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IN THE COURT OF REHMAT ULLAH WAZIR,
CIVIL JUDGE-I, CAMP COURT, KALAYA, ORAKZAI

Civil Suit No. 70/1 of 2020
Date of Original Institution: 24.04.2019
Date of Transfer in 05.07.2021
Date of Decision: 10.07.2021

1. *Meenawar Khan s/o Mazar Khan and 06 others.*
All R/O Qoum Mishti, Tapa Darvi Khel, village Khair Ullah Garey,
District Orakzai.

(Plaintiffs)

VERSUS

1. *Eid Bar Khan s/o Ghairat Khan and 04 others.*
All R/O village Saro Garey, Tehsil Central, District Orakzai.

(Defendants)

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

JUDGEMENT:
10.07.2021

Plaintiffs Meena War Khan, Sunab Khan, Sojafar Khan, Sajid Ullah, Sharbat Khan, Muhib Ullah and Ateeq Ullah, have brought the instant suit for declaration-cum-perpetual and mandatory injunction and possession against the defendants. That the plaintiffs belong to Qoum Mishti, District Orakzai and are the owners in possession of the suit property measuring more than 100 jerab since their forefathers. That the defendants also belong to Qoum Mishti and they are the residents of Srey Garey and are residing in the same and they have nothing to do with the suit property. That a jirga was also conducted regarding the suit property

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whereby, the suit property was declared the ownership of the plaintiffs. That the defendants have got no right to take possession of the same or do construction over the same or make interference in the same. That the defendants are about to do the aforesaid acts. That they were asked time and again not to do the same 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 suit of plaintiffs is incompetent in its present form?
3. Whether the plaintiffs are estopped to file the instant suit ?
4. Whether plaintiffs are owners in possession of disputed property since time of their ancestors and defendants are illegally interfering and encroaching the disputed property?
5. Whether defendants are owners in possession of disputed property?
6. Whether defendants have constructed their houses in disputed property which were later on demolished due to Army Operation?
7. Whether disputed property is situated in Sray Gary while plaintiffs are resident of Khairullah Garhi? If so its effect.
8. Whether the plaintiffs are entitled to the decree as prayed for?
9. Relief.

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

The plaintiffs produced witnesses in whom the one Meenawar Khan, the plaintiff no. 1 for himself and as a special attorney for rest of the plaintiffs appeared as PW-01, who narrated the same story as in the plaint. He has cross examined but nothing tangible has been extracted out of him during cross examination. Further, Sadeeq Muhammad and Khameen Gul appeared as PW-02 & PW-03 respectively, who both supported the stance of the plaintiffs. They were cross examined but not contradicted.

The defendants produced witnesses in whom the one Lobat Khan appeared as DW-01, who denied the claim of the plaintiffs. Mr. Qasim Khan appeared as DW-02, who also denied the claim of the plaintiffs. Mr. Shaheed Khan appeared as DW-03, who also denied the claim of the plaintiffs.

My issue wise findings are as under:

Issues No. 02:

The defendants in their written statement raised the objection that the suit of the plaintiffs is not competent in its present form 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 the plaintiffs are estopped to sue but later on failed to prove the same, hence, the issue is decided in negative.

Issues No. 04, 05, 06 & 07:

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

The Plaintiffs alleged in their plaint that they belong to Qoum Mishti, District Orakzai and are the owners in possession of the suit property measuring more than 100 jerab since their forefathers. That the defendants also belong to Qoum Mishti and they are the residents of Srey Garey and are residing in the same and they have nothing to do with the suit property. That a jirga was also conducted regarding the suit property whereby, the suit property was declared the ownership of the plaintiffs. That the defendants have got no right to take possession of the same or do construction over the same or make interference in the same. That the defendants are about to do the aforesaid acts. That they were

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asked time and again not to do the same but they refused, hence, the present suit.

For this, the plaintiffs produced witnesses in whom the plaintiff no.1 for himself and as a special attorney for the rest of the plaintiffs appeared as PW-01, who narrated the same story as in his plaint. He has been cross examined but no contradiction has been extracted him during cross examination. Further, Mr. Sadeeq Muhammad and Mr. Khameen Gul appeared as PW-02 & PW-03 respectively, who both narrated the same stories as in the plaint. They have not been contradicted during cross examination.

In order to counter the claim of the plaintiffs, the defendants produced witnesses in whom Mr. Lobat Khan, Qasim Khan and Shaheed Khan appeared as DW-01, DW-02 & DW-03 respectively, who all denied the claim of the plaintiffs.

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EHMAT ULLAH WAZIR
CIVIL JUDGE I/JM-1
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During the pendency of the suit, the plaintiffs submitted an application for appointment of local commission for determining the location of the suit property. The same was accepted vide order no. 30, dated 20/01/2021 by my learned predecessor with the following directions.

1. Whether a boundary/demarcation line exists on the spot between the village Khair Ullah Garhi and Srey Garay?

2. Whether disputed property is situated in village Khair Ullah Garhi or Sray Garay?
3. Whether any construction are remains of previous construction exist in disputed property, if so, who have raised the construction?
4. Prepare the site plan/sketch of disputed property.
5. Record statements of the elders of the locality.

Accordingly, the local commission submitted its report on 16/03/2021. Both the parties were directed to submit their objections over the commission report, who accordingly submitted their respective objections. The statement of local commissioner was recorded wherein he exhibited his report as Ex. CW-1/1, site plan as Ex. CW-1/2 and pictures of the site as Ex. CW-1/3 too Ex. CW-1/6.

During cross examination by the counsel for the plaintiffs,

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the local commissioner admitted that the suit property is a *Ghair Mumkin Pahar* and wild *charagah*. Further, that there houses over the suit property, some of which are demolished but the owners of the said houses were not present that is why their statements do not be recorded. That there is a small mountain between the village of the plaintiffs i.e. Khair Ullah Garhi and the village of the defendants i.e. Sray Garay

and upon the same mountain there is a water tank. Further admitted that it is correct that the disputed property is *Ghair Mumkin Pahar* and *Shamilat*.

During cross examination by the counsel for the defendants, he admitted that there is a *Nala* as a boundary line between the villages of both the parties.

It is pertinent to mention here that on the previous date i.e. on 05/07/2021 the instant case file was received from the court of learned Senior Civil Judge, Orakzai. The special attorneys for both the parties present in the court when asked by the court, replied that as the court has shifted to Kalaya, Orakzai, that is why they cannot produce their respective counsel because they cannot pay further for their appearance before the court at Kalaya and requested for announcement of order on the available record. Accordingly, they recorded their statements on the margin of order sheet

and their thumb impressions were obtained on the margin of the order sheet.

Thus, the available record in the shape of the statements of the witnesses and report of the local commissioner along with his statement established the fact that there exist a boundary line between the two villages in the shape of a mountain. There is universal principal of Paani Daal which decides the ownership of a property. The village

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of the plaintiffs, the Khair Ullah Garhi is situated on the eastern side of the aforesaid mountain, thus, the eastern paani daal along with the downward property is the ownership of Khair Ullah Garhi while the village of the defendants, the Sray Garay is situated on the western side of the aforesaid mountain, thus, the western Paani Daal along with the downward property is the ownership of Sray Garay. So far as the old construction or its remains are concerned, the ownership of the same could not be determined even by the local commissioner because admittedly the owners of the same were not present and both the parties had their own claims of its ownership. Thus, there is no legal shortcomings in the report of local commission and accordingly confirmed. In the light of aforesaid observations, all these issues are decided accordingly.

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
10.07.2021

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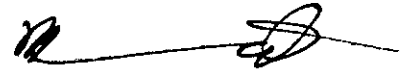


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CERTIFICATE

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



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Camp Court, Kalaya, Orakzai

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