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# IN THE COURT OF SAMI ULLAH, CIVIL JUDGE-I,
## ORAKZAI (AT BABER MELA).

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|---|---|
| **Original Civil suit No** | **51/1 of 2022** |
| **Date of institution** | **10.11.2022** |
| **Date of decision** | **14.04.2023** |

1. **Tor Khan S/o Haider Khan**
2. **Sial Batshah S/o Hakeem Badshah**

**Both Residents of Kaski Zar, P.O. Ghiljo, Tehsil Upper, District Orakzai.**

**..... (Plaintiffs)**

**Versus**

1. **Provincial Government KPK Through Collector District Orakzai.**
2. **Contractor Muhammad Qasim S/o Leelam Khan**
   **Resident of Aseer Kaly, Dabori, District Orakzai.**
3. **XEN Public Health Department District Orakzai.**
4. **SDO District Orakzai.**

**.....(Defendants)**

**SUIT FOR DECLARATION & PERMANENT INJUNCTION.**

***JUDGMENT:***

1. Brief facts of the case are that the plaintiffs have filed the instant suit for declaration, permanent injunction and possession to the effect that the plaintiffs are owners in possession of suit property measuring 15 Jareeb while the defendants are bent up on passing a pipeline in the disputed property without their consent and without giving any benefit to the residents of village Kaski Zar. That the installation of the said pipeline on their agricultural property will adversely effect the same. And that the defendants be restrained from interfering and passing the pipeline on their agricultural property.

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2. After due process of summons the defendants appeared in person and contested the suit by submitting written statement in which contention of the plaintiffs were resisted on many legal as well as factual grounds.

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

***ISSUES.***

1. ***Whether the plaintiffs have got cause of action?***
2. ***Whether the plaintiffs are estopped to sue?***
3. ***Whether the plaintiffs are entitled to take benefits of the water supply scheme in question?***
4. ***Whether the plaintiffs are owners in possession of the suit property?***
5. ***Whether the defendants are passing water pipeline on agricultural land of the plaintiffs, which will adversely affect the same?***
6. ***Whether plaintiff is entitled to the decree as prayed for?***
7. ***Relief.***

4. Parties were afforded with ample opportunity to adduce evidence. Plaintiffs in support of his claim and contention produced 03 Witnesses. Detail of the plaintiff's witnesses and exhibited documents are as under; -

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| | WITNESSES | EXHIBITIS |
|---|---|---|
| PW-1 | Tor Khan S/o Haider Khan Resident of Gabaree, P.O. Ghiljo, Tehsil Upper, District Orakzai | Copy of CNIC is Ex. PW-1/1. |
| PW-2 | Sial Batshah S/o Hakeem Badshah Resident of Gabaree, P.O. Ghiljo, Tehsil Upper, | Copy of CNIC is Ex. PW-2/1. |

| | | |
|---|---|---|
| | District Orakzai | |
| PW-3 | Noorang Khan S/o Habib Ullah Resident of Nari Gari, P.O. Ghiljo, Tehsil Upper, District Orakzai | Copy of CNIC is Ex.PW -3/1 |

Defendants in support of his claim and contention produced only one (01) witness. Detail of defendant's witnesses and exhibited documents are as under;

| WITNESSES | | EXHIBITIONS |
|---|---|---|
| DW-1 | Afsar Ali Khan S/o Mayan Wali Khan SDO, District Orakzai, PHED. | Nil. |

5. After completion of evidence of the parties, arguments of the learned counsel for the parties were heard and record of the case file was gone through.

6. Learned counsel for the plaintiffs Mr. Noor Awaz Advocate argued that plaintiffs have produced cogent evidence and reliable witnesses to prove that the suit property is ownership of plaintiffs. The witnesses are consistent in their statements that the suit property is ownership of the plaintiffs. That the defendants had marked land on agricultural property of the plaintiffs for installation of water pipeline. That no requirement Under Land Acquisition Act, 1894 has been fulfilled for acquiring land for the said water supply scheme and installation of pipeline. Learned counsel further argued that the plaintiffs have no objection if the pipeline is installed alongside the road instead of passing through middle of the

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agricultural suit property.

7. District Attorney for defendants argued that the plaintiffs have not produced sufficient evidence in order to proof their case. He argued that the pipeline will be installed alongside road and not on agricultural property of the plaintiffs. Further argued that the said pipeline was initiated on need basis for the residents of Mazari Garhi and residents of Kaski Zar cannot get benefit from the same.

8. After hearing arguments and after gone through the record of the case with valuable assistance of learned Counsels for both the parties, my issue-wise findings are as under:

***ISSUE NO.2:***

***Whether the plaintiff is estopped to sue?***

9. Burden of proof regarding this issue was on defendants. Estoppel needs cogent, convincing and reliable evidence which is lacking on the part of defendants, therefore issue is decided in negative and against the defendants.

***ISSUE NO.04***

***Whether the plaintiffs are owners in possession of the suit property?***

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10. The issue was framed keeping in view the claim of plaintiffs in plaint, however, in written statement and in subsequent pleadings, the said issue was not pressed by defendants. Keeping in view the pleadings and available record on file, this court is of the view that the parties are not at issue regarding ownership of the property in question. The suit pertains to the declaration up to extent of

entitlement of benefit in a water supply scheme which is under construction for the benefit of adjacent village.

11. For what is discussed above this court is of the view that the issue No.04 has been wrongly framed in the instant suit, hence, the said issue is struck out Under Order XIV Rule V(II).

***ISSUE NO. 5:***

***Whether the defendants are passing water pipeline on agricultural land of the plaintiffs, which will adversely affect the same?***

12. Claim of the plaintiffs as asserted in plaint is that the defendants are passing the pipeline in the agricultural property of the plaintiffs. The burdens of proof regarding the issue was on plaintiffs. Plaintiffs in order to discharge this burden produced three witnesses. The essence of the statements of said PWs in the light of issue No.5 is as under.

13. Plaintiff No.01 himself deposed as PW-01 and stated on oath that the plaintiffs are owner in possession of the suit property and passing of pipeline in their property will adversely affect the worth and utility of the same. Further stated that neither any notice was given nor any permission has taken from them regarding installation of the said pipeline in their property. He also stated in his statement that the said act of the defendants will adversely affect the crop production and will limit their options regarding future construction on the disputed property.

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14. Plaintiff No.02 deposed as PW-02 and supported their stance in his statement. Same facts were brought on record in his statement as were recorded in writing in statement of PW-01.

15. PW-03 is the statement of Noorang Khan, an elder of locality, who has supported the stance of the plaintiffs and stated that the defendants are passing pipeline on property of the plaintiffs without taking their prior permission. He recorded in his cross examination, in rebuttal of stance of defendants regarding the fact that the pipeline will be placed 7/8 feet underground, that the same is not feasible due to uneven surface of the suit property.

16. DW-01 is the statement SDO, Orakzai of Public Health Department who recorded in his statement that work order regarding construction of the project was issued to a contractor but plaintiffs had forcibly stopped work on the same. Further stated that the pipeline will pass according to specified route. The said DW admitted in his cross examination that they have not taken any permission from any person regarding installation of pipeline. Further stated that we don't usually take permission regarding installation of pipeline on a property. He also stated that no work has been started on installation of said pipeline.

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17. The statements of the witnesses brought the facts before the court, mentioned here in after, which provided reason for deciding the issue. Firstly, the witnesses were consistent in their statements that the defendants are passing the said pipeline on property of plaintiffs without obtaining any permission and without having any NOC for the same. It is worth mentioning here that DW-01 stated in his statement that they have not obtained any permission for laying

pipeline in the suit property. Needless to say, that the defendants have failed to prove that they have fulfilled the legal requirements for passing the said pipeline in the suit property. However, defendants have taken a stance in their pleadings that they are passing the pipeline alongside road and not in the suit property. But this rebutted stance was not proved in evidence and is not supported by any document on file. Secondly, passing the pipeline in the agricultural suit property will have adverse effect on the value and utility of the suit property. In absence of any documentary proof in support of the stance of defendants that they are passing the said pipeline alongside road, in shape of any document which might have shown the route of the same, the deterioration and waste of agricultural property can't be warranted.

18. Keeping in view the above discussion, it is held that the issue is decided in favour of the plaintiffs and defendants are hereby restrained from passing pipeline on agricultural suit property of the plaintiffs.

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***ISSUE NO.03***

***Whether the plaintiffs are entitled to take benefits of the water supply scheme in question?***

19. The claim of plaintiffs is that they are owner in possession of the suit property and defendants are unlawfully passing the pipeline on their agricultural property, without their consent and without giving any benefit to the plaintiffs in the same. That the plaintiffs have the right to take benefit from the water supply scheme due to the fact that the pipeline of the said scheme will pass through their land.

Burdon of proof regarding this issue was on plaintiffs to prove that they are entitled to take benefit of the said scheme.

20. Keeping in view the evidence taken in the instant suit and available record on file, the plaintiffs have failed to proof their entitlement to the benefit of the said water supply scheme. Counterly, defendants have taken the stance in their pleadings as well as in evidence that the said water supply scheme was approved for the benefit of residents of Mazari Garhi on need basis. Moreover, the project doesn't have the capacity to accommodate residents of Mazari Garhi and Kaski Zar by supplying fresh drinking water to both.

21. Keeping in view the above discussion, it is held that plaintiffs failed to produce any cogent, convincing and reliable oral and documentary evidence in support of their claim, therefore, issue No.03 is decided in Negative and against the plaintiffs.

***ISSUE NO. 1 and 6:***

***Whether plaintiffs have got cause of action?***

***Whether plaintiffs are entitled to the decree as prayed for?***

22. Both these issues are interlinked, therefore, taken together for discussion.

23. The discussions on the above referred issues show that issue No.05 being decided in favour of the plaintiffs; the defendants are hereby restrained from passing pipeline on the agricultural suit property of the plaintiffs. However, issue No.3 being decided against the plaintiffs, they are not entitled to the benefits of water supply scheme in question. The plaintiffs have partially proved their case by fulfilling the requirements of law and by producing cogent and confidence inspiring evidence; therefore, they have got cause of

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action. And the plaintiffs are entitled to the decree as prayed for in prayer 'ب' only.

***RELIEF:***

24. The detailed discussion on issues mentioned above transpires that the plaintiffs have partially proved their case against the defendants by proceeding cogent and confidence inspiring oral evidence. Hence, suit of the plaintiffs is partially decreed.

Costs to follow the events.

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

**Announced**
14.04.2023

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**CERTIFICATE: -**

Certified that this judgment consists of Nine (09) pages. Each and every page has been read over, corrected and signed by me where ever necessary.

**Sami Ullah**
Civil Judge/JM-I,
Orakzai (At Baber Mela)