

(57)

IN THE COURT OF FARMAN ULLAH
SENIOR CIVIL JUDGE ORAKZAI AT BABER MELA, HANGU

Family Suit No. 7/3 of 2020
Date of Institution: 11/12/2020
Date of Decision: 26/07/2021

1. **Sorat Rehman s/o Lal Zareen**
2. **Hazrat Hassan s/o Anwar-ul-Haq**
3. **Hazrat Ali s/o Anwar-ul-Haq**
4. **Umar Sadique s/o Anwar-ul-Haq**
R/o Tari, Qoam Rabia Khel, Tapa Payo Khel, Tehsil & District Orakzai
..... (Plaintiffs)

VERSUS

1. **Noor Hassan Gul s/o Mir Hassan Gul** R/o Chappar Mishti, Tehsil & District Orakzai.
2. **Mehraban s/o Noor Hassan Gul** R/o Chappar Mishti, Tehsil & District Orakzai.(Deleted)(Defendants)

SUIT FOR RECOVERY OF MAINTENANCE

JUDGEMENT:

Brief facts of case in hand are that the plaintiffs have brought the instant suit for recovery of maintenance of plaintiffs No. 2 to 4 by contending that the father of plaintiffs No. 2 to 4 namely Anwar-ul-Haq died in year 2009 while their mother namely Bibi Rafia died in year 2017; that plaintiffs No 2 to 4 (minors) are residing with their maternal grandfather (Plaintiff No. 1) since 2013 and he bears all the expenses of the plaintiffs No 2 to 4 (minors). That defendant No. 1 filed a petition for custody of minors before the court of Senior Civil Judge Hangu on 14.03.2018 and the same petition was dismissed vide judgment dated: 13.09.2018. That plaintiff No.1 is bearing expenses of plaintiffs No. 2 to 4 since year 2013 and he demanded past and future maintenance of plaintiffs No. 2 to 4 from defendants but they failed. Hence, plaintiff No. 1 is entitled to receive the past as well as future maintenance of plaintiffs No. 2 to 4 at the rate of Rs. 7500/- per month of

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each minor. That defendants were repeatedly asked to pay the maintenance of plaintiffs No 2 to 4 (minors) but they refused. Hence, the present suit.

1. Defendants were summoned who appeared before the court and contested the suit of plaintiff by submitting their written statement, wherein, they objected the claim of plaintiff on various grounds.
2. It is pertinent to mention that plaintiff filed instant suit against Noor Hassan Gul (Defendant No. 1, who is the paternal grandfather of plaintiff No. 2 to 4) and Mehraban (defendant No.2, who is the paternal uncle of plaintiffs No. 2 to 4) however, vide order of this court dated: 13.03.2021 the name of defendant No.2 was deleted from the instant suit being unnecessary party.

The divergent pleadings of the parties were reduced into the following issues.

ISSUES:

1. Whether the plaintiffs have got a cause of action?
2. Whether plaintiff No. 1 is entitled to the past and future maintenance of plaintiff No. 2 to 4 from defendant?
3. Whether defendant No.1 is of old age with weak financial position and unable to pay the maintenance of the minors?
4. Whether plaintiff No.1 himself refused to hand over of custody of minors to defendant No.1? If so its effects.
5. Whether plaintiff is entitled to the decree as prayed for?
6. Relief.

After framing of issues both the parties were provided opportunity to produce evidence in support of their respective contention, which they did.

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Learned counsel for the parties heard and record gone through. In the light of available record and arguments of counsel for parties, my issue wise discussion is as under:

Issues No. 02, 03 and 04:

The instant issues being interlinked and inter dependent are taken together for discussion.

It is averred in the plaint that plaintiffs No. 2 to 4 (minors) are residing with plaintiff No.1 (their maternal grandfather) since year 2013 and plaintiff No.1 is bearing all their expenses, hence plaintiff No.1 is entitled to receive the past maintenance as well as future maintenance of plaintiff No. 2 o 4 (minors) from defendants.

On other hand defendants contended in their written statement that defendant No.1 is of old age and is dependent on his family members but in spite of that he filed a petition for the custody of minors for their welfare, so they can reside in the joint house with defendant No. 1 but plaintiff No.1 contested the same and refused to hand over the minors to defendant No.1.

Plaintiff in support of his contention appeared as PW-01 and repeated the contents of plaint in his examination in chief. During cross examination admitted that defendant No. 1 filed petition for the custody of minors in the court of Senior Civil Judge Hangu and in that case he (Plaintiff) refused to hand over the custody of minors to defendant No.1. PW-01 also admitted that defendant No.1 is of old age and his age in more than 80 years. He also admitted that defendant No.1 is suffering from death illness.

On other hand defendant in support of his contention produced Noor Sayed Khan and Shehzada Khan as DW-01 and DW-02 respectively, who stated in their

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examination in chief that after death of mother of minors they were sent by the defendant No. 1 to the house of plaintiff to hand over the minors to the defendant No.1 as he can take better care of minors but plaintiff No.1 and his family members refused to hand over the minors.

The attorney for defendant appeared as DW-03 and he repeated the contents of written statement in his examination in chief. DW-01 to DW-03 were subjected to cross examination but nothing substantial was brought on record which could have shattered the facts uttered by them in their examination in chief.

Handwritten signature and stamp of the court.

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From the available record it is an admitted position that plaintiff No.1 is the maternal grandfather of plaintiffs No. 2 to 4 (minors) while defendant No. 1 is the paternal grandfather of the plaintiffs No. 2 to 4 (minors). It is also evident from record that minors are residing with plaintiff No. 1 and who is bearing all the expenses of minors. However, from the statement of DW-01, DW-02, it is evident that defendant No.1 approached the plaintiff No.1 and his family members with request to hand over the minors to him but plaintiff No.1 and his family member refused to hand over the minors to defendant No. 1. Even it is also clear from the record that defendant No. 1 filed a petition for the custody of minors in the court of Senior Civil Judge Hangu but plaintiff No.1 contested the petition and refused to hand over minors to the defendant No.1 and thus petition of defendant No.1 was dismissed vide judgment Dated: 13.09.2018. Plaintiff while appearing as PW-01 admitted during cross examination that he refused to hand over the custody of minors to the defendant No.1 when he (defendant No.1) filed petition before the court of Senior Civil judge Hangu. So, from the available record it is evident that defendant No.1, being the paternal grandfather of the minors, made all the efforts to take the minors in his custody but plaintiff No.1 and his family members

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resisted such efforts and refused to hand over the minors to defendant No.1. All these facts and circumstances clearly establish that plaintiff No.1 and his family members voluntarily and with their own desire opted to retain the custody of minors and bear their expenses. Though after death of father, the paternal grandfather is under obligation to provide maintenance and bear the expenses of his grandsons/grandchildren but it is evident from available record that plaintiff No.1 being the maternal grandfather of plaintiffs No. 2 to 4 (minors) himself opted to perform such obligation and refused to hand over the minors to his grandfather (Defendant No.1). As plaintiff No.1 himself with his own free will and desire opted to retain the custody of minors and bear their expenses, hence, he cannot claim such expenses and maintenance from defendant No.1.

Moreover, it is the contention of defendants in their written statement that defendant No.1 is of old age, suffering from death illness and is dependent on his family members for his expenses. This contention of defendant to some extent was also admitted by the plaintiff during cross examination while appearing as PW-01. As PW-01 admitted that the age of defendant No.1 is more than 80 years and now-a-days he is on death illness. Though defendant No.1 being the paternal grandfather of minors (Plaintiffs No. 2 to 4) is under obligation to provide maintenance to the minors after the death of their father yet it is evident from the record that defendant No.1 himself is of old age, suffering from illness and also himself is dependent on his family members for his own expenses. Hence, in such like circumstances defendant No.1 cannot be burdened with responsibility which is beyond his capacity. In other words, in such like circumstances defendant No.1 being the grandfather of the minors is not under obligations to provide the maintenance to the minors due to his inability. However, DW-03 who is the

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paternal uncle of minors offered during course of proceedings in the instant case that he will maintain the minors along with his children, if they reside in his home but no positive response from plaintiff No.1.

So, the issue No. 02 is decided in negative and issue No. 3 in positive while issue No. 04 is decided accordingly.

Issue No. 01 and 05:

For what has been held in issue No. 02, 03 and 04 this court is of the opinion that plaintiffs have got neither cause of action nor they are entitled to the decree as prayed for.

Thus, both the issues are decided in negative.

Relief:

As sequel to above discussion, it is held that plaintiffs have failed to prove their stance through cogent and confidence inspiring evidence. Hence, suit of plaintiffs is dismissed. No order as to cost.

File be consigned to the record room after its completion and compilation.

Announced
26/07/2021

FARMANULLAH
Senior Civil Judge
Orakzai at Baber Mela, Hangu
(Farman Ullah)
SCJ/Judge Family Court,
Orakzai at Baber Mela, Hangu.

CERTIFICATE

Certified that this judgment of mine consists 06 (six) pages, each has been checked, corrected where necessary and signed by me.

FARMANULLAH
Senior Civil Judge
Orakzai at Baber Mela, Hangu
(Farman Ullah)
SCJ/Judge Family Court,
Orakzai at Baber Mela, Hangu.