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IN THE COURT OF SYED ABBAS BUKHARI
CIVIL JUDGE - II, KALAYA
ORAKZAI

Suit No. 95/1 of 2022

Date of Original Institution09.03.2021
Date of transfer to this court.....02.07.2022
Date of Decision of the suit.....27.09.2023

1. Nasir Khan s/o Muhammad Yaqoob Khan
2. Fazal Muqem s/o Dilbar Khan
3. Molana Muhammad Rafique s/o Laghman Shah
4. Muhammad Shoaib s/o Marghan Shah
5. Wazir Khan s/o Haider Shah
6. Ismail Shah s/o Zameen Shah
7. Safodin s/o Pir Badshah
8. Safer Khan s/o Sawab Khan
9. Fazal Haq s/o Mewa Gul residents of Qom Mishti,
Tapa Daro Khel Kandi Shoaib Khel wazir namasi
village Kasha Tehsil Central Lower Orakzai.

.....Plaintiffs

Versus

1. Waziristan s/o Isaar Gul
2. Hamdi Gul s/o Saeed Gul
3. Badshah
4. Kashmir Khan s/o Gul Baz Khan
5. Arsala Khan s/o Wakeel Khan
6. Muhammad Raheem s/o Mir Mat Khan
7. Hameed Gul Abdul Akbar
8. Muhammad Raheem s/o Arzam Khan
9. Mushrtaq Khan s/o Darya Khan residents of Qom
Mishti Tapa Daro Khel Kandi Mandra Khel
Jamadar Namasi village Kasha Tehsil Central
District Orakzai.Defendants

SUIT FOR DECLARATION, EVICTION
THROUGH PARTITION AND PERMANENT
INJUNCTION

SYED ABBAS BUKHARI
Civil Judge/JM-II
Tehsil Central Kalaya

27-9-2023

Counsel for plaintiffs: Abid Ali Advocate
Counsel for defendants: Sana Ullah Advocate

JUDGMENT

27.09.2023

Vide this judgment I intend to dispose of suit captioned above.

2. It is a suit from plaintiffs against defendants for declaration, Eviction through partition and perpetual injunction to the effect that plaintiffs are owners in possession of the suit property through mentioned in the head note of the plaint and plaintiffs have also grown forest over the suit property and thus the defendants have got no right to interfere with the suit property or to cut trees grown up over the suit property.
3. Brief facts of the case as narrated in the plaint are that owner in possession of the suit mountain named as Gargar Mountain from point no A to D mentioned in the site plan. They had grown forest over the suit property and since centuries plaintiff are in possession of the same. Defendants are in possession of excess area of the mountain as compared to that of plaintiffs. Defendants after cutting trees all the grown over the area in their possession, are now cutting trees from the suit property. Furthermore, the disputed mountain is yet to be partitioned and thus prior to partition defendants have got no right to interfere with the suit property or to cut

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trees erected over the same. In this respect the defendants were time and again requested not interfere with the suit property or to cut trees but they refused, hence the instant suit.

4. After institution of the suit, the defendants were summoned and accordingly defendants appeared and submitted their respective written statement with legal and factual objections raised therein.
5. Out of controversies of the parties, as raised in their respective pleadings, the then incumbent Court has framed the following issues on 27.07.2022.

1. Whether the plaintiffs have got a cause of action?
2. Whether the plaintiffs have got locus standi to sue?
3. Whether the suit of plaintiffs is time barred?
4. Whether the suit property is the sole ownership in possession of plaintiffs or joint property of plaintiffs and defendants?
5. Whether the plaintiffs are entitled to the decree as prayed for?
Relief:

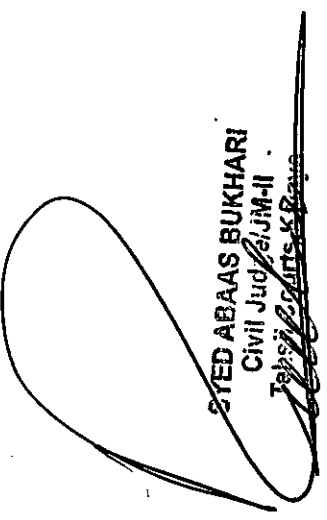
6. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiffs produced as many as four witnesses and thereafter closed their evidence. Contrary to this defendants produced three witnesses and thereafter closed their evidence with a note.
7. Both the learned counsels for the parties to the suit then advanced arguments. Learned counsel for the plaintiffs

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opened the arguments and argued that plaintiffs are owners in possession of the suit property named as Gargar Mountain, since the time of their forefathers and they had also grown forest over the same. He further argued that defendants are in possession of excess area than the plaintiffs but despite excess area they are interfering the suit property and further after cutting trees from their area, are now cutting trees from the suit property. He further adduced that defendants were time and again requested to refrain from interfering with the suit property and cutting of trees but they refused, hence instant suit was instituted. He further argued that the plaintiffs succeeded to prove their stance through cogent, convincing and reliable evidence and further nothing in rebuttal is available on the record, hence prayed that the suit in hand may kindly be decreed in favour of plaintiffs and against the defendants for the relief as prayed for.

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8. Contrary to this learned counsel for the defendants argued that plaintiffs have got no cause of action. He further adduced that any private partition between the parties has not previously taken place and thus suit property is joint ownership of the parties to the suit. Learned counsels further contended that the plaintiffs failed to prove their stance through cogent and convincing evidence. On the other hand,

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the defendants succeeded to produce evidence in light and support of their stance previously alleged in their written statement. Hence, prayed that as plaintiffs failed to prove their case, accordingly the suit in hand may kindly be dismissed.

9. Now on perusal of record, available evidence and valuable assistance of both the learned counsels for the parties my issue wise findings are as under.

ISSUE NO. 2:

Whether the plaintiffs got locus standi to sue?

ISSUE NO. 3:

Whether the suit of plaintiffs is time barred?

Defendants have previously alleged in their written statement that plaintiffs have got no locus standi to file the instant suit and furthermore suit of plaintiffs is barred by limitation, hence burden to prove issues no.2 and issue no.03 was on the shoulders of defendants. In this respect, to prove the issues in hand, defendants produced three witnesses. However perusal of the statements of all the DWs it has been noticed that they failed to utter a single word regarding the abovementioned issues and thus deviated from the stance of defendants previously alleged in their respective written statement.

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In light of what has been discussed above, as defendants miserably failed to prove issues no.02 and 03 through their cogent, reliable and convincing evidence, hence the aforementioned issues are hereby decided in negative against defendants and in favour of plaintiffs.

ISSUE NO. 4:

Whether the suit property is sole ownership in possession of plaintiffs or joint property of plaintiffs and defendants?

Burden of proof to prove issue no.04 lies on the shoulders of both the parties to the suit, for the reason that plaintiffs had alleged in their plaint that suit property is their sole ownership while defendants had alleged in their written statement that suit property is joint ownership of the parties to the suit.

In given circumstances both the parties to the suit produced their respective evidence and brief of the same is mentioned and reproduced as under;

As for as the stance of plaintiffs regarding their sole ownership over the suit property is concerned, PW-01, special attorney for plaintiffs has deposed in his cross examination that mountains had yet not been partitioned. He further deposed that plaintiffs are ready to partition mountain situated in the suit property. He also stated that defendants no.05 and no.08 also reside within the suit property and had constructed their houses over the suit property. He further deposed that if the defendants desire partition, they are

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also ready for partition. PW-02 had also admitted in his cross examination that it is correct that the suit property mountain etc has not been partitioned amongst parties to the suit. He further deposed that defendants no.05, 08 and 09 also reside over the suit property. Furthermore, PW-03 had deposed in his examination in chief that parties to the suit share each and every property, in which half portion belong to plaintiffs and the remaining half belong to defendants. During cross examination PW-03 deposed that mountain has not been partitioned amongst parties to the suit. PW-04 also deposed in his examination in chief that parties to the suit share all the property located anywhere and thus all the property is their joint ownership. During his cross examination PW-04 stated that suit property has not been partitioned amongst parties to the suit and thus they are joint owners of the same.

As for as the stance of defendants that suit property is joint ownership of parties to the suit is concerned, it is pertinent to mention here that this fact has been proved from the evidence produced by the plaintiffs and thus there is no need to further discuss this stance of defendants, being already proved through plaintiffs evidence. However during defendants evidence none of the witnesses was contradicted in material particulars and thus it is also proved from the defendants evidence that suit property is joint ownership of parties to the suit.

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In light of the above discussion, as plaintiffs failed to prove both the issues in hand through cogent, convincing and reliable evidence while on the other hand defendants succeeded to prove the issue in hand through their cogent, convincing and confidence inspiring evidence, hence accordingly the issue in hand is hereby decided in negative against the plaintiffs and in positive in favour of the defendants.

ISSUE NO. 1

Whether the plaintiffs have got cause of action? OPP

In wake of issue wise findings above, the plaintiffs have got no cause of action. hence the issue in hand is decided in negative against the plaintiffs and in favour of defendants.

ISSUE NO.05:

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

In wake of my issue wise findings above, plaintiffs are not entitled to the decree as prayed for, hence the issue in hand is decided in negative against plaintiffs and in favour of defendants.

Relief:

As per issued wise findings above the instant suit of plaintiffs is hereby decided as under;

Relief Alif; as it is for declaration and perpetual injunction in respect of the suit property is hereby **dismissed**.

Relief Bay; as it is for partition of suit property through eviction is hereby **dismissed**, for the reasons that plaintiffs had neither

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impleaded all the necessary parties to the suit or nor their shares had been determined during the pendency of suit and thus in this regard in case of preliminary decree for partition, future complication would arise. However, any one of the parties to the suit is at liberty to file a fresh suit for partition of suit property as well as property other than suit property jointly owned by parties to the suit. No order as to costs. File be consigned to the record room after its necessary completion, compilation and scanning.

Announced
27.09.2023



SYED ABBAS BUKHARI
Civil Judge-II Kalaya Orakzai

C E R T I F I C A T E

Certified that this judgment of mine consist upon nine (09) pages. Each page has been read over, checked and signed after making necessary correction therein.

Dated: 27.09.2023



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Civil Judge-II Kalaya, Orakzai