

(57)

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

**Suit No. 59/1 of 2021**

**Date of Original Institution.....12.07.2021**  
**Date of transfer to this court .....01.07.2022**  
**Date of Decision of the suit .....25.05.2023**

**Aqal Jaffar S/O Noor Jafar, Resident of Qaum Ali  
Khel, Tappa Panjam, Zanka Khel, presently Shadalay  
Tambai Tehsil Lower District Orakzai.**

**.....Plaintiff**

**Versus**

**1. Noor Muhammad S/O Mohmand and  
2. Gulab Khel S/O Abdul Jalil, both residents of Shadalay  
Tambai Tehsil Lower District Orakzai.**

**.....Defendants**

**SUIT FOR DECLARATION CUM PERMANENT**  
**AND MANDATORY INJUNCTION**

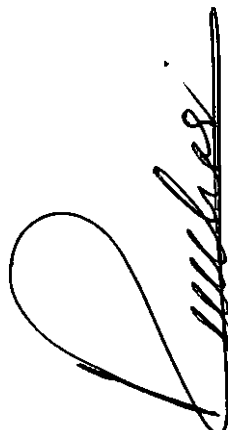
**Counsel for plaintiff: Sana Ullah Khan Advocate**  
**Counsel for defendants: Khan Karim Afridi Advocate**

**JUDGMENT**  
**25.05.2023**

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

2. It is a suit from plaintiff against defendants for declaration  
cum permanent and mandatory injunction to the effect that

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plaintiff is owner in possession of suit property named as *Reward Patay* (رہوانڈ پٹای) situated at Tambai, fully detailed in the headnote of the plaint at the time of his predecessor.

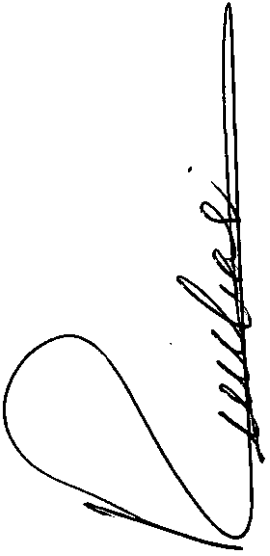
3. Brief facts of the case as narrated in the plaint are that both the parties to the suit belongs to Tambai, Lower Orakzai. That plaintiff is owner in possession of suit property named as *Reward Patay* (رہوانڈ پٹای) since the time of his predecessor.

The defendants have got not right to interfere with the suit property or to erect wall over the same or to illegally dispossess the plaintiff. In this respect the defendants were asked time and again that do not interfere with the suit property but they refused, hence the instant suit.

4. After institution of the plaint, the defendants were summoned, they appeared before the court and submitted their written statement.
5. Out of controversies of the parties, as raised in their respective pleadings, the then incumbent Court has framed the following issues on 27.08.2022.

1. Whether the plaintiff has got a cause of action?
2. Whether the plaintiff is estopped to sue?
3. Whether the suit of plaintiff is time barred?
4. Whether the plaintiff is the owner in possession of the 01 filed known as *Reward Patay* since his predecessor and defendants have nothing to do with the suit property?

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5. Whether suit of plaintiff is bad due to mis-joinder and non-joinder of parties?
6. Whether the predecessor of the plaintiff have exchanged the suit property with the defendants according to agreement deed dated 23.12.2014?
7. Whether the suit property is in possession of defendants and plaintiff has nothing to do with the same?
8. Whether the plaintiff is entitled to the decree as prayed for?  
Relief.

6. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiff produced as many as three witnesses and thereafter closed his evidence. Contrary to this the defendants produced two 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 plaintiff opened the arguments and argued that plaintiff is owner of one field known as Rewand Patay situated at Tambai L/Orakzai while defendants are strangers to the suit property and hence, have got no right to interfere with the suit property or to disturb peaceful possession of plaintiff or to change its nature by way of construction. He further argued that plaintiff succeeded to prove his stance through cogent, convincing and reliable evidence and furthermore nothing in rebuttal has been brought on record by defendants, hence

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prayed that the suit in hand may kindly be decreed in favor of plaintiff and against the defendants for the relief as prayed for.

8. Contrary to this learned counsel for the defendants argued that plaintiff has got no cause of action. He further adduced that suit field was previously exchanged by the predecessor of the plaintiff with defendants vide exchange deed dated 23.12.2014, and thus in exchange the predecessor of defendants had also given a field known as Anar Baig Patay to the predecessor of plaintiff. He further contended that the suit field is still in the possession of defendants. Learned counsel further contended that the plaintiff failed to prove their stance through cogent, convincing and reliable evidence. On the other hand, the defendants succeeded to produce evidence in light and support of their stance previously alleged in written statement. Hence, prayed that as plaintiff failed to prove his 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 plaintiff is estopped to sue?**

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 Advocate General  
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**ISSUE NO. 3:****Whether the suit of plaintiff is time barred?****ISSUE NO. 5:****Whether the suit of plaintiff is bad in its present form due to non-joinder and mis-joinder of parties?**

Defendants have previously alleged in their written statement that plaintiff is estopped to sue by his conduct, suit of plaintiff is barred by limitation and suit of plaintiff is bad for mis-joinder and non-joinder of parties, hence burden to prove issues no.2, issue no.03 and issue no. 05 was on the shoulders of defendants. In this respect, to prove the issue in hand, defendants produced two witnesses as DW-01 and DW-02. However on perusal of the statements of both the DWs, it has been noticed that they failed to utter a single word regarding the abovementioned issues in their respective examination in chief and thus deviated from the stance of defendants previously alleged in their written statement.

In light of what has been discussed above, as defendants miserably failed to prove issues no.02, 03 & 05 through their cogent, reliable and convincing evidence, hence the aforementioned issues are hereby decided in negative against defendants in favor of plaintiff.

**ISSUE NO. 04:**

  
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 Civil Judge (Jt-II)  
 Tehsil Courts Katsaya  
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**Whether the plaintiff is the owner in possession of the 01 filed known as Rewand Patay since his predecessor and defendants have nothing to do with the suit property?**

Plaintiff in his plaint had previously alleged that he is owner in possession of 01 fields known as Rewand Patay. To prove his stance plaintiff produced one Aqal Jaffar s/o Noor Jaffar, plaintiff, as PW-01, who stated on oath in light and support of his previous stance alleged in plaint. He further stated that he is the owner in possession of one field known as Rewand Patay since his predecessor. During cross examination he stated that it is correct that he inherited suit field from his fore-fathers. It is correct that he is owner in possession of the suit field and same is under his use since the time of his fore-fathers. It is correct that he has not cultivated suit property for the last 15 years. It is correct that he is in possession of suit property since his birth. Self-stated that prior to his birth his fore-fathers were owners in possession of the suit property. It is correct that the map/sketch annexed with the plaint is also correct.

PW-02 was produced and examined as one Khial Akbar s/o Khial Meer, who deposed on oath in light and support of the stance of plaintiff previously alleged in the plaint. During cross examination he stated that the suit field is in possession of plaintiff and the

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same is barren for last 7/8 years. It is correct that plaintiff is in possession of and is residing over the land of Tappa.

PW-03 was produced and examined as one Said Ahmad s/o Niaz Muhammad, who deposed on oath in light and support of the stance of plaintiff previously alleged in the plaint. During cross examination nothing in rebuttal regarding the issue in hand has been brought on record.

In light of the above evidence produced by the plaintiff to prove the issues in hand, it has been noticed that all the PWs deposed in light and support of the stance of plaintiff previously alleged in their plaint. During cross examination of PW-01 a question was put to the witness which he replied "*it is correct that he inherited the suit field from his fore-fathers. It is correct that he is owner in possession of suit field since time of his fore-fathers and same is in his use. It is correct that he is in possession of suit property since his birth*". Similarly during cross examination of PW-02 a question was put to the witness to which he replied "*suit field is in possession of plaintiff Aqal Jaffar*". In given circumstances, the above mentioned questions are otherwise an admission of stance of plaintiff by the defendants and thus they admitted that suit property is ownership of plaintiff and he is in possession of the same since his birth and prior to his birth it was

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 Civil Judge (J) II  
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in possession of his fore-fathers. Furthermore, during cross examination the defendants failed to shatter the credibility of witnesses and thus nothing such material contradiction has been brought on the record rather such questions were put to the witnesses during cross examination which otherwise amount to admission by defendants.

In light of above discussion, it has been noticed that plaintiff succeeded to prove issue in hand through cogent, convincing and confidence inspiring evidence and furthermore nothing contradictory is available on record, hence accordingly issue in hand is hereby decided in positive in favor of plaintiff and against the defendants.

**ISSUE NO. 6**

**Whether the predecessor of the plaintiff have exchanged the suit property with the defendants according to agreement deed dated 23.12.2014?**

Defendants have previously alleged in their written statement that suit field was previously exchanged by the elders of plaintiff with them vide exchange deed dated 23.12.2014 and since then they are owners in possession of the same. To prove their stance defendants produced one Noor Muhammad Khan s/o Mohmand Khan, defendant no. 1 in person and attorney for defendant no.2, as DW-01 who deposed on oath in light and support of previous stance of defendants alleged in the written statement and further

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produced exchange deed as Ex. DW-1/3. During cross examination he deposed that it is correct that Ex. DW-1/3 does not bear the signature of plaintiff or his brothers namely Wazir and Meenak. It is correct that Ex-DW-1/3 does not bear his signature. It is correct that Ex-DW-1/3 does not bear the signature, thumb impression and CNIC no. of any witness. Plaintiff has cultivated *Bang* over field situated in *Anar Baig*. It is correct that he had also cultivated *Bang* over all his land in *Anar Baig*. It is correct that Ex. DWX-1/1 does not contain his name and signature. It is correct that said deed does not contain the name of *Reward field* and its surroundings. It is correct that he had not blocked the passage towards *Reward field*. It is correct that he had not erected wall in the plaintiff's field.

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DW-02 was produced and examined as one Ajab Khan s/o Faqir Gul, who deposed on oath that when the brothers of plaintiff and brother of defendants namely Abdul Jalil were exchanging *Reward field* and *Anar Baig field*, he was present and in his presence deed dated 23.12.2014 was scribed. During cross examination he deposed that it is correct that he affixed his thumb impression over Ex. DW-1/3. Self-stated that he always use to affix his thumb impression. It is correct that he had seen Ex. DWX-1/1, which does not contain his thumb impression. It is also

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correct that he had also seen Ex. DW-1/3, which does not contain his thumb impression.

In light of above evidence produced by defendants to prove the issue in hand, it has been noticed that although both the DWs deposed in light and support of the stance previously alleged by defendants in their written statement. However, during cross examination they were contradicted in material particulars and thus their credibility was shattered. DW-01 admitted in his cross examination that Ex. DW-1/3 does not bear the signatures of plaintiff or his brothers namely Wazir and Meenak. He further admitted that Ex. DW-1/3 does not bear his signature. He also admitted that Ex. DW-1/3 does not bear the signature, thumb impression or CNIC no. of any witness thereto. DW-01 also admitted that the name of Rewand field and its abuttals are not mentioned in the said deed. He also stated that plaintiff has sown Bang over his field at Anar Baig. He further admitted that he has also sown Bang over all his lands in Anar Baig. On the other hand DW-02 by deviating from the stance of defendants alleged in the written statement, has stated in his examination in chief that alleged exchange had taken place between the brothers of plaintiff and brother of defendants namely Abdul Jalil and further also admit his presence at the time of exchange while the defendants

Handwritten signature and stamp:   
Stamp: RAHIM KHAN, JUDGE, Civil Court, Tehsil, District, Sindh   
Date: 25-05-17

had previously alleged in para no. 2 of their written statement that said exchange deed was executed with the elders of plaintiff. It is also pertinent to mention here that DW-02 in his cross examination stated that he had previously affixed his thumb impression over Ex. DW-1/3. However, he was confronted with the same and thereafter he admitted that Ex. DW-1/3 does not bear his thumb impression, which make him unworthy of credit.

In light of above discussion, as defendants miserably failed to prove the execution of alleged exchange deed Ex. DW-1/3 and further also admit that the same does not bear signatures/thumb impression of plaintiff or witnesses thereto. Defendants also failed to examine all the witnesses of the alleged exchange deed Ex. DW-1/3. Hence, accordingly the issue in hand is hereby decided in negative against the defendants and in favor of plaintiff.

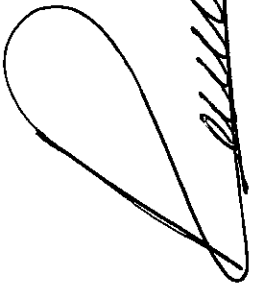
**ISSUE NO. 7**

**Whether the suit property is in possession of defendants and plaintiff has nothing to do with the same?**

Defendants have previously alleged in their written statement that suit property is in their possession. To prove their stance defendants produced one Noor Muhammad Khan s/o Mohmand Khan, defendant no. 1 in person and attorney for defendant no. 2, who deposed on oath that suit field is still in their possession. During cross examination he stated that it is correct that said deed

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neither contain name of Rewand field nor its surroundings. It is correct that he had not blocked the passage towards Rewand field. It is correct that he had not erect wall in plaintiff's field.

DW-02 was examined as one Ajab Khan s/o Faqir Gul, however perusal of his examination in chief would reveal that he failed to depose regarding the issue in hand and thus deviated from the stance of defendants previously alleged in their written statement.

In light of above evidence, it has been noticed that defendants have produced two witnesses. DW-01 merely deposed that suit property is in their possession while DW-02 did not deposed regarding the instant issue. It is also pertinent to mention here that defendants claim their ownership and possession over the suit field on the basis of alleged exchange deed dated 23.12.2014, however from the findings of issue no. 6 as defendants failed to prove the execution of alleged exchange deed hence, in given circumstances, no question of their possession over suit field arise. Furthermore, DW-01 has also admitted in his cross examination that he had not blocked the passage towards Rewand field, which otherwise lead this court to presume that Rewand field is not in possession of defendants.

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In light of above discussion, as defendants failed to prove the issue through cogent, convincing and reliable evidence, hence the issue in hand is hereby decided in negative against the defendants and in favor of plaintiff.

**ISSUE NO. 1**

**Whether the plaintiff has got cause of action? OPP**

In wake of issue wise findings above, the plaintiff has got cause of action, hence the issue in hand is decided in positive in favor of plaintiff and against the defendants.

**ISSUE NO.06:**

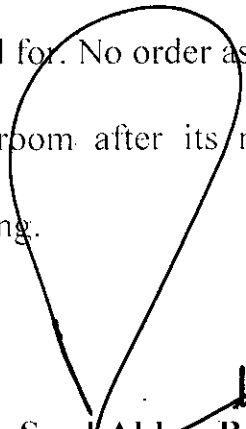
**Whether plaintiff is entitled to the decree as prayed for? OPP**

In wake of my issue wise findings above, plaintiff is entitled to the decree as prayed for, hence the issue in hand is decided in positive in favor of plaintiff and against defendants.

**Relief:**

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

Announced  
25.05.2023

  
**Syed Abbas Bukhari,**  
Civil Judge-III,  
Tehsil Court Kalaya, Orakzai

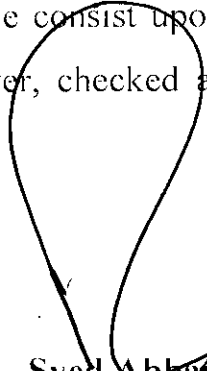
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Civil Judge-III  
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C E R T I F I C A T E

Certified that this judgment of mine consist upon fourteen (14) pages. Each page has been read over, checked and signed after making necessary correction therein.

**Dated: 25.05.2023**

  
Syed Abbas Bukhari,  
Civil Judge-II,  
Tehsil Court Kalaya, Orakzai

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**Civil Judge-II**  
**Tehsil Courts Kalaya**