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

Civil Suit No. : 11/1 of 2023
Date of Original Institution : 10.08.2020
Date of Transfer In : 03.01.2023
Date of Decision : 31.05.2023

Dr. Jan Alam (deceased) s/o Muhammad Khan through Legal Heirs and 02 others, All R/O Qoum Mani Khel, Lower Orakzai, Presently R/O Ibrahim Zai, Tehsil and District Hangu.

.....(Plaintiffs)

VERSUS


Khyalmin Ali s/o Ali Baz Khan and 03 others, All R/O Qoum Mani Khel, Ahmad Khel, Tehsil Lower, District Orakzai

..... (Defendants)

SUIT FOR DECLARATION-CUM-PERPETUAL & MANDATORY INJUNCTION

JUDGEMENT:

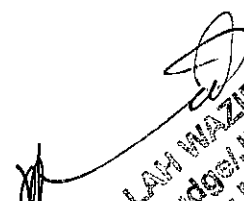
Plaintiffs have brought the instant suit for declaration-cum-perpetual & mandatory injunction against the defendants, seeking therein that they are the owners in possession of the suit land measuring 15 Jarebs i.e 17 fields including a house situated at Fateh Khan Konj, Ahmad Khel, Qoum Mani Khel near Kalaya Bazar, Orakzai since their forefathers. That the one Fateh Khan was the great grandfather of the plaintiffs that is why the suit land is named so. That in the year 1929, the ones Qasaban took possession of the suit land of the plaintiffs, which was later on retrieved in the year 1985 in lieu of Rs. 34,000/- and 02


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fields by the plaintiffs, in which the said 02 fields were handed over by the father of the defendants namely Ali Baz Khan to the said Qasaban. But the plaintiffs handed over 01 larger field to the said Ali Baz Khan in lieu of his aforesaid 02 fields. That the defendants did not interfere in the suit property till the death of their father Ali Baz Khan in the year 2004 but later on they began to interfere in the suit property. That at last a jirga was conducted with the defendants and through a decision, Dated: 21.11.2006, the plaintiffs were made bound to pay Rs. 65,000/- to the defendants, in which Rs. 53,000/- were paid in cash while a gun (بندوق) was handed over to them in lieu of the remaining Rs. 12,000/-. That now the defendants are once again interfering in the suit property in the shape of cultivating the same, metaling a thoroughfare in the same and are about to take possession of the same without any justification. That the defendants were asked time and again not to do the aforesaid acts but they refused, hence, the present suit.

Defendants were summoned through the process of the court who appeared before the court and submitted their written statement in which they denied not only the claim of the plaintiffs but also raised various legal and factual objections.


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Divergent pleadings of the parties were reduced into the following issues;

Issues:

1. Whether the plaintiffs have got a cause of action?
2. Whether the plaintiffs are estopped to sue?
3. Whether the suit of the plaintiffs is time barred?
4. Whether the suit property is the ancestral property of the plaintiffs and the defendants have got nothing to do with the same?
5. Whether the defendants are illegally interfering in the suit property?
6. Whether the plaintiffs are entitled to the decree as prayed for?
7. Relief?

My issue-wise findings are as under;

Issues No. 02

The defendants alleged in their written statement that the plaintiffs are estopped to sue but later on failed to prove the same, hence, the issue is decided in negative.

Issues No. 03:

The defendants in their written statement raised the objection that suit of the plaintiffs is time barred but I am the opinion that as per Article 120 of the Limitation Act,

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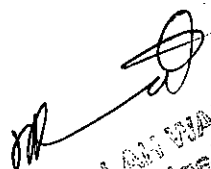
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1908 there is a period of 06 years for the institution of such like suits but the aforesaid Limitation Act, 1908 is extended to the erstwhile FATA on 31/05/2018 through the 25th constitutional amendment and the same has become operational from the aforesaid date while the instant suit has been filed on 10.08.2020. Thus, the same is well within time. The issue is decided in negative.

Issues No. 04 & 05:

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

The plaintiffs alleged in their plaint that they are the owners in possession of the suit land measuring 15 Jarebs i.e 17 fields including a house situated at Fateh Khan Konj, Ahmad Khel, Qoum Mani Khel near Kalaya Bazar, Orakzai since their forefathers. That the one Fateh Khan was the great grandfather of the plaintiffs that is why the suit land is named so. That in the year 1929, the ones Qasaban took possession of the suit land of the plaintiffs, which was later on retrieved in the year 1985 in lieu of Rs. 34,000/- and 02 fields by the plaintiffs, in which the said 02 fields were handed over by the father of the defendants namely Ali Baz Khan to the said Qasaban. But the plaintiffs handed over 01 larger field to the said Ali Baz Khan in lieu of his aforesaid 02 fields. That the defendants did not interfere in the suit


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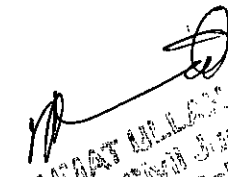
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property till the death of their father Ali Baz Khan in the year 2004 but later on they began to interfere in the suit property. That at last a jirga was conducted with the defendants and through a decision, Dated: 21.11.2006, the plaintiffs were made bound to pay Rs. 65,000/- to the defendants, in which Rs. 53,000/- were paid in cash while a gun (بندوق) was handed over to them in lieu of the remaining Rs. 12,000/-. That now the defendants are once again interfering in the suit property in the shape of cultivating the same, metaling a thoroughfare in the same and are about to take possession of the same without any justification. That the defendants were asked time and again not to do the aforesaid acts but they refused, hence, the present suit.

In order to prove their claim, the plaintiffs produced witnesses, in whom the one Nawaz Ali, appeared as PW-01, who endorsed the signature of his grandfather on the decision, Dated: 09.09.1985. But admitted in his cross-examination that he has no knowledge of the dispute between the parties and the jirga decision and also he has no other document in his possession for comparison of the said signature. Further, Mr. Shahjehan, appeared as PW-02, who endorsed the signature of his paternal uncle on the decision, Dated: 09.09.1985. But admitted in his cross-examination that he has no knowledge of the dispute between the parties

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and the jirga decision and also he has no other document in his possession for comparison of the said signature. Further Mr. Raheem Ali, appeared as PW-03, who endorsed the thumb impression of his father on the decision, Dated: 09.09.1985. But admitted in his cross-examination that he has no knowledge of the dispute between the parties and also he has no other document in his possession for comparison of the said thumb impression. Further, Mr. Kifayat Ali, appeared as PW-04, who endorsed the thumb impressions of his brother and father on the iqrar nama, Dated: 03.08.1983. Further that the suit property was their ownership, upon which they wanted to do construction but in the meanwhile a dispute arose that the suit property was handed to them on mortgage and later on a jirga decision was made, whereby 02 fields and 34,000/- cash were handed over to our elders and the property was handed over to the plaintiff No. 03 namely Shah Alam. During cross-examination, he deposed positively in favour of the plaint, like the suit property is consisted upon 18 fields. But later on he admitted that he has no such like document in his possession, the thumb impression of which can be compared with the one of my father and also he was not present in the jirga and the same was also not scribed in his presence. Further Mr. Kibad Ali, appeared as PW-05, who endorsed the signature of his paternal uncle upon the


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decision, Dated: 09.09.1985 but admitted in his cross-examination that there is no document in his possession, the signature of which can be compared with the signature of his paternal uncle and that he was not present in the jirga decision. Further, Mr. Sher Ali Khan, appeared as PW-06, who endorsed his signature over the jirga decision, Dated: 21.11.2006 and that the jirga decision is correct including its contents and correctly signed by the witnesses in his presence. During cross-examination, a positive deposition has been made by him in line with stance of the plaintiffs that according to the aforesaid jirga decision, the thoroughfare would be used by all the Garhiwal brothers at the time of necessity to the extent of the use of tractor/pick-up and that there is no house except the one of the defendants on the spot and that the defendants use the dispute thoroughfare for access to their house. Further, Mr. Mehboob Ali, a cultivator of the plaintiffs, appeared as PW-07, who stated that they are the zamindars of the plaintiff No. 01 in the suit property and the suit property is in their possession with the permission of the plaintiffs for the last 35 years. That they used to pay the income of the suit property to the plaintiff Dr. Jan Alam and the suit property comprises in more than 17 fields. That a jirga decision was made in the year 2006, through which the plaintiffs would pay Rs. 65,000/- to the defendants and that

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accordingly on 25.03.2007, an amount of Rs. 53,000/- was paid to the one Khyalmin Ali in his presence through the one Hayat Ali against a receipt duly signed by him along with Khyalmin Ali and other witnesses, which is Ex.PW-7/1. That the defendants requested the plaintiffs for a thoroughfare accessing to their house, which was given subject to the condition that it would not be made public. During cross-examination, he made a positive deposition to the extent of the house in the suit property in his occupation, which is constructed by the plaintiff Dr. Jan Alam and they are residing in the same for the last 30/35 years and that Ex.PW-7/1 was scribed in Kalaya bazar in front of the shop of the

one Iftikhar. Further he has been cross-examined in detail but nothing tangible against the plaint has been extracted out of him during cross-examination. Further, Mr. Amjad Ali, the special attorney for the plaintiffs, appeared as PW-08, who produced the jirga decision, Dated: 03.08.1983 as Ex.PW-8/2 and the jirga decision Dated: 09.09.1985 as Ex.PW-8/3 (between the father of the plaintiffs namely Muhammad Khan and the aforementioned Qasaban regarding the retrieval of the suit property) and the jirga decision, Dated: 21.11.2006 as Ex.PW-8/4 (between the plaintiff Dr. Jan Alam and the defendant Khyalmin Ali, whereby compensation of Rs. 65,000/- has been paid to the defendants in lieu of 02 fields


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which were allegedly handed over by the predecessor of the defendants to the aforementioned Qasaban in the year 1985 and the temporary use of a thoroughfare through the fields of the plaintiffs by the defendants) and a receipt of the same payment to the defendants, which is Ex.PW-7/1 and the affidavit of his zamindar as Ex.PW-8/5 and further fully narrated the same story as in the plaint. He has been cross-examined in detail but the lengthy cross-examination is irrelevant and unnecessary and even nothing against the plaint has been extracted out of the same.

In order to counter down the claim of the plaintiffs, the defendants produced witnesses in whom, the one Hayat Ali, appeared as DW-01, who alleged that there was a dispute between the parties which was resolved through a jirga decision which is Ex.PW-8/4 and that he has seen the statement on the back of the Ex.PW-8/4 which is in his handwriting and the same bears his signature. That the Ex.PW-7/1 is also written by him, which is against the payment made to defendant No. 01 through himself but the said payment was returned to him by defendant No. 01 and he returned the same to the one Amjid Ali and a statement on the said receipt is written in this respect. But admitted in his cross-examination that both Ex.PW-7/1 & Ex.PW-8/4 are written by him but the front page of the Ex.PW-8/4 does not

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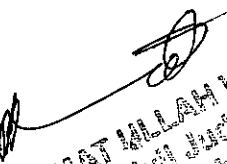
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bear his name/signature. That the Ex.PW-8/4 was written with the consent of the parties on 21.11.2006 and its contents are correct and that according to the said deed, the dispute thoroughfare was to be used by the defendants at the time of need only and the same would not be considered as public thoroughfare. Also, that what is written on the back of the Ex.PW-8/4 is also written by him and the same are correct and the Ex.PW-7/1 is also correct. In the meanwhile, he alleged that he returned the amount to the one Amjid Ali but admitted that he has not received any receipt in this respect. Further, Mr. Jamal Hassan, a jirga member of the parties, appeared as DW-02, who endorsed his signature over the jirga decision of the year 2006, which is Ex.PW-8/4 with addition that later on the said jirga decision failed as the defendants paid back the aforementioned amount. That another jirga decision was made on 20.10.2013 between the parties which is Ex.DW-2/1. But admitted in his cross-examination that he is only witness of the statement on the back of jirga decision, Dated: 21.11.2006 which is Ex.PW-8/4 and not a witness to any other jirga. Further, Mr. Muhammad Qambar, a jirga member appeared as DW-03, who endorsed his signature over the jirga decision, Dated: 20.10.2013 which is Ex.DW-2/1. But admitted in his cross-examination that there is no signature of any party on the

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said jirga decision. That he does not remember that to whom the parties gave waak for the jirga and who scribed the same. That the same does not bear the CNIC number of any party. Further, Mr. Amraz Ali, the defendant No. 02 for himself and special attorney for the rest of the defendants appeared as DW-04, who produced a deed, Dated: 06.04.1976, which is Ex.DW-4/2 regarding the ownership of the suit property, another deed with the zamindar of the suit property bearing dated as 10.08.1995 which is Ex.DW-4/3, another deed regarding expenditure over the said house which is Ex.DW-4/4, another jirga decision between the parties on 20.10.2013 which is Ex.DW-4/5. But admitted in his cross-examination that the suit property around his house is in slope, lying uncultivated since 2006 and 15 fields can be made out of the same and the same was cultivated by the zamindar Itbar Ali, jointly for the parties. That the suit property is known as Fateh Khan Konj. That the slope mentioned in his statement is the suit property and their property lying towards West of the slope and then there is a mountain. That their house is lying at a distance of 1000/1200 feet from the said slope. That the names of his father and grandfather are not mentioned in the Ex.DW-1/4 and the same is correct and the said amount was received by his father from the plaintiff No. 01 through the said receipt. That he was present in the jirga


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decision of the year 2006 and that in the said jirga, the suit thoroughfare was disputed. That the jirga decision, Dated: 21.11.2006 is correct. That the suit thoroughfare is attached to the property of Dr. Jan Alam. That his father received the amount of Rs. 53,000/- through the receipt which is Ex,PW-7/1 as a result of the jirga decision, Dated: 21.11.2006. That the rifle mentioned in the jirga decision, Dated: 21.11.2006 is still in their possession. That the suit property was disputed since 1929 and the same was resolved through a jirga decision of the year 1985. That the jirga decision, Dated: 20.10.2013 which is Ex.DW-4/5 neither bears the signature of the plaintiffs nor the signature of the defendants and the same was never acted upon. That they have never alleged any claim against the defendants regarding the suit property.

Arguments heard and record perused.

After hearing of arguments and perusal of the record, I am of the opinion that the plaintiffs established successfully their claim by proving that the suit property was retrieved from the possession of the Qasaban through jirga decisions, Dated: 03.08.1983 which is Ex.PW-8/2 and that of 09.09.1985, which is Ex.PW-8/3 and afterwards from the present defendants through a jirga decision, Dated: 21.11.2006, which is Ex.PW-8/4. Also, these jirga decisions are admitted by the defendants in their evidence. So far as the

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question of thoroughfare is concerned, it is admitted by the DW-04 that the same goes through the property of the plaintiffs and the jirga of the year 2006 was also in this respect and further that this thoroughfare is only leading towards the house of the defendants, meaning thereby that the same is not a public thoroughfare rather a concession given by the plaintiffs through the jirga decision, Dated: 21.11.2006 to the defendants and thus the same can never be legally considered/declared as public thoroughfare. Thus, in the light of the aforesaid findings, both these issues are decided in positive.

Issues No. 01 & 06:

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

As sequel to my findings on issue no. 04 & 05, the plaintiffs have got a cause of action and thus, they are entitled to the decree as prayed for. Hence, both these issues are decided in positive.

Relief

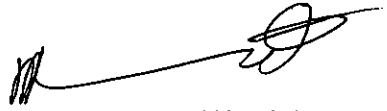
As sequel to my above issue-wise findings, suit of the plaintiffs is hereby **decreed** as prayed for with costs.

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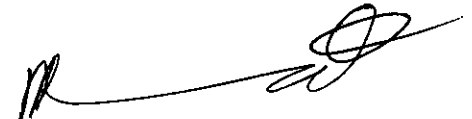
File be consigned to the Record Room after its necessary completion and compilation.

Announced
31.05.2023


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

CERTIFICATE

Certified that this judgment of mine consists of fourteen (14) pages, each has been checked, corrected where necessary and signed by me.


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