

(43)

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

**Suit No.11/1 of 2023**

Original Date of Institution. ....21.06.2022  
 Date of Transfer to this court.....08.03.2023  
 Date of Decision of the suit..... 11.10.2023

Sobaidar Muhammad Jameel s/o Lal Badshah resident  
 of Qom Mishti, Tappa Haider Khel, Ibrahim Zona  
 Tehsil Central District Orakzai. .... Plaintiff

Versus

Habib Nawaz s/o Malik Meherban Khan resident of  
 village Sangrani Qom Mishti Tappa Darvi Khel Tehsil  
 Central District Orakzai. ....Defendant

**SUIT FOR RECOVERY OF RS-2,57,866/-**

Counsels for plaintiff: Abid Ali Advocate  
 Counsel for defendant: Sana Ullah Khan Advocate

**JUDGMENT**

11.10.2023


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

2. It is a suit from the plaintiff against defendant for the  
 recovery of Rs-2,57,866/- (Two Lac Fifty seven thousand  
 eight hundred and sixty six Rupees).
3. Brief facts of the case are that plaintiff through instant suit  
 had alleged that defendant is resident of Orakzai and is  
 contractor by profession, who obtain government contracts.

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Defendant obtained contract from government for construction of Sampogh road and he started work over the said road in the month of June/July 2017. Upon the request of defendant plaintiff also provided his tractor Massey Ferguson no. C-1166. The tractor of plaintiff was driven by driver Hashmat Khan and his brother namely Shaheed Khan, as they were drivers of said tractor. The construction work was in progress for several months and finally in the year 2020 it was accomplished. Upon demand of rent, the defendant used to depose that upon passing of bills he will pay the same. However after passing of bills and recovery of money from the government, the defendant was requested for payment of tractor rent but he lingered on the payment on one pretext or the other. Later on the defendant also admitted in presence of the witnesses that a rent of Rs-1,37,866/- is outstanding against him. However subsequently he refused to make payment of said rent and also threatened the plaintiff. In this respect the defendant was time and again requested to pay the rent of tractor to plaintiff but he refused, hence the instant suit.

4. After institution of the suit the defendant was summoned, who accordingly appeared and submitted his written statement with legal and factual objections, raised therein.

  
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5. Out of controversies of the parties, as raised in their respective pleadings, the then incumbent Court framed the issues on 18.10.2022 but perusal of the file reveals that same are not available on the file. Hence this court has framed the following issues on 29.08.2023.

1. Whether plaintiff has got a cause of action? OPP
2. Whether plaintiff previously handed over possession of his tractor bearing registration no. C-1166 to defendant, which he used for construction of Sampog road? OPP
3. Whether rent of said tractor is outstanding against defendant and plaintiff is entitled for the recovery of same? OPP
4. Whether defendant is government contractor and further he entered into an agreement with plaintiff in respect of tractor? OPD
5. Whether plaintiff is entitled to the decree as prayed for? OPP

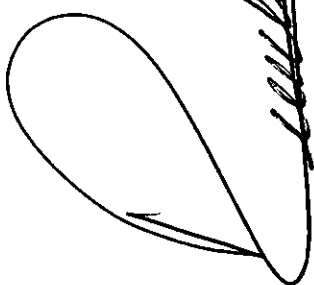
Relief.

6. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiff produced as many as three witnesses and thereafter closed his evidence with a note. Contrary to this the defendant personally appeared as DW-01 and thereafter closed his evidence with a note.
7. Thereafter arguments were heard. Learned counsels for the plaintiff argued that defendant is resident of Orakzai and is contractor by profession, who obtain government contracts.

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 Tehsil Courts Kataya

Defendant obtained contract from government for construction of Sampogh road and he started work over the said road in the month of June/July 2017. Upon the request of defendant plaintiff also provided his tractor Massey Ferguson no. C-1166. The tractor of plaintiff was driven by driver Hashmat Khan and his brother namely Shaheed Khan, as they were drivers of said tractor. The construction work was in progress for several months and finally in the year 2020 it was accomplished. Upon demand of rent, the defendant used to depose that upon passing of bills he will pay the same. However after passing of bills and recovery of money from the government, the defendant was requested for payment of tractor rent but he lingered on the payment on one pretext or the other. Later on the defendant also admitted in presence of the witnesses that a rent of Rs-1,37,866/- is outstanding against him. However subsequently he refused to make payment of said rent and also threatened the plaintiff. He further adduced that the plaintiff succeeded to prove his stance through his evidence and furthermore nothing in rebuttal or contradictory has been brought on the record by the defendant. Hence prayed that the suit in hand may kindly be decreed in favour of plaintiff and against the defendant for the relief as claimed for.

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8. Contrary to this learned counsel for the defendant argued that the plaintiffs had not approached this court with clean hands. He further adduced that neither defendant is government contractor nor the contract of Sampog road was giving in his favour. Furthermore, no agreement regarding the delivery of possession of tractor in respect of sampog road has been executed between parties to the suit. He further argued that the driver of tractor, being material witness, was not examined by the plaintiff and thus plaintiff failed to prove his stance through his evidence. The plaintiff has filed a false suit against the defendant. On the other hand the defendant succeeded to produce evidence in light and support of his previous stance alleged in the written statement. Hence, prayed that as plaintiff failed to prove his case, hence the suit in hand may kindly be dismissed with costs.

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 plaintiff previously handed over possession of his tractor bearing registration no. C-1166 to defendant, which he used for construction of Sampog road? OPP**

Plaintiff in his plaint had alleged that he handed over the possession of his tractor Massey Ferguson no. C-1166 to

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defendant for construction of Sampog road. To prove his stance plaintiff personally appeared as PW-01 in the witness box and deposed in light and support of the issue in hand. During cross examination he deposed that he had not annexed contractor license of the defendant with his plaint. It is incorrect to suggest that defendant is that defendant is not contractor. It is correct that he is not in possession of any agreement or deed, scribed with the defendant, in respect of tractor. It is correct that he is not in possession of the advertisement or work order in the name of defendant, in respect of Sampog road.

PW-02 was produced and examined as one Muhammad Shahid s/o Nadar Khan, who deposed on oath that he used to drive tractor of Muhammad Younas s/o Gulistan, in the contract of Habib Nawaz contractor and he was tractor driver. Tractor of plaintiff was also working in the said contract with them, which was driven by hashmat Khan driver. Plaintiff's tractor worked for a period of one year. Later on plaintiff stopped his tractor from the work and expelled his driver, as defendant was not paying rent to him. They are witnesses of the fact that plaintiff's tractor was used in the contract. During cross examination he deposed that it is correct that he is unaware of the terms and conditions of the contract, which was executed between plaintiff and defendant.

PW-03 was produced and examined as one Muhammad Younas s/o Gulistan, who deposed on oath that during the contract

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he accompanied his driver namely Shahid in order to learn the driving of tractor and plaintiff's tractor was also working in the said contract. Habib Nawaz and mastu were the contractors. The tractor was working in the year 2017 and he is not in knowledge that when it stopped working. His tractor worked for one year and he had received the rent. During cross examination he deposed that it is correct that defendant is government contractor.

In light of the above evidence produced by the plaintiff to prove the issue in hand, it has been noticed that all the PWs deposed in light and support of the stance of plaintiff, previously alleged by him in the plaint. Furthermore, during cross examination the witnesses were not contradicted in material particulars rather such questions were put to the them which otherwise amount to admission on the part of defendant. For instance, during cross-examination of PW-02 a question was put to the witness to which he replied that "*it is correct that he is unaware of the terms and conditions of the contract, which was executed between plaintiff and defendant*". This question from PW-02 is otherwise an admission of the execution of agreement, either oral or written, previously executed between parties to the suit. Furthermore, there is nothing such available in the cross examination of PWs which could suggest that the tractor was not handed over by the plaintiff to defendant for construction of road.

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In light of my above findings as plaintiff succeeded to prove the issue in hand through cogent, convincing and confidence inspiring evidence, hence accordingly the issue in hand is hereby decided in positive in favour of the plaintiff and in negative against the defendant.

**ISSUE NO. 3:**

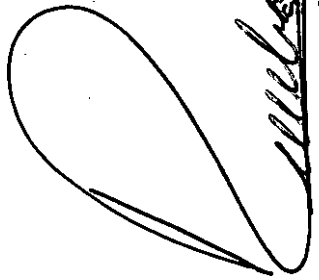
**Whether rent of said tractor is outstanding against defendant and plaintiff is entitled for the recovery of same? OPP**

Plaintiff in his plaint has alleged that rent of tractor is still outstanding against defendant and he is entitled for the recovery of the same. To prove his stance plaintiff personally appeared as PW-01 in the witness box and deposed on oath in light of the his previous stance alleged in the plaintiff as well as the issue in hand. During cross examination no question was put to the witness regarding the issue in hand and thus was not contradicted in material particulars.

PW-02 was produced and examined as one Muhammad Shahid s/o Nadar Khan, who failed to utter a single word regarding the issue in hand. During cross examination no question was put to the witness regarding the issue in hand.

PW-03 was produced and examined as one Muhammad Younas s/o Gulistan, who did not deposed regarding the issue in hand and during his cross examination he deposed that he is not in knowledge that the dispute between the parties is in respect of how much amount.

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In light of the above evidence produced by the plaintiff to prove the issue in hand, it has been noticed that PW-01 (plaintiff) deposed in light and support of his previous stance but he was not contradicted in material particulars and furthermore, no question regarding the disputed outstanding amount of rent was put to him. On the other hand, PW-02 and PW-03 did not uttered a single word regarding the issue in hand. However during cross examination of PW-03 a question was put to him, to which he answered that *"he is not in knowledge that the dispute between the parties is in respect of how much amount"*. Putting this question by the defendant also amounts to admission regarding the non-payment of rent to plaintiff, for the reason that defendant is admitting the dispute regarding money. Furthermore, from the findings of Issue no. 2, it has also been proved that plaintiff's tractor was used by defendant in construction of Sampog road.

In light of the above findings as plaintiff succeeded to prove the issue in hand through cogent, reliable and convincing evidence and furthermore, nothing contradictory has been brought on the record during cross examination by defendant, hence accordingly the issue in hand is hereby decided in positive in favour of plaintiff and against defendant.

Tenali Court  
 G. J. J. J. J.  
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**ISSUE NO. 4:**

**Whether defendant is government contractor and further he entered into an agreement with plaintiff in respect of tractor? OPD**

The defendant in his written statement had asserted that neither he is government contractor nor he entered into any agreement with the plaintiff in respect of tractor. To prove his stance defendant personally appeared as DW-01 in the witness box and stated on oath that in light and support of the issue in hand. During cross examination he deposed that Arshad Javid was not partner with him in Sampog contract.

In light of the above evidence produced by the defendant to prove the issue in hand, it has been noticed that although initially in his written statement and subsequently in his statement as DW-01, defendant has stated that neither he is contractor nor plaintiff's tractor was used by him in road construction, however during cross examination of plaintiff's evidence such questions and suggestion were put to the PWs which are otherwise admission of the stance of plaintiff. During cross examination of PW-01 a suggestion was brought on the record that "*it is incorrect to suggest that defendant is contractor*". Similarly during cross examination of PW-03 a question was put to the witness to which he answered that "*it is correct that defendant is government contractor*". Furthermore, during cross examination of DW-01 defendant deposed that "*Arshad Javid was not his partner in*

*Arshad Javid*  
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"Sampog contract". In given circumstances, the abovementioned suggestion, question and answer negate the stance of defendant alleged in the written statement and his examination in chief as DW-01. Furthermore, it establishes the fact that defendant is government contractor and thus the contract for the construction of Sampog road was giving in his favour by the government.

In light of what has been discussed above, as defendant failed to prove the issue in hand through cogent, convincing and reliable evidence, hence accordingly the issue in hand is hereby decided in negative against the defendant and in favour of plaintiff..

**ISSUE NO. 1**

**Whether plaintiff has got a cause of action? OPP**

In wake of issue wise findings above, the plaintiffs has got a cause of action, hence accordingly the issue in hand is hereby decided in positive in favour of plaintiff and against the defendant.

**ISSUE NO.5:**

**Whether plaintiff is entitled to the decree as prayed for? OPP**

In wake of my issue wise findings above, plaintiff is entitled to the decree as prayed for, hence accordingly the issue in hand is hereby decided in positive in favour of plaintiff and against the defendant.


**Relief:**

As nutshell of my detailed discussion upon various issues, the suit of plaintiff is hereby decreed for the relief as prayed for. No order

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as to costs. File be consigned to record room after its necessary completion.

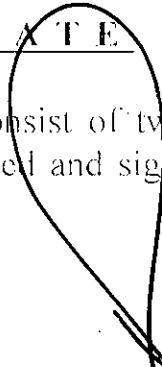
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11.10.2023

  
Syed Abbas Bukhari  
Civil Judge-II,  
Tehsil Court Kalaya, Orakzai

**SYED ABAAS BUKHARI**  
Civil Judge/II-II  
Tehsil Courts Kalaya

C E R T I F I C A T E

Certified that this judgment consist of twelve (12) pages. Each page has been read over, checked and signed after making necessary correction therein.  
Dated: 11.10.2023

  
Syed Abbas Bukhari  
Civil Judge-II,  
Tehsil Court Kalaya, Orakzai

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Civil Judge/II-II  
Tehsil Courts Kalaya