

153

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

Civil Suit No. : 02/1 of 2023
Date of Original Institution : 29.05.2019
Date of Transfer In : 03.01.2023
Date of Decision : 25.05.2023

Muhammad Saeed s/o Ajra Din

R/O Qoum Sheikhan, Tappa Umar Zai, Tehsil Central, Village
Lakh Kanri, P/O Mishti Mela, District Orakzai

(Plaintiff)

VERSUS

Khan Zadeen s/o Raza Din

R/O Qoum Sheikhan, Tappa Umar Zai, Tehsil Central, Village
Mian Khel Tarha, P/O Mishti Mela, District Orakzai.

(Defendant)

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

JUDGEMENT:

Plaintiff Muhammad Saeed has brought the instant
suit for declaration-cum-perpetual & mandatory injunction
and possession against the defendant, seeking therein that the

parties belong to one family and they are cousins inter-se.

That the plaintiff is the owner in possession of the suit
property as a result of family partition since his forefathers
and the defendant has nothing to do with the share of the
plaintiff. That the suit property was given on ijara by the
father of the plaintiff to the one Yar Jan in the year 1981 and
he was receiving ijara but the plaintiff retrieved the property
and gave the same on ijara to the defendant in the year 1998


REHMAT ULLAH WAZIR
Senior Civil Judge,
Orakzai at Baber Mela

154

and remained so till 2017. That the plaintiff retrieved the property from the defendant in 2017 and gave the same on ijara to the one Khalil Khan s/o Rehman Mula. That the defendant had no claim at that time but after giving the same to the said Khalil Khan, the defendant claimed its ownership. That 02 jirgas were conducted between the parties regarding the dispute on 21.07.2017 & 01.10.2017. That other relative of the parties namely Raza Din also had a claim over the suit property but he later on withdrew from the said claim and resultantly the jirga was decided in favour of the plaintiff. That a third jirga was conducted between the parties on 23.11.2018, wherein ijara for the year 2018 was waived off for the defendant and resultantly the decision was made in favour of the plaintiff. That despite the aforesaid facts, the defendant is neither allowing the plaintiff to give away the suit property on ijara to someone nor allowing the plaintiff to cultivate the same rather asserting himself as the owner in possession of the same, hence, the present suit.

Defendant was summoned through the process of the court who appeared before the court and submitted his written statement in which he denied not only the claim of the plaintiff but also raised various legal and factual objections.

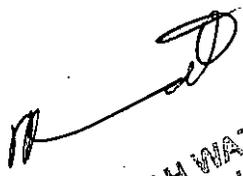

REHMAT ULLAH WAZIR
Senior Civil Judge (AM)
Oralzzai St. Bakor Mela

155

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 incompetent in its present form due to non-joinder of the necessary parties?
4. Whether plaintiff is the owner of the suit property but the same was given on ijara to the one Yar Jan s/o Sahib Jan by the father of the plaintiff in the year 1981 but the same was retrieved in the year 1998 from the said person and was given to the defendant on ijara, who had been cultivating the same till the year 2017 and later on, the same was retrieved and was given on ijara to the one Khalil s/o Rehman Mulla?
5. Whether the one Kohi Patai (a part of the disputed property) was given to the great grandmother of the parties i.e the wife of the one Saif Uddin by the one Jahanzeb Khan s/o Awal Jan in charity, which was later on partitioned between the parties in which both the parties including the one Noor Zadin got equal shares?
6. Whether the suit property is the ancestral property of the defendant and the plaintiff has nothing to do with the same?
7. Whether the plaintiff is entitled to the decree as prayed for?
8. Relief?


REHMAT ULLAH WAZIR
Senior Civil Judge/JM,
Orakzai at Baber Mela.

My issue-wise findings are as under;

Issues No. 02

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

Issues No. 03

The defendant alleged in his written statement that the suit of the plaintiff is incompetent in its present form due to non-joinder of the necessary parties but later on failed to prove the same, hence, the issue is decided in negative.

Issues No. 04, 05 & 06:

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

The plaintiff alleged in his plaint that that the parties belong to one family and they are cousins inter-se. That the plaintiff is the owner in possession of the suit property as a result of family partition since his forefathers and the defendant has nothing to do with the share of the plaintiff. That the suit property was given on ijara by the father of the plaintiff to the one Yar Jan in the year 1981 and he was receiving ijara but the plaintiff retrieved the property and gave the same on ijara to the defendant in the year 1998 and remained so till 2017. That the plaintiff retrieved the

REHMAT ULLAH WAZIR
Senior Civil Judge/JM,
Orakzai at Embor Mehta

157

property from the defendant in 2017 and gave the same on ijara to the one Khalil Khan s/o Rehman Mula. That the defendant had no claim at that time but after giving the same to the said Khalil Khan, the defendant claimed its ownership. That 02 jirgas were conducted between the parties regarding the dispute on 21.07.2017 & 01.10.2017. That other relative of the parties namely Raza Din also had a claim over the suit property but he later on withdrew from the said claim and resultantly the jirga was decided in favour of the plaintiff. That a third jirga was conducted between the parties on 23.11.2018, wherein ijara for the year 2018 was waived off for the defendant and resultantly the decision was made in favour of the plaintiff. That despite the aforesaid facts, the defendant is neither allowing the plaintiff to give away the suit property on ijara to someone nor allowing the plaintiff to cultivate the same rather asserting himself as the owner in possession of the same, hence, the present suit.

REHMAT ULLAH MAZIR
Senior Civil Judge
Orakzai at Baber Mela

In order to prove his claim, the plaintiff produced witnesses, in whom the one Sawab Gul and Saifoor Khan, the jirga members of the jirga deed, Dated: 23.11.2018 appeared as PW-01 & PW-02 respectively, who endorsed their signature on the alleged jirga decision which was made in favour of the plaintiff but admitted in their cross-examination that no jirga decision as mentioned above exists on the file.

Further, Mr. Khalil appeared as PW-03, who narrated that there was a dispute between the parties for the suit property, which was resolved in the year 2018 and that 07 fields including the suit property was given by the plaintiff to him on ijara but when he contacted the defendant regarding this, he told him to cultivate only 04 fields and not the disputed 03 fields that is why he withdrew from the ijara. That they are the residents of one and the same village. He has been cross-examined but nothing tangible against the plaint has been extracted out of him during cross-examination. Further, Mr. Jahanzeb Khan appeared as PW-04, who stated that the parties are his relatives. That his grandfather gave a field to the grandmother of the parties in charity, which they later on partitioned into 03 parts and now the same is in the possession of the parties. That there is a well in the portion of the defendant. That the rest of the fields are the inherited property of the plaintiff. But admitted in his cross-examination that no partition of the parties has been carried out in his presence and that the suit property is cultivated by the defendant. Further, Mr. Noor Zadeen appeared as PW-05, who stated that he and the parties are the children of cousins inter-se. That there property was partitioned by the one Siraj Uddin (grandfather of the plaintiff), in which one third (1/3) of the same was kept for himself while the rest of the 1/3s

REEMAT ILLAH MAZAR
Sole & Joint Advocate
Court of Sessions, Muzaffargarh

158

were given to his father and the defendant. That the jirga decision Dated: 01.10.2017 which is Ex.PW-5/1 correctly bears his signature. That the suit property was retrieved from the one Yar Jan in his presence. During cross-examination, the relationship of the parties has been further authenticated by narrating that it is correct that his grandfather namely Islam Din, the grandfather of the plaintiff namely Siraj Uddin and that of defendant namely Shams Uddin were brothers inter-se. But admitted in his cross-examination that the jirga deeds do not bear the signatures of the defendant. Further, Mr. Umar Gul Haji, a jirga member appeared as PW-06, who endorsed his signature over the jirga decision of the year 2018, whereby it was decided in favour of the plaintiff. But admitted in his cross-examination that the said jirga decision does not bear the signature of the defendant. At the end the one Muhammad Saeed, the plaintiff himself, appeared as PW-07, who produced the jirga decision, Dated: 21.07.2017 as Ex.PW-7/1 and jirga decision, Dated: 01.10.2017 as Ex.PW-7/2, jirga decision, Dated: 01.01.2018 as Ex.PW-7/3, jirga decision which is Ex.PW-7/4 and jirga decision, Dated: 23.11.2018 as Ex.PW-7/5, decided in his favour and further fully narrated the same story as in his plaint. But admitted in his cross-examination that he has no written proof regarding the alleged ijara of the suit property. Also admitted that there

REHMAT ULLAH WAZIR
Senior Civil Judge (II),
Quetta at Bazar Meis

162

is no signature/thumb impression of the defendant on Ex.PW-7/3. Also admitted that there is no written order of the appointment of jirga by the AC/Tehsildar. That the defendant have sold out all his share excluding the suit property. Also admitted that there is no signature of the defendant on Ex.PW-7/1.

In order to counter down the claim of the plaintiff, the defendant produced witnesses in whom, the defendant himself appeared as DW-01, who fully denied the claim of the plaintiff. But admitted in his cross-examination that the grandfathers of the parties were brothers inter-se. Further admitted that jirgas were conducted by the people between the parties regarding property situated as Lakh Kanri. Further admitted that he has given property on ijara to his son-in-law namely Abdul Karim but he has no written proof in this respect because the same was given orally. Further admitted that the one Khalil s/o Rehman (PW-03) is his co-villager while the one Noor Zadeen belongs to his family. Further admitted that the suit property has been inherited by him from his forefathers. Further admitted that he had disputes with the plaintiff over the property situated at Lakh Kanri some 10 years ago in which the jirga was conducted by the one Ferdost Haji, Jameel Badshah, Islam Badshah and Umar Gul etc. Further admitted that he has no knowledge

16t

regarding family partition because it was done by their great grandfather and he does not know which one of the property was given to the plaintiff and the one Noor Zadeen in the partition of the great grandfather. That the one Kohi Patay is in his possession while the field of the one Noor Zadeen is situated Southwards of the same. That the plaintiff attempted to give his property on ijara to the one Khalil but he restrained him. That he has received in inheritance 09 fields in Mian Khel Tarha. That the plaintiff was directed by the jirga to take oath through 05 persons and the same was directions to him but the same never was never implemented. Further Muhammad Zareen, appeared as DW-02, who stated that the suit property compromises in 03 fields and the same is the ownership in possession of the defendant since his forefathers. But admitted in his cross-examination that the parties belong to one and the same family. That 5/6 fields are in possession of the defendant in Mian Khel Tarha. Further Mr. Rasool Rehman appeared as DW-03, who stated that the suit property is in the ownership and possession of the defendant since his forefathers. But admitted in his cross-examination that the parties belong to one and the same family. That the plaintiff have property in Lakh Kanri and many jirgas were conducted between the parties over the same.

29
REHMAT ULLAH WAZIR
Senior Civil Judge
Onizai of Bahawalpur

Arguments heard and record perused.

After hearing of arguments and perusal of the record, I am of the opinion that **firstly**, it is an admitted fact that the parties belong to one and the same family, **secondly**, it is also an admitted fact that the suit property is an inherited property because the defendant has never taken the stance that the same has been acquired through sale etc rather he has categorically asserted/admitted that the suit property has been inherited by him from his forefathers, **thirdly**, it has also been admitted that both the parties have the property at Lakh Kanri and they have dispute over the same and jirgas have been conducted in this respect, **fourthly**, it has been admitted by the defendant that he has no knowledge of any partition between the parties because it has been done in the life of the great grandfather of the parties and he has no knowledge that which one of the property was handed over to the plaintiff at that time, **fifthly**, he admitted the fact of giving the suit property to the one Khalil but he restrained the said Khalil, **sixthly**, it has also been admitted that the jirga gave 05 oaths taking to the plaintiff and to him but the same was never implemented, meaning thereby that he admitted that a jirga was conducted between the parties regarding the suit property in addition to the production of jirga deeds and their witnesses. It is also worth mentioning

REHMAT ULLAH WAZIR
Senior Civil Judge/JM,
Orakzai at Balochistan

163

here that the defendant today in the open court stated that the suit property is the joint property of the parties but the plaintiff is residing in Shaho, Hangu since long and it is he, who borne all the expenses in the shape of its security and Qoumi expenses etc over the same, that is why he is not ready to give his share to the plaintiff. In the light of the aforesaid findings, the issue No. 04 & 05 are decided in positive while the issue No. 06 is decided in negative.

Issues No. 01 & 07:

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 plaintiff is hereby **preliminary decreed** as prayed for with costs.

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

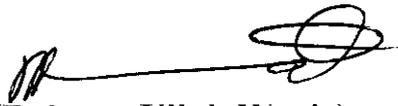
Announced
25.05.2023


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

164

CERTIFICATE

Certified that this judgment of mine consists of twelve (12) pages, each has been checked, corrected where necessary and signed by me.


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