The statement of complainant and eye witness was recorded by the SHO u/s 161 Cr.PC. I also interrogated the respondent who stated that the disputed property had been sold out by his father to the complainant and now the respondent is taking back the


SHAHMAT ALI
Addl: District & Sessions Judge-II,
Orakzai at Nangu

property after payment to the complainant. The respondent on due to the
aforementioned reason cultivated the disputed property. After
completion of investigation I submitted my report to the court which is
Ex.PW-3/1. Today I have seen my report which correctly bear my
signature.”

PW.04 is the statement of Khadim Gul who stated that “on 01-06-
2020 on Monday I along with my son Muhammad Qasim left home and
went to Peer Mela. From the Mela I came to my village Ghonda Kai and
visited my agriculture fields. I found that my agriculture fields (disputed
property) had been ploughed by someone. I went to the village and
inquired about the person who ploughed the fields. When we reached to
the other end of our fields there the respondent met with us and told us
that he had ploughed the fields. The respondent told me that he had
purchased property from us 25 years earlier which has been ploughed by
your brother and due to that reason I have ploughed yours fields. The
respondent threatened me to leave the fields and I left the fields. I
reported to the police but no action was taken against the respondent
therefore I submitted the instant compliant against the respondent. My
statement was recorded u/s 161 Cr.PC. today I have seen which correctly
bears my thumb impression. During inquiry the site plan was prepared in
my instance. I charged the respondent for the commission of offence.”

PW.05 is the statement of Muhammad Qasim who stated that “on
01-06-2020 on Monday I along with my father Khadim Gul left home
and went to Peer Mela. From the Mela we came to our village Ghonda
Kai and visited our agriculture fields. I found that our agriculture fields
(disputed property) had been ploughed by someone. We went to the

4
SHAIKHA A...
Addl District Sessions Judge
Orakzai at Hangu

village and inquired about the person who ploughed the fields. When we reached to the other end of our fields there the respondent met with us and told us that he had ploughed the fields. The respondent told us that he had purchased property from us 25 years earlier which has been ploughed by your uncle and due to that reason I have ploughed yours fields. The respondent threatened us to leave the fields and we left the fields. My father reported to the police but no action was taken against the respondent therefore my father submitted the instant compliant against the respondent. My statement was recorded u/s 161 Cr.PC. I charged the respondent for the commission of offence.”

On 23.09.2020 after closing of the complainant evidence, the statement of respondent/accused was recorded on 28.09.2020 u/s 342 Cr.P.C, wherein he respondent did not opt to be examined on oath or to produce defense and the case was fixed for final arguments.

Arguments of learned counsel for the complainant and counsel for the respondent heard and available record perused.

For the purpose of attracting the provisions of Illegal Dispossession Act, the complainant has to prove firstly that he was in lawful possession or occupier of the property, secondly that the accused has entered into or upon the said property and the entry was without any lawful authority and thirdly that the accused has done so with the intention to dispossess the complainant against his will. The complainant has charged the respondent for his illegal dispossession from the disputed property situated at village *Ghondaki* that was in his possession for the last 35 years as per contents of the complaint. There is no revenue record of the disputed property as no settlement had been

5

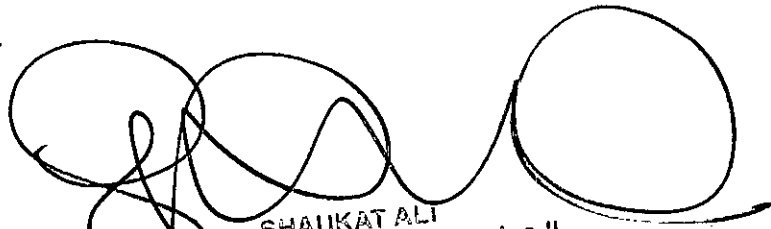
carried out at District Orakzai and all the transactions are either oral or through written deeds.. The complainant averred in the complaint that he is owner and occupier of the disputed property that he had purchased in the year 1985 from one Ghafoor s/o Khan Zada on sale consideration of Rs. 50,000/-. There was no written agreement of sale of the disputed property produced by the complainant nor any oral evidence produced to prove that the complainant is the possessor or occupier of the disputed property or he had purchased the disputed property. The complainant (PW-04) stated in his cross examination that he has no written proof in respect of his ownership of the disputed property and self-stated that it in oral transaction however the complainant could not produce any witness to prove that he had been in possession for the last 35 years through an oral transaction. The complainant produced Jirga members Muhammad Haneef (PW-01) and Sabz Ali Khan (PW-02) in support of his case but neither PW-01 nor PW-02 stated in their evidence before the court that the complainant is either the owner or occupier of the disputed property. PW-01 stated in his cross examination he is not the eye witness of the occurrence. PW-02 also stated in his cross examination that he is not the eye witness of the occurrence and no nothing about the occurrence. Furthermore during the investigation the statement of any adjacent owner to the disputed property also not recorded to prove that the complainant is occupier of the disputed property since long. The complainant could not prove through cogent and confidence inspiring evidence his possession of the disputed property.

The complainant and his son Muhammad Qasim (PW-05) are also not the eye witnesses of the occurrence neither the complainant could


6

Muhammad Ali
Addl. District & Sessions Judge-II,
Orakzai at Mangla

produce any eye witness of his alleged dispossession. The complainant stated in his cross examination that he is not the eye witness of the occurrence and he had not seen the respondent ploughing his fields and further stated that as he was not present at the time of ploughing therefore neither he was neither dispossessed nor threaten by respondent to leave the fields at that time. Similarly Muhammad Qasim (PW-05) also stated in his cross examination that he is not the eye witness of the occurrence and at the time of ploughing fields he was not present, therefore the alleged dispossession could not established by the complainant. The complainant mentioned in his compliant that the respondent dispossessed him forcefully on gun point from the disputed property however in the cross examination the complainant negated any fire arm weapon with the respondent when he stated that at the time of ploughing the field he was not present therefore he did not know that whether the respondent had any fire arm weapon or not. PW-05 also stated in his cross examination that he had not seen any fire arm weapon with the respondent when he met with them. The statement of complainant and his son Muhammad Qasim (PW-05) reflects that the complainant had not been forcefully dispossessed of any property and the dispute between the parties is over the ownership of the disputed property which is purely of civil nature falls within the jurisdiction of civil court. To conclude the complainant neither proved his possession over the disputed property nor his alleged forceful dispossession from the disputed property in the mode and manner as alleged by the complainant..


 SHAIKAT ALI
 Addl: District & Sessions Judge-II,
 Orakzai/1st Nagar

Furthermore, the complainant mentioned in his compliant that he also reported the occurrence to the police and submitted application to the DPO at Orakzai headquarter situated at Hangu but no action was taken on his report. The complainant could not produce any official from the PS to prove that he reported the occurrence to the police and that such occurrence had taken place on the date and time of occurrence as alleged by the complainant in his compliant. The complainant had neither produced the application submitted to the DPO nor the report made to the police before the court during his evidence which negate his averment in the compliant regarding his dispossession on the alleged date and time. Besides, the inquiry officer has neither state before the court nor he mentioned in his report Ex.PW-3/1 that as per his inquiry the complainant was forcefully dispossessed. The disputed property is situated at village Ghondaki but no one from the village came forward to record his statement before the IO to support the allegation of the complainant. The IO has also not recorded the statement of any independent witness regarding the dispute as stated by him in his cross examination. The inquiry report and statement of Jahanzeb Khan IO also shows that the dispute between the parties is over the ownership of the disputed property and there is no question of any illegal dispossession or occupying of the disputed property by the respondent. The statement of inquiry officer and evidence produced by the complainant did not augment the allegation of the complainant that he was forcefully dispossession form the property or that the respondent entered upon the property of the complainant with the intention to dispossess him.

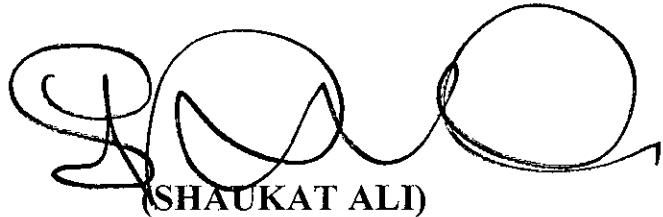

SHAUKH/8/ALI
Addl District Sessions Judge-II,
Orakzai

The basic principle of law of evidence that he who alleges a fact has to prove the same and in a criminal case the proof must be beyond any reasonable shadow of doubt. The complainant could not prove his allegation against the respondent/accused through cogent and authentic evidence, therefore the complaint is dismissed and the respondent/accused is hereby acquitted from the charges leveled against him. The accused/respondent is on bail; his sureties are discharged from the liabilities of bail bonds.

File be consigned to record room after necessary completion and compilation and compilation.

Announced

12th October, 20

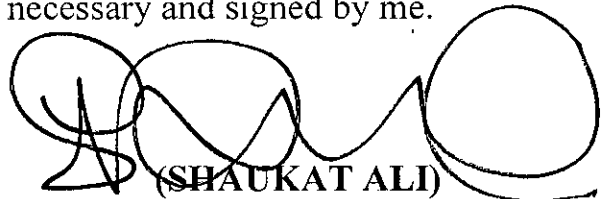


(SHAUKAT ALI)

Additional Sessions Judge-II,
Orakzai at Baber Mela, Hangu

CERTIFICATE

Certified that this judgment consists of (09) pages. Each page has been read, corrected wherever, necessary and signed by me.



(SHAUKAT ALI)

Additional Sessions Judge-II,
Orakzai at Baber Mela, Hangu