

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

Civil Suit No. 38/1 of 2020  
Date of Original Institution: 18.11.2020  
Date of Transfer in: 29.06.2022  
Date of Decision: 12.07.2023

- 1. **Ajmal Hussain Son of Meerza Hussain and**
- 2. **Israr Hussain Son of Meerza Hassan**, both residents of Qaum Mani Khel, Tapa Mirwas Khel, Karr Ghar, Tehsil Lower District Orakzai.

.....(Plaintiffs)

**VERSUS**

- 1. **Khalid Hussain,**
- 2. **Naveed Hussain, both Sons of Naeem Jan and**
- 3. **Sadiq Ali Son of Noor Ahmad Jan**, all residents of Qaum Mani Khel, Tapa Mirwas Khel, Karr Ghar, Tehsil Lower District Orakzai.....

(Defendants)

**SYED ABBAS BUKHARI**  
Civil Judge, JIM-II  
Tehsil Courts Kalaya

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

**JUDGEMENT:**

Through this judgment I am going to decide the suit in hand filed by the plaintiffs against the defendants.

Brief facts of the case in hand are that the plaintiffs have filed the instant suit for Declaration-cum- Perpetual Injunction and possession in alternate, against defendants to the effect that the parties to the suit are relatives (ترکوبان) inter se. Suit property were previously partitioned between the parties to the suit vide private partitioned deed dated 13.01.2009. Plaintiffs are owner in possession of the Plot-E and in return defendants took Plot- A, situated on the road

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side as shown in the sketch, through family partition deed dated 13.01.2009. The defendants are now interfering with Plot-E. The said partition deed was signed by the uncle of defendants and thus the defendants did not objected said partition for a period of about 10/11 years. Now the defendants have started construction over point F as shown in the sketch, which amounts to forceful and illegal possession. Furthermore, plaintiffs are owner in possession of Plot-E measuring 30 Marlas. Defendants were time and again requested to stop construction over the suit property well as refrain from interfering with the same but they refused, hence, the present suit.

*Alkhalid*  
 SYED ABAS ALKHALIDI  
 Civil Judge, III  
 Wahil Courts, Bahawalpur

With due process of law and procedure defendants were summoned, they appeared before the court and contested the suit by filing the written statement and reply. Defendants have raised several legal and factual objections in their written statement.

2. From divergent pleadings of the parties, the following issues were framed for adjudication of real controversy between the parties.

**Issues:**

- i. Whether plaintiffs have got a cause of action?
- ii. Whether plaintiffs are estopped to sue?
- iii. Whether the suit of plaintiffs is time barred?
- iv. Whether plaintiffs are owner in possession of Plot-E as shown in the sketch and as per the family partition deed dated 13.01.2009 and the defendants have nothing to do with the same?

- v. Whether plaintiffs are entitled to the possession of the Plot-E in the alternate?
- vi. Whether the plaintiffs are entitled to the decree as prayed for?
- vii. Relief.

3. Upon submission of list of witnesses, both the parties were provided opportunity to adduce their desired evidence and accordingly they produced their respective evidence.

4. After completion of evidence, arguments of the learned counsel for the parties were heard and record of the case file was gone through, with their valuable assistance.

During course of recording evidence plaintiffs in support of their claim and contention produced three witnesses as PW-01 to PW-03. Thereafter plaintiffs closed their evidence.

Defendants in support their claim also produced three witnesses as DW-01 to DW-03. Thereafter defendants closed their evidence.

7. Arguments of learned counsels for the parties heard and record gone through. In the light of available record and arguments of counsel for the parties, my issue wise discussion is as under.

**Issue No. 2**

**Whether plaintiffs are estopped to sue?**

Burden of proof regarding this issue was on the shoulders of defendants. However none of their witnesses uttered a single word regarding the issue in hand. Moreover, estoppel needs cogent, convincing and reliable evidence, which is lacking on part of

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 Tehsil Courts Malaya

defendants, therefore, the issue is decided in negative and against the defendants.

**Issue No. 3**

**Whether the suit of the plaintiff is time barred? OPD**

Burden of proof regarding this issue was on the shoulders of defendants. Contention of defendants is that the suit of plaintiff is not within time but they failed to produce evidence to prove their stance and thus there is nothing on record which could show that the suit of plaintiffs is time barred, hence, the issue is decided in negative and against the defendants.

**Issue No. 4 & 5**

**Whether plaintiffs are the owners in possession of Plot-E as shown in the sketch and as per the family partition deed dated 13.01.2009 and defendants have nothing to do with the same?**

**Whether plaintiffs are entitled to the possession of the Plot-E in the alternate?**

Both these issues are interlinked and interconnected, hence to avoid the repetition of facts, both the issues are taken together for discussion.

Plaintiffs in their plaint had previously alleged that vide private partition plot E was declared as their ownership vide partition deed dated: 13.01.2009 and since then they are in possession of the same and thus defendants have got nothing to do the same.

To prove their stance plaintiffs produced one Israr Hussain s/o Mirza Hassan, plaintiff no.02, as PW-01, who stated on oath in light

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Civil Judge (M)  
Tehsil Chakwal  
12-07-2013

and support of stance of plaintiffs alleged in the plaint. During cross examination he deposed that at the time of partition one Naeem Jan, father of defendants no.01 and no.02, was alive. At the time of partition he was in Saudi Arabia. Deed was scribed at Bar Darbar. When he came back from Saudi Arabia, elders informed him regarding partition. In original deed in respect of partition no.03 and no.04, the word 03 Saraoi and 04 Bardarbar had been written. Self-stated that he himself had numbered the same for clarification. It is correct that in partition no.04 Bardarbar, he had additionally written the words "Taqseem no.04 Bardarbar".

SYED ABAAS HUSSAIN  
 Civil Judge  
 Tehsil Gurguskhana

PW-02 was produced and examined as one Gul Ameer Shah Son of Syed Ameer Shah, who deposed in light and support of issues in hand. He further deposed that he and defendants are relatives and had received the property towards road side with their own consent. They had further partitioned said property and in that very subsequent partition defendants received portion towards road side while he received portion little bit away. They had constructed houses over there for the last 10/12 years. During cross examination he deposed that it is correct that it has not been mentioned in the deed that which property has been received by whom with his own consent. Self-stated that land was received by them with their own consent.

PW-03 was examined as one Gul Hussain Son of Sarwar Hussain, who deposed on oath in light and support of the stance of plaintiffs. During cross examination he deposed that it is the same deed which was written on the spot. It is correct that no addition or

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deletion has been made in the deed. He had seen the deed thoroughly. He was present on the spot. The deed was signed in his presence.

In light of the above evidence produced by plaintiffs to prove the issue in hand it has been noticed that all the three witnesses supported the stance of plaintiffs in their examination in chief. On the other hand during cross examination nothing such contradictory has been brought on the record rather such questions were put to the witnesses which amount to admission on the part of defendants, a brief of which is as under.

As for as admissions with regard to partition between parties to the suit is concerned, during cross examination of PW-01 it was brought on the record that *"at the time of partition one Naeem Jan, father of defendants no.01 and no.02, was alive. At the time of partition he (PW-01) was in Saudi Arabia. When he came back from Saudi Arabia, elders informed him regarding partition"*. Similarly during cross examination of PW-02 it was brought on the record that *"consultations took place during partition between him and father and uncle of defendants no.01 and no.02"*. Similarly PW-03 answered to the question put to him during his cross examination that *"father defendants no.01 and no.02 was present at the time of partition. He had not seen the garden, which the defendants are claiming. At the time of partition this place/area was barren"*.

As for as admissions with regard to the execution of partition deed dated: 13.01.2009 is concerned, during cross examination of PW-01 a question was put to him to which he replied that *"deed was*

scribed at Bar Darbar. In original deed in respect of partition no.03 and no.04, the word 03 Saraoi and 04 Bardarbar had been written.”

Similarly PW-02 had answered in his cross examination that “he had seen Ex-PW1/1, in which no addition or deletion has been made. It is correct that it is not mentioned in the deed that amongst the parties who has received which portion of property as per his consent.” PW-03 stated in his cross examination that “it is the same deed which was written on the spot. It is correct that no addition or deletion has been made in the deed. He had seen the deed thoroughly. He was present on the spot. The deed was signed in his presence”. It is also worth

mentioning here that after bringing on the record abovementioned admissions by the defendants during cross examination of PWs, the same were not rebutted by defendant even through suggestions rather they remained silent to this effect, which otherwise lead this court to presume that defendants had admitted the stance of plaintiffs with regard to partition of the suit property as well as execution of deed dated: 13.01.2009.

It is also pertinent to mention here that plaintiffs on their suit had alleged that the four properties, situated at four different places, were partitioned amongst the parties to the suit vide partition deed dated: 13.01.2009. In given circumstances, perusal of cross examination of one Naveed Hassan, defendant no.02, as DW-01 would reveal that he had stated therein that “in first partition land towards road side was given to plaintiffs while in second partition land towards road was given to them (defendants). Similarly in third

  
SYED AZAAN RUKHSHARI  
Civil Judge (Jl-II)  
Tehsil Court, Kalay

partition property towards road side was given to plaintiffs while that on the rare side was given to defendants. In fourth partition the property near the road was given to their (defendants) father while plaintiffs received the land adjacent and on the back side to the land received by defendants. He had got no objection over the three partitions". From this statement of defendant no.02 in his cross examination, this court is of the view DW-01 had admitted the version of plaintiffs with regard to partition of four properties situated at four different places and furthermore, DW-01 had also deposed that he had got no objection over the partition of three properties, out of the total of four while he had admitted that partition of all the four properties had taken place. In given circumstances, this court is of the view that defendants cannot accept or deny the partition proceedings in parts. Either they should have challenged the partition of all the four properties or admitted all of them. It is further necessary to mention here that the partition between parties to the suit had taken place in the year 2009 and thereafter, the relatives of defendants have also constructed their houses over the same after partition, which is also evident from the statement of PW-02, who is the relative of defendants.

*[Handwritten Signature]*  
 SYED ARAAS SUKHARI  
 Civil Judge (M)-II  
 Tehsil Courts, Kalaya

It is also worth mentioning here that during the pendency of instant suit a question arose during evidence that one Irshad Ali died prior to partition proceedings while plaintiffs allege that said Irshad Ali was present at the time of partition. As said Irshad Ali was sepoy in Levy, hence order dated: 15.01.2008 was verified by this court



through DPO Orakzai, wherein it had been mentioned that said Irshad Ali died on 04.01.2008. After confirmation of the death of Irshad Ali prior to partition of the suit property, the stance of petitioners with regard to presence of Irshad Ali at the time of partition is baseless. However same does not affect the merit of case for the reason that perusal of Ex-PW1/1 would reveal that neither the name nor signature of said Irshad Ali is available over the same. Furthermore, the abovementioned admissions on the part of defendants make it immaterial to consider the issue with regard to death of Irshad Ali and stance of plaintiffs with regard to his presence at the time of partition.

*(Signature)*  
 SYED ARAAS SYUHADER  
 Civil Judge, JM-II  
 Tehsil Court, Kalaya

In light of what has been discussed above, as plaintiffs succeeded to prove the issues in hand through cogent, convincing and reliable evidence and furthermore, nothing in rebuttal has been brought on the record by the opposite party, hence accordingly both the issues in hand are hereby decided in positive in favor of plaintiffs and against defendants.

**Issue No. 1 & 6**

**Whether plaintiffs have got a cause of action?  
 Whether the plaintiffs are entitled to the decree as prayed for?**

Issues no.01 and no.06 being interlinked are hereby decided collectively.

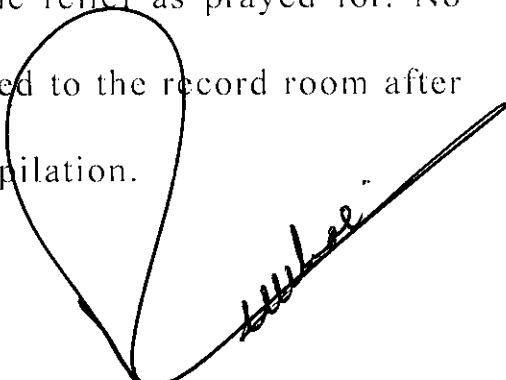
In wake of my issue wise findings, plaintiffs have got a cause of action and they are entitled to the decree as prayed for. Hence

accordingly both the issues are hereby decided in positive in favour of plaintiffs and against defendants.

**Relief**

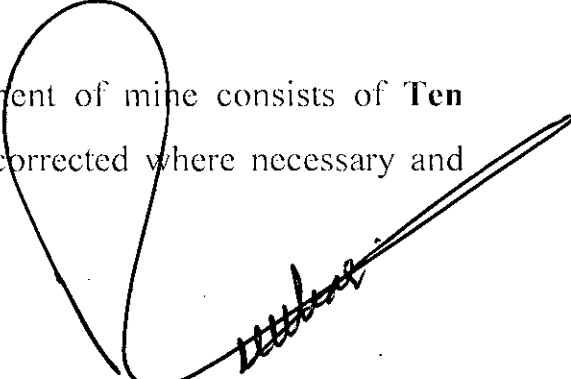
As sequel to my above issue-wise findings, suit of the plaintiffs is hereby **decree** for the relief as prayed for. No order as to costs. File be consigned to the record room after its necessary completion and compilation.

**Announced**  
**12.07.2023**

  
**Syed Abbas Bukhari,**  
Civil Judge-II,  
Tehsil Courts, Kalaya, Orakzai

**CERTIFICATE**

Certified that this judgment of mine consists of **Ten (10)** pages, each has been checked, corrected where necessary and signed by me.

  
**Syed Abbas Bukhari,**  
Civil Judge-II,  
Tehsil Courts, Kalaya, Orakzai