

IN THE COURT OF SHAUKAT AHMAD KHAN
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 9/13 OF 2023
DATE OF INSTITUTION : 29.04.2023
DATE OF DECISION : 29.05.2023

1. ABDUL RAZIQ S/O MUHAMMAD SADIQ
2. MUHAMMAD SHAFIQ S/O TAZA KHAN
BOTH R/O CASTE MISHTI, TAPA DARWI KHEL, TEHSIL CENTRE,
SHAHO KHEL, DISTRICT HANGU
3. LAL SAID S/O HAJI MAN, R/O TARI BANDA, TAPA DARWI KHEL,
SHOAIB KHEL, DISTRICT ORAKZAI
4. MEENAWAR KHAN S/O HAJI MAZAR KHAN, R/O KHAIRULLAH
DAREY, TAPA DARWI KHEL, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. NAWAB SHAH
2. SAAD ULLAH
BOTH SONS OF ABDUL MALIK, R/O CASTE MISHTI, TAPA
MAMIZAI KANDEY UTMANRI
3. HAJI ARSAL KHAN S/O HAKEEM KHAN, CASTE ALI KHEL, TAPA
ZANKA KHEL KANDEY, MADOON NAWASI, BRANZONA
KANDEY KOCHA KHEL
4. JOUHAR S/O MUGHAL BAZ, CASTE MISHTI, TAPA DARWI KHEL
IBRAHIMZONA MADOON NAWASI, DISTRICT ORAKZAI
5. SHAHEEN S/O KHANA GUL, R/O DISTRICT ORAKZAI

.....(RESPONDENTS)

Present: Mr. Noor Mir Jan Advocate for appellants
: Mr. Noor Karim Advocate for respondents

JUDGEMENT
29.05.2023

Impugned herein is the judgment/decree dated 31.03.2023 of the learned Civil Judge-I, Orakzai vide which suit of the appellants/plaintiffs has been dismissed.

- (2). The appellants/plaintiffs through a civil suit before the learned trial court sought declaration-cum-permanent mandatory injunctions to the fact that they are owners in possession of the suit property measuring 20 Kanals as detailed in the headnote of the plaint while the respondents/defendants having got no concern whatsoever with the suit property, are bent upon making interference by


Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
29/05/23

exploring coal mine without the permission of the appellants/plaintiffs. The respondents/defendants were summoned who appeared before the learned trial and contested the suit by submitting their written statement wherein they besides raising various legal and factual objections, contended that they are owners in possession of the suit property as a result of exchange of their property in lieu of suit property with one Khiyal Jan and his family. Pleadings of the parties were culminated into the following issues;

- I. Whether plaintiffs have got a cause of action?
- II. Whether this court has got jurisdiction to entertain this suit?
- III. Whether plaintiffs are estopped to sue?
- IV. Whether the suit of plaintiffs is within time?
- V. Whether the suit is bad in the present form?
- VI. Whether the plaintiffs are owners in the suit property and are entitled to enjoy all the rights associated with same?
- VII. Whether the defendants are doing illegal mining in the suit property?
- VIII. Whether the plaintiffs are entitled for decree as prayed for?
- IX. Relief.

(3). Parties were given opportunity to produce evidence.

Accordingly, appellants/plaintiffs produced 04 witnesses; Sunab Khan, Zahid Sultan, Abdul Raziq and Minawar Khan as PW-1 to PW-4 respectively. On the other hand, respondents/defendants produced 05 witnesses: Ghalib Khan, Ghafoor Khan, Wazir Khan, Habib Ur Rehman and Saeed

Shaukat Ahmad Khan
District & Sessions Judge,
Razai at Paper Mela
20/05/23

Ullah as DW-1 to DW-5 respectively in support of their contention.

(4). The learned trial court, after having heard the arguments, dismissed the suit. Appellants/plaintiffs, being aggrieved of the impugned judgment, filed the instant appeal.

(5). I heard arguments and perused the record.

(6). It is evident from the record that the claim of appellants/plaintiffs, as per contents of plaint, is; that they are owners in possession of the suit property. In support of their claim, they produced Sunab Khan and Zahid Sultan as PW-1 and PW-2 while appellant/plaintiff no. 1 and appellant/plaintiff no. 4 appeared in the witness box as PW-3 and PW-4 respectively. Appellant/plaintiff no. 1 in his statement has claimed that the suit property belongs to Mishti tribe which has subtribes in the names of Haider Khel, Darwi Khel and Mamozai with Mandra Khel, Shoaib Khel and Shargha Khel as subtribe of Darwi Khel. That the suit property falls in the share of Shoaib Khel and Mandra Khel of the subtribe of Darwi Khel while Shargha Khel of Darwi Khel tribe has no share in the suit property. Similarly, appellant/plaintiff no. 4 in his statement as PW-4 has also claimed that the suit property falls in the share of Shoaib Khel and Mandra Khel of Darwi Khel tribe and Shargha Khel has no share in the suit property. PW-1 and PW-2 also belong to Darwi Khel tribe and both of them have claimed that the suit

Shaukat Ahmad Khan
District & Sessions Judge,
Cantonment at Bahawalpur
29/05/23

property belongs to Darwai Khel tribe while Shargha Khel has no share in the suit property.

On the other hand, the claim of respondents/defendants is; that they have exchanged their property at Narey Kanrhe with the suit property belonging to Khial Jan and his family of Shargha Khel, the subtribe of Darwi Khel, that they are owners in possession of the suit property since their forefathers, that they have explored coal mines in the suit property in 1995, 2008 and 2021. In support of their claim, they have produced Ghalib Khan, Ghaffar Khan, Wazir Khan and Habib Ur Reman as DW-1 to DW-4. All of them belong to Darwi Khel tribe. They have contended that the suit property being belonging to them have exchanged by their forefathers with the defendant in lieu of land at Narey Kanrhe which is in their possession. Respondent/defendant no. 1 as attorney for respondent/defendant no. 3 and no. 4 has appeared in the witness box as DW-5 wherein he has reiterated the claim of respondent/defendant in his statement.

It is evident from the pleadings and evidence available on file that originally the suit property belonged to Mishti tribe. It is admitted on record that the suit property falls in the share of Darwi Khel, the subtribe of Mishti. The subtribe of Darwi Khel has further subtribes namely, Shoaib Khel, Mandra Khel and Shargha Khel. The appellant/plaintiff belongs to Mandra Khel and Shoaib Khel tribes. They

Shaukat Ahmad Khan
District & Sessions Judge,
Orangi at Baher Mela
29/05/23

claimed the suit property to have fallen in their share to the exclusion of Sharga Khel; but neither the factum of exclusion of Shargha Khel tribe has been explained nor any other property has been pointed out where the share of Shargha Khel tribe would have been adjusted. Similarly, the appellants/plaintiffs are in possession of other property in outskirts of the suit property indicating the fact that they are in possession of their due share leaving the suit property to be the share of Shargha Khel tribe. Moreover, admittedly the suit property is in possession of respondent/defendant and the appellant/plaintiff have never remained in possession of the suit property. In this respect they claimed that they have remained in possession of the suit property through their tenants but no oral or documentary evidence in this respect has been brought on record. Not a single person has been produced to testify to the fact of having been in possession of suit property as tenant of appellant/plaintiff. Furthermore, DW-1 to DW-4 belong to Shargha Khel tribe whom have testified that their forefathers have exchanged the suit property with the respondent/defendant in lieu of a property named as Narey Kanrhi which is still in their possession being located near their residences. Similarly, the appellants/plaintiffs as per contents of the plaint, have claimed themselves as owners in possession of suit property but in evidence they claimed the suit property to be the


Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai Baher Mela
29/05/23

ownership of Shoaib Khel and Mandra Khel tribes of Darwi Khel which on one hand falls beyond the pleadings while on the other hand they have neither sued in representative capacity nor the other members of the tribes have joined them as plaintiffs.

- (7). Hence, in view of what is discussed above, it is held that the learned trial court has rightly dismissed the suit of the respondent/plaintiff. The impugned judgement/decree is based upon proper appreciation of evidence available on file and needs no interference of this court. The appeal in hand resultantly stands dismissed being devoid of merits. File of this court be consigned to Record Room while record be returned. Copy of this judgement be sent to learned trial court for information.




Pronounced
29.05.2023


(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of six (06) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 29.05.2023


(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela