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IN THE COURT OF REHMIAT ULLAH WAZIR,
CIVIL JUDGE-I ORAKZAI AT BABER MELA

Civil Suit No. 72/1 of 2019
Date of Institution: 11.12.2019
Date of Decision: 04.06.2021

1. *Muhammad Rahim s/o Rahim Khan and 05 others.*
All R/O Toota Mela, District Orakzai.

(Plaintiffs)

VERSUS

1. *Azeem Ullah s/o Muhammad Nazir and 04 others.*
All R/O Shakar Tangi, Sheikhan, District Orakzai.

(Defendants)

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

JUDGEMENT:
04.06.2021

Plaintiffs Muhammad Rahim, Haji Rahman, Eid Muhammad Gul, Fazal Jana, Naseeb Gul and Ghazi Rahman have brought the instant suit for declaration-cum-perpetual and mandatory injunction against the defendants. That the plaintiffs belong to Qoum Mishti, District Orakzai and are the owners in possession of the suit property since their forefathers. That the defendants belong to Qoum Sheikhan and they are the residents of Shakar Tangi and are residing in the same and they have nothing to do with the suit property. That the two persons of the plaintiffs were recruited on the same land by the forest department, who received their salaries and contract and commission for construction of the

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road over the suit property have been received by the plaintiffs. That a jirga was also conducted regarding the suit property whereby, the suit property was declared the ownership of the plaintiffs. That the defendants are about to construct a playground over the suit property despite all the aforesaid facts. That the defendants were asked time and again to admit the claim of the plaintiffs but they refused, hence, the present suit.

Defendants were summoned through the process of the court, who appeared and contested the suit by filing written statement, wherein they raised certain factual and legal objections.

Divergent pleadings of the parties were reduced into the following 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 ownership in possession of the plaintiffs and the defendants have nothing to do with the suit property?
5. Whether the plaintiffs are entitled to the decree as prayed for?
6. Relief.

Parties were given ample time and opportunity to produce their respective evidence. ||

The plaintiffs produced the one Shirkat Ali, Record Keeper, Judicial Record Room, Orakzai, who

appeared as PW-01, who produced the suit file no. 2/2, instituted on 26.06.2019 and decided on 23.10.2019, which is Ex.PW-1/1 and that the same was dismissed as withdrawn with permission to file a fresh suit. Further, Mr. Hamid Hussain, Senior Clerk, Forest Department, appeared as PW-02, who produced Iqrar Nama Dated: 28.02.1993, which is Ex.PW-2/1, whereby the suit land was handed over to the Forest Department for plantation. Further, Mr. Muhammad Rahim, the plaintiff no. 01 for himself and as a special attorney for the rest of the plaintiffs appeared as PW-03, who narrated the same story as in the plaint. ||

The defendants produced the one Tauseef Ur Rehman, the one Abdul Wahab and Azeem Ullah as DW-01, DW-02 and DW-03 respectively, who all narrated the same stories as in the written statement. My issue wise findings are as under:

Issues No. 02: ||

The defendants in their written statement raised the objection 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 statements raised their objection that suit of the plaintiffs is time barred but I am the opinion that as per Article 120 of the Limitation Act, 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 **11.12.2019**. Thus, the same is well within time. The issue is decided in negative.

Issues No. 04:

The Plaintiffs alleged in their plaint that they belong to Qoum Mishti, District Orakzai and are the owners in possession of the suit property since their forefathers. That the defendants belong to Qoum Sheikhan and they are the residents of Shakar Tangi and are residing in the same and they have nothing to do with the suit property. That the two persons of the plaintiffs were recruited on the same land by the forest department, who received their salaries and contract and commission for construction of the road over the suit property have been received by the plaintiffs. That a jirga was also conducted regarding the suit property whereby,

the suit property was declared the ownership of the plaintiffs. That the defendants are about to construct a playground over the suit property despite all the aforesaid facts. That the defendants were asked time and again to admit the claim of the plaintiffs but they refused, hence, the present suit.

For this, the plaintiffs produced the one Hamid Hussain, Senior Clerk, Forest Department, Orakzai, who produced the Iqrar Nama Dated: 28.02.1993, which is Ex.PW-2/1, whereby the suit land was given to the Forest Department, Orakzai for plantation for 03 years by the plaintiffs. That 02 persons of the plaintiffs were appointed as watchers for 03 years by the Forest Department. The plaintiff No. 01 for himself and as a special attorney for the rest of the plaintiffs appeared as PW-03, who narrated the same story as in the plaint. He has been cross examined but nothing tangible against the plaint has been extracted out of him during cross examination, rather, admissions against the version of the defendants have been made during cross examination, for example, we receive royalty of the minerals and we received the contract of the road construction over the suit property etc.

In order to counter the claim of the plaintiffs, the defendants produced the one Tauseef Ur Rehman as DW-01, who alleged that the suit property was sold out to the

defendants by his predecessors to the predecessors of the defendants but he admitted in his cross examination that it is correct that when a road is to be constructed, then, according to the Rivaj of Orakzai, it is the owner of the land, who receive contract/hifzan of the same. Further, Mr. Abdul Wahab appeared as DW-02, who alleged that the suit property was sold out to the defendants by his predecessors to the predecessors of the defendants but admitted in his cross examination that the suit property was neither the ownership of the plaintiffs nor the defendants rather, it was given to the parties by us. Further, that there is no written deed in his possession whereby the suit property was sold out to the defendants and that we are the permanent residents of District Hangu. Later on, he admits in his cross examination that he does not know that which one land was sold out to the defendants. These two (02) witnesses admit in their statements that they belong to Khanan Family of District Hangu and are the permanent residents of District Hangu, while, both of the parties belong to Orakzai tribes, settled at District Orakzai and the suit property is situated in District Orakzai. Further, they couldn't produce any tangible piece of evidence from which it could be presumed that either their predecessors have sold out the suit property to the predecessors of the defendants or even they have any type of

Handwritten notes and a signature: R. C. Orakzai (12)

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connection with the suit property. Thus, from their statements, it is simply presumed that these are mere empty claims, having nothing to do with reality. Further, the defendant no. 01 appeared as DW-03, who narrated the same story as in the written statement, but admitted in his cross examination that the plaintiffs belong to Patla Darra and we belong to Shakar Tangi and the suit property is situated in Patla Darra. Further, that it is correct that the Forest Department planted trees for the plaintiffs over the suit land of the plaintiffs. Further, that there is no deed/proof in their possession w.r.t the purchase of the suit land. Further, that there is enough distance between our village Shakar Tangi and the suit land.

Thus, in the light of the aforesaid findings, the plaintiffs established their claim through cogent and reliable evidence, mean the evidence what is possible in respect of a land in the Erst-While FATA, where there is no land record. The suit land is admittedly situated in the village of the plaintiffs, record of Forest Department supports the claim of the plaintiffs, admittedly the village of the defendants is a different one and situated at a distance from the suit land, in other words, the possession of the plaintiffs is admitted in the shape of planting trees by the Forest Department for the plaintiffs over the suit land. So far as, the claim of purchase,

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of the suit land from the predecessors of the DW-01 and DW-02 by the predecessors of the defendants is concerned, the same plea is never taken by the defendants in their written statement, over and above this, they also failed to establish the aforesaid claim of purchase of the suit land. Thus, the issue is decided in positive.

Issues No. 01 & 05:

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


As sequel to my above issue-wise findings, the plaintiffs have got a cause of action and therefore entitled to the decree as prayed for. Therefore, 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. Costs shall follow the event.

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

Announced
04.06.2021


(Rehmat Ullah Wazir)
Civil Judge-I,
Orakzai at Baber Mela.

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CERTIFICATE

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Certified that this judgment of mine consists of 09 pages,
each has been checked, corrected where necessary and signed by me.



(Rehmat Ullah Wazir)
Civil Judge-I,
Orakzai at Baber Mela.

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