

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

Civil suit No	24/1 of 2023
Date of institution	13.04.2023
Date of decision	24.10.2023

1. Janab Khan S/O Lateef Shah
2. Almar Khan S/O Ajab Khan

Both residents of Qoam Mala Khel, Tappa Qatab Khel, Minaz Ghari, Tehsil Upper District Orakzai.

..... (Plaintiffs)

Versus

1. Department of C & W, District Orakzai through Executive Engineer.
2. Contractor Anwar Afridi resident of Purana Sabzi Mandi opposite to Police Line, District Kohat.

.....(Defendants)

**SUIT FOR DECLARATION WITH PERPETUAL MANDATORY
INJUNCTION.**

EX-PARTE JUDGMENT:

1. Brief facts of the case are that plaintiffs filed the instant suit for declaration, permanent & mandatory injunction to the effect they are owner in possession of suit property (fully detailed in the head note of the plaint) since the time of their ancestors. Plaintiffs in their plaint further asserted that the defendants are constructing Ghiljo to Dabori road which passes in front of their property, in which some portion of their property has been taken for the said purpose without acquiring it legally. The plaintiffs further asserted that around 200 Marlas land of the plaintiffs is used by defendants for construction of the said road.

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Alongwith deceleration and permanent injunction the plaintiffs have sought compensation of Rs.50,000,000/- in prayer Bay. Plaintiffs alleged in their plaint that defendants were time and again asked to legally acquire their property and pay compensation in that respect but of no avail. Hence, they filed the present suit.

2. Defendants were summoned properly but they remained absent despite service, therefore, placed and proceeded against ex-parte. Thereafter, plaintiffs were allowed to produce their ex-parte evidence after submission of list of witnesses. Moreover, in the pendency of the suit during evidence stage record keeper of defendant No.1 appeared before the court on two counts as official witness but his department even then remained ex-parte.
3. Detail of plaintiff's witnesses and exhibited documents are as under: -

	WITNESSES	EXHIBITIONS
PW-1	Janab Khan S/O Latif Shah R/O Qoam Mala Khel, Tappa Qutab Khel, Village Minaz Ghari District, Orakzai.	Copy of CNIC is Ex.PW-1/1.
PW-2	Almar Khan S/O Ajab Khan R/O Qoam Mala Khel, Tappa Qutab Khel, Village Minaz Ghari District, Orakzai.	Copy of 1 st Plaint (consisting of 29 pages) is Ex.PW-2/1. Copy of CNIC is Ex.PW-2/2.
PW-3	Abdur Razaq S/O Khayal Man Shah R/O Qoam Mala Khel, Tappa Qutab Khel, Ghiljo District, Orakzai.	Copy of CNIC is Ex.PW-3/1.

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PW-4	Said Rafiq S/O Alam Jan R/O Qoam Mala Khel, Tappa Qutab Khel, Ghiljo District, Orakzai.	Copy of CNIC is Ex.PW-4/1.
PW-5	Asif Nasim Development Assistance of DC District Orakzai.	RHC Upgradation Record of Dabori Hospital is Ex.PW-5/1.

4. Ex-parte arguments heard and record perused.
5. Learned counsel for the plaintiff, Mr. Noor Karim Khan Advocate, argued that the plaintiffs claimed declaration, permanent injunction compensation in respect of the land used by the defendants for the construction of road. He further argued that the defendants willfully remained ex-parte in the present suit despite proper service and despite attendance of record keeper as an official witness in the pendency of the instant suit. That the defendants have no right to use the land of the defendants without acquiring it legally and without fulfilling the requirements of Law. The learned counsel also brought a fact before the court that similar suit by the same plaintiffs had earlier been filed which concluded in withdrawal after recording of statement of representative of P&D department, KPK. In the said statement (copy of which is Ex.PW-2/1) the aforementioned person recorded that the house of the plaintiff would not be damaged in any way in construction of the said road. Further stated that the plaintiffs have proved their stance by producing cogent and confidence inspiring oral and documentary

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evidence in support of stance of the plaintiffs while there is nothing in rebuttal hence, prayed for decree of the suit.

6. The plaintiffs produced five witnesses in their ex-parte evidence in support of their claim. Plaintiff No.1, Plaintiff No.2, appeared themselves and produced Abdur Razaq, Said Rafiq and Asif Naseem Development Assistance of DC, Orakzai as their witnesses and recorded their statements as PW-1 to PW-5. They supported the claim of plaintiffs. The essence of the ex-parte evidence of plaintiffs are as under.


7. Janab Khan who is plaintiff No.1 appeared as PW-01 and recorded in his statement on oath that plaintiffs are owners of the suit property. The defendants are constructing Ghiljo to Dabori Road in which around Two Hundred Marlas land of the plaintiffs have been used/utilized without legally acquired the same.

8. Almar Khan who is plaintiff No.2 appeared before the court as PW-02 and recorded in his statement on oath that due to construction of the said road, our (plaintiffs) property has been used/utilized by the defendants. Further stated that no compensation of whatsoever has been given to us by defendants. He further stated that we, the plaintiffs have filed a suit regarding the same facts previously which was decided in our favour. Relevant attest documents of the previous suit are Ex.PW-2/1. Needless to mention that the same was withdrawn by the plaintiffs after recording of statement of the official concerned regarding assurance that the House/property of the plaintiff would not be damaged.

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9. Abdur Razaq appeared before the court as PW-03 and recorded his statement on oath as follow. That the plaintiffs have not received any compensation regarding the suit property. The said PW also mentioned two person who has received compensation in respect of their land in some other projects.
10. Said Rafiq appeared before the court as PW-04 and recorded his statement in support of claim and contention of the plaintiffs.
11. Asif Nasim, Development Assistance of DC, Orakzai appeared before the court as PW-05 and recorded his statement that according to Ex.PW-5/1, the persons who had shares in the land acquired for the purpose of RHC upgradation had received compensation in that respect.
12. After hearing of ex-parte arguments and perusal of the record, I am of the opinion that the plaintiffs have established their case through evidence and as there is nothing in the rebuttal, therefore, the suit of the plaintiffs is hereby ex-parte preliminary decreed in favour of plaintiffs up to the extent of declaration and permanent injunction only. As far as prayer "Bay" is concerned, compensation can't be granted to the plaintiff through this decree at this stage and due to insufficient evidence and record to that effect.
13. Costs to follow the events.
14. File of the Court be consigned to record room after its completion and compilation.

Announced:
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CERTIFICATE: -

Certified that this judgment consists of Five (05) pages. Each and every page has been read over, corrected and signed by me where ever necessary.

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