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**IN THE COURT OF SYED ABBAS BUKHARI**  
**CIVIL JUDGE - II, KALAYA**  
**ORAKZAI**

Suit No. 45/1 of 2022

Date of Original Institution.....28.10.2021

Date of transfer to this court .....30.06.2022

Date of Decision of the suit .....29.04.2023

1. Muhammad Hanif son of Manab Khan resident of Meer Ghara Orakzai
2. Meharban Khan son of Sultan Akbar presently resident of Jarma Kohat. ....Plaintiffs

Versus

1. Ubaid Gul
2. Omer Gul sons of Khayal Gul residents of Mishti Bazar Orakzai. ....Defendants

**SUIT FOR SPECIFIC PERFORMANCE OF**  
**CONTRACT AND POSSESSION**

Counsel for plaintiff: Khurshid Alam Advocate

Counsel for defendants: Sana Ullah Khan Advocate

**JUDGMENT**

29.04.2023

Vide this judgment I intend to dispose of suit captioned above.

2. It is a suit from plaintiffs against defendants for specific performance of contract and possession to the effect that as per agreement deed dated: 16.04.2020, plaintiffs are entitled

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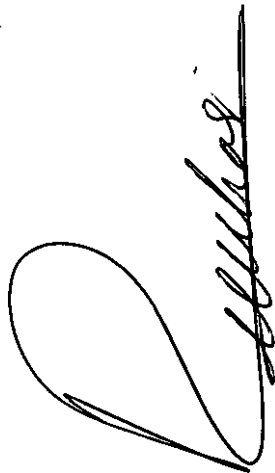
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to the recovery of Rs-10,000/- from the defendants for lease of five fields and a house.

3. Brief facts of the case as narrated in the plaint are that plaintiffs are owners of five fields and a house situated at Alwara Mela on the back side of Mishti Bazar. On 16.04.2020, parties to the suit entered into a lease agreement in respect of the abovementioned property in lieu of Rs-10000/annum as lease consideration. After completion of one year of said lease agreement, plaintiffs demanded the lease consideration from defendants. However defendants initially exercised delaying tactics and finally refused to pay annual lease consideration of Rs-10,000/-. The leased property is also in possession of defendants and thus they neither pay the lease consideration to plaintiffs as per lease agreement nor they deliver the possession of the leased property. In this respect the defendants were time and again requested to either by full filling the terms and conditions of lease agreement dated: 16.04.2020, pay the amount of Rs-10000/annum to plaintiffs or otherwise restore the possession of leased property to plaintiffs but they refused to do the same, hence the instant suit.
4. After institution of the plaint, the defendants were summoned. However defendant no.1 failed to appear before the court and hence was placed and proceeded as ex-parte



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while defendant no.02 appeared before the court and submitted his respective written statement before the court.

5. Out of controversies of the parties, as raised in their respective pleadings, the then incumbent Court has framed the following issues on 06.09.2022.

1. Whether the plaintiffs have got a cause of action?
2. Whether the plaintiffs are estopped to sue?
3. Whether the suit of plaintiffs is time barred?
4. Whether plaintiffs are owner in possession of 05 fields and one house and defendants are tenants in the same?
5. Whether the plaintiffs are entitled to the amount of @ Rs-10000/- per year on the agreement deed dated: 16.04.2020, for five fields in jirga?
6. Whether the plaintiffs are entitled to the decree as prayed for?  
Relief.

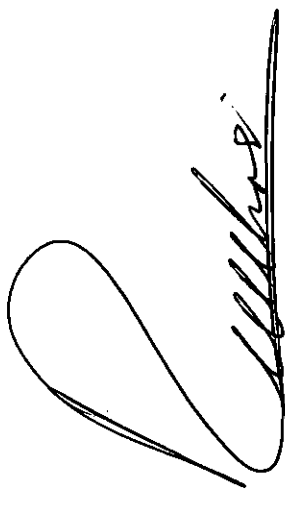
Both the parties were directed to produce their evidence, which they did accordingly. Plaintiffs produced as many as four witnesses and thereafter closed their evidence. Contrary to this the defendants produced three witnesses and thereafter closed their evidence with a note.

7. Both the learned counsels for the parties to the suit then advanced arguments. Learned counsel for the plaintiffs opened the arguments and argued that plaintiffs are owners of five fields and a house situated at the back side of Mishti bazar. He further adduced that previously parties to the suit entered in to a lease agreement on 16.04.2020 and as per terms and condition of the said agreement it was agreed upon by the parties that defendants will pay Rs-10000/annum as

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lease consideration to the plaintiffs. He further argued that on completion of one year of lease, plaintiffs demanded Rs-10000/- from the defendants but defendants initially delayed payment on one pretext or the other and thereafter in violation to the terms and conditions of lease agreement, finally refused to make said annual payment. Learned counsel further contended that defendants were time and again requested to either pay the lease consideration or otherwise deliver the possession of leased property to plaintiffs but they refused and thus are in illegal possession of the suit property. He further argued that the plaintiffs succeeded to prove their stance through cogent, convincing and reliable evidence and further nothing in rebuttal is available on the record, hence prayed that the suit in hand may kindly be decreed in favour of plaintiffs and against the defendants for the relief as prayed for.



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8. Contrary to this learned counsel for the defendant no.2 argued that plaintiffs have got no cause of action. He further adduced that suit property is in possession of defendant no.02 since time of his ancestors and thus plaintiffs are neither owners of the same nor they have got any concern with the same. He further contended that no lease agreement was previously executed between defendant no.02 and plaintiffs and thus the impugned lease agreement dated:

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16.04.2020 is fake, forged and void. Learned counsel further contended that the plaintiffs failed to prove their stance through cogent and convincing evidence. On the other hand, the defendant no.02 succeeded to produce evidence in light and support of his stance previously alleged in written statement. Hence, prayed that as plaintiffs failed to prove their case, accordingly the suit in hand may kindly be dismissed.

9. Now on perusal of record, available evidence and valuable assistance of both the learned counsels for the parties my issue wise findings are as under.

**ISSUE NO. 2:**

**Whether the plaintiffs are estopped to sue?**

**ISSUE NO. 3:**

**Whether the suit of plaintiffs is time barred?**

Defendants no.02 has previously alleged in his written statement that plaintiffs are estopped to sue and furthermore, suit of plaintiffs is barred by limitation, hence burden of proof of issues no.02 and no.03 is on the shoulders of defendant no.02.

In given circumstances perusal of the record would transpire that defendant no.02 produced three witnesses as DW-01 to DW-03. However on perusal of the statements of DWs it has been noticed that all the DWs failed to utter a single word regarding the abovementioned issues and thus

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deviated from the stance of defendant no.02 previously alleged in his respective written statement.

In light of what has been discussed above, as defendants no.02 miserably failed to prove issues no.02 and 03 through his cogent, reliable and convincing evidence, hence the aforementioned issues are hereby decided in negative against defendants no.02 and in favor of plaintiffs.

**ISSUE NO. 04 and ISSUE NO. 05:**

**Whether plaintiffs are owner in possession of 05 fields and one house and defendants are tenants in the same?**

**Whether the plaintiffs are entitled to the amount of @ Rs-10000/- per year on the agreement deed dated: 16.04.2020, for five fields in jirga?**

Issues no.05 and no.06 being interlinked, are hereby discussed and decided collectively. Plaintiffs in their plaint had previously alleged that they are owners of 05 fields and a house situated at the back side of Mishti Bazar and they leased the same to defendants vide lease agreement dated: 16.04.2020 in lieu of Rs-10,000/annum as lease consideration. To prove their stance plaintiffs produced one Meharban Khan s/o Sultan Akbar, plaintiff no.02, as PW-01, who stated on oath in light and support of their previous stance alleged in plaint. He further produced Ex-PW1/1 to Ex-PW1/3. During cross examination he deposed that it is correct that Ex-PW1/1 does not contain his name/signature or the names and signatures of his father and siblings. It is correct that Ex-PW1/1 was not personally scribed with the defendants.

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PW-02 was produced and examined as one Muhammad Hanif son of Manab Khan, plaintiff no.01, who deposed on oath in light and support of his previous stance alleged in plaint. During cross examination he deposed that it is correct that Ex-PW1/1 does not contain his name/signature or names and signatures of his brothers. It is correct that they had not executed any agreement with the defendants in respect of property. It is correct that the father of defendants also used to live in the suit house. It is correct that it is nowhere mentioned in his plaint that how they got the status of owners in respect of suit property and under what title they claim their ownership.

PW-03 was produced and examined as one Haji Fazal Janan son of Saidan Jan, who deposed on oath in light and support of the stance of plaintiffs previously alleged in plaint. During cross examination he deposed that it is correct that father of defendants namely Khayal Gul also used to reside in the suit house. It is correct that Ex-PW1/1 does not bears signatures of plaintiffs or their elders and furthermore, their names are also not available over Ex-PW1/3. It is correct that impugned agreement neither bear signature of defendant no.02 nor defendant no.02 was present with them.

PW-04 was examined as one Muhammad Rehan son of Muhammad Amin, who deposed in support of previous stance of plaintiffs alleged in the plaint. During cross examination he

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deposed that it is correct that Ex-PW1/1 does not contain the names or signatures of plaintiffs. Self-stated that on dorsal side of stamp paper the names of elders of plaintiffs are mentioned. It is correct that the plaintiffs fathers names are also not available over Ex-PW1/1. At the time of impugned agreement Omer Gul was not present. Self-stated that the elder brother of Omer Gul namely Ubaid Gul was present. It is correct that in the year 2011 when they migrated as IDPs, the defendants also migrated. It is correct that when defendants migrated as IDPs, they left five fields and a house. He and defendants returned back in the year 2011. It is correct that when they returned back after migration, he used to cultivate his own lands while defendants used to cultivate their own lands (suit property).

SYED ABAAS BUKHTARI  
Civil Judge/JM-2  
Tehsil Courts Kaiyia

In light of the above evidence produced by the plaintiffs to prove the issues in hand, it has been noticed that although PWs deposed in light and support of the stance of plaintiffs previously alleged in their plaint. However, during cross examination all the PWs were contradicted in material particulars. A brief of said contradictions is mentioned as under;

As for as the names and signatures of parties to the suit over the impugned lease deed Ex-PW1/1 is concerned, it is pertinent to mention here that PW-02 admitted that Ex-PW1/1 neither bear his signature or name nor signatures and names of his father or siblings. Similarly PW-03 has also admitted in his cross



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examination that it is correct that Ex-PW1/1 does not contain the names or signatures of plaintiffs or their elders. He further admit that Ex-PW1/1 neither bear signature of defendant no.02 nor he was present there. PW-04 also stated in his cross examination that it is correct that Ex-PW1/1 does not contain the names or signature of any plaintiff. It is also correct that Ex-PW1/1 also does not contain the names of fathers of plaintiffs.

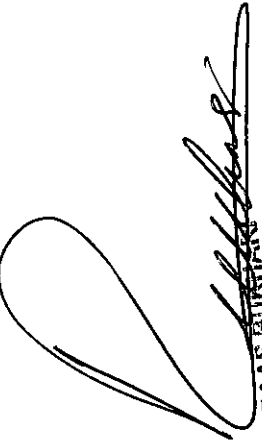
Similarly as for as execution of impugned lease deed Ex-PW1/1 is concerned, it is pertinent to mention here that PW-01 has stated in his cross examination that PW-01 admitted in his cross examination that the impugned lease deed Ex-PW1/1 was not personally executed with the defendants. PW-02 has also admitted in his cross examination that it is correct that they had not entered in to any agreement in respect of property with the defendants while PW-01 has deposed in his cross examination that defendant no.02 was not present on the spot at the time impugned deed was scribed. In given circumstances, the above statements of PWs are in contradiction to the stance of plaintiffs previously alleged in the plaint and furthermore, are material one, for the reason that plaintiffs had previously alleged in their plaint that they entered into lease agreement with both the defendants.

It is also worth mentioning here that plaintiffs had alleged in Para no.05 of their plaint that they handed over the possession of suit property and house to defendants after the agreement, while

  
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during cross examination PW-02 had deposed that it is correct that father of defendants also used to reside in suit house. Similarly PW-03 had deposed in his cross examination that father of defendants namely Khayal also lived in suit house. Self-stated that said house was given to defendants by plaintiffs after migration of Hindus while PW-04 had deposed in his cross examination that it is correct that when defendants migrated as IDPs, they left five fields and a house. When they returned back in 2011, defendants started to cultivate suit property. The statements made by PWs in their respective cross examinations, lead this court to presume that suit property consisting upon 05 fields and a house was in possession of defendants prior to execution of impugned lease deed Ex-PW1/1.



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Civil Judge (JM) II  
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It is also worth mentioning here that plaintiffs in addition to their stance alleged in the plaint also made improvements by introducing new facts in their evidence and in this respect PW-01 stated that their ancestors had previously purchased suit property from Hindus and thus produced Ex-PW1/3. PW-02 deposed in his examination in chief that possession of suit property was handed over to them after private partition.

In light of the above discussion, it has been noticed that all the PWs were contradicted in material particulars and furthermore, plaintiffs failed to prove both the issues in hand through cogent, convincing and reliable evidence, hence

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accordingly both the issues are hereby decided in negative against the plaintiffs and in favor of the defendants.

**ISSUE NO. 1**

**Whether the plaintiffs have got cause of action? OPP**

In wake of issue wise findings above, the plaintiffs have got no cause of action, hence the issue in hand is decided in negative against the plaintiffs and in favour of defendants.

**ISSUE NO.06:**

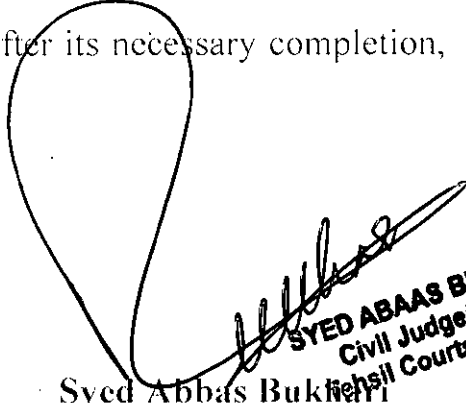
**Whether plaintiffs are entitled to the decree as prayed for? OPP**

In wake of my issue wise findings above, plaintiffs are not entitled to the decree as prayed for, hence the issue in hand is decided in negative against plaintiffs and in favour of defendants.

**Relief:**

As per issued wise findings above the instant suit of plaintiffs is hereby dismissed. No order as to costs. File be consigned to the record room after its necessary completion, compilation and scanning.

Announced  
29.04.2023

  
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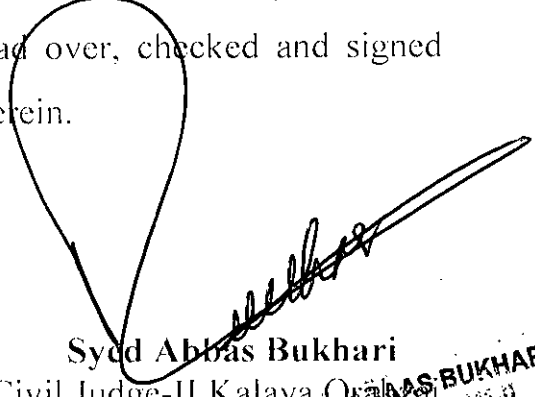
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CERTIFICATE

Certified that this judgment of mine consist upon twelve (12) pages. Each page has been read over, checked and signed after making necessary correction therein.

**Dated: 29.04.2023**

  
Syed Abbas Bukhari  
Civil Judge-II Kalaya  
**SYED ABBAS BUKHARI**  
Civil Judge-II Kalaya  
Tehsil Courts Kalaya