

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

Suit No. 131/1 of 2022

Date of Original Institution.....13.09.2022

Date of Decision of the suit.....19.10.2023

- 1. Ghulam Nabi s/o Abdul Ghani
- 2. Shahid Ali s/o Mohib Ali residents of Qom Mani Khel Tappa Zikria Khel Tehsil Lower District Orakzai.
.....Plaintiffs

Versus

- 1. Ijaad Ali
- 2. Oraan Ali
- 3. Nasir Ali
- 4. Insan Ali sons of Ajab Ali
- 5. Hashim Ali son of Moraan Ali residents of Qom Mani Khel Tappa Zikria Khel Tehsil Lower District Orakzai.
.....Defendants

SUIT FOR DECLARATION AND PERMANENT
INJUNCTION

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

JUDGMENT
19.10.2023

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

- 2. It is a suit from plaintiffs against defendants for declaration and perpetual injunction to the effect that plaintiffs are owners in possession of the suit property named as "Tandair Mountain" since the time of their fore-fathers and thus the defendants have got no right install crush machine and

Syed Abbas Bukhari
Tehsil Courts Kalaya


thereafter excavate stones etc from suit property. Defendants may kindly be restrained from interfering with the suit property, excavation of stones, crushing or dispossessing the plaintiffs.

3. Brief facts of the case as narrated in the plaint are that plaintiffs are owners in possession of suit property named as "Tandair Mountain" since the time of their fore-fathers and plaintiffs houses are also situated near the suit property. Plaintiffs further allege that defendants have got no concern with the suit property. Defendants have forcefully installed crush machine over the suit property and thus are now illegally excavating the stones and other raw material from the Tandair Mountain. In this respect the defendants were time and again requested that not to interfere with the suit property but they after exercising delaying tactics, finally refused to do the same. Hence the instant suit has been filed.

4. After institution of the suit, the defendants were summoned, who accordingly appeared through special attorney and submitted their respective written statement with legal and factual objections raised therein.

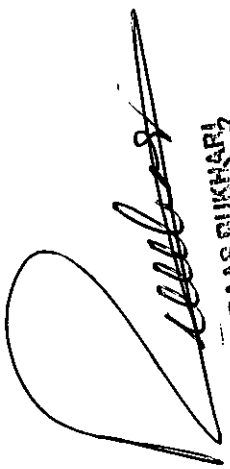
5. Out of controversies of the parties, as raised in their respective pleadings, the then incumbent Court has framed the following issues on 08.02.2023.

1. Whether the plaintiffs have got a cause of action? OPP


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Advocate
Tehsil Courts, Kalaja

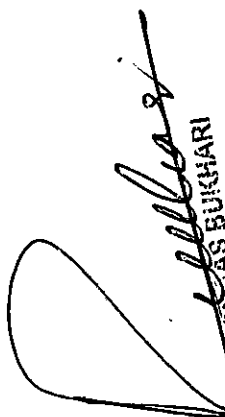
2. Whether the plaintiffs are estopped to sue? OPD
3. Whether the suit of plaintiffs is time barred? OPD
4. Whether the suit of plaintiffs is bad for non-joinder and mis-joinder of the parties? OPD
5. Whether plaintiffs are owner in possession of mountain called Tandır Mountain situated at Mani Khel since their predecessor and defendants are illegally interfering in the said mountain? OPP
6. Whether defendants have installed a crash machine on the property of plaintiffs and are excavating stones and other materials from the Tandır Mountain? OPP
7. Whether grandfather of defendant no.1, 3, 4 & 5 namely Ajab Ali has purchased the suit property (mountain) vide agreement deed dated: 31.01.1957 and since then defendants are owners in possession of the same? OPD
8. Whether 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 three witnesses and thereafter closed their evidence. Contrary to this defendants produced four 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 opened the arguments and argued that plaintiffs are owners in possession of the suit property named as Tandır Mountain, since the time of their forefathers and furthermore, defendants being strangers to the suit property have got no concern with the same. Learned counsel further adduced that defendants have illegally and forcefully installed crush machine over the suit property and thus are illegally


 SYED ABAAS RUKHARY
 Civil Judge
 Tehsil Courts Kalaya

excavating stones and other raw materials from the suit mountain. 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.

8. Contrary to this learned counsel for the defendants argued that plaintiffs have got no cause of action. He further adduced that suit property along with other property was previously purchased by the grandfather of defendants no. 01 and 03 to 05 vide deed dated: 31.01.1957 and thus since the time of its purchase, same is in possession of defendants. He further argued that after about lapse of about sixty six years, deed dated: 31.01.1957 has not been challenged before any forum by the plaintiffs. He further argued that defendants previously entered into agreement of crush machine with one Amir Abbas resident of Kalaya vide deed dated: 22.03.2012 and since the year 2012 crush machine is working and during the period of said eight years no one has challenged the same. Learned counsels further contended that the plaintiffs failed to prove their stance through cogent and convincing evidence. On the other hand, the defendants succeeded to produce evidence in light and support of their stance


 SYED ABBAS BUKHARI
 Civil Judge, J-11
 Tehsil Court Kalaya

In light of what has been discussed above, as defendants miserably failed to prove issues no.02, 03 and 04 through their cogent, reliable and convincing evidence, hence the aforementioned issues are hereby decided in negative against defendants and in favour of plaintiffs.

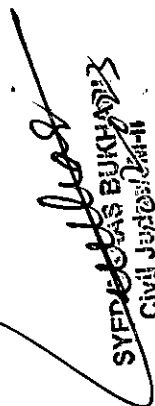
ISSUE NO. 05 & ISSUE NO. 07

Whether plaintiffs are owner in possession of mountain called Tandar Mountain situated at Mani Khel since their predecessor and defendants are illegally interfering in the said mountain? OPP

Whether grandfather of defendant no.1, 3, 4 & 5 namely Ajab Ali has purchased the suit property (mountain) vide agreement deed dated: 31.01.1957 and since then defendants are owners in possession of the same? OPD

Issues no. 05 and no.06 being interlinked are hereby decided collectively. Plaintiffs had previously alleged in their plaint that suit property named as Tandair Mountain is their sole ownership and thus they are in possession of the same since the time of their predecessors. They further alleged that defendants are illegally interfering with the suit property while on the other hand defendants had alleged in their written statement that grandfather of defendant no. 01, 03, 04 and 05 namely Ajab Ali had previously purchased suit mountain vide agreement deed dated: 31.01.1957 and since then they are in possession of the same.

To prove their stance plaintiffs produced one Qabil Hassan s/o Ghulam Nabi, special attorney for plaintiffs, as PW-01 who deposed on oath in light and support of the stance of plaintiffs


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Civil Justice
Teluk Courtis Kalaya

previously alleged in their plaint. During cross examination he deposed that he had not challenged installation of crush machine as the same has been installed over the other mountain owned by one Zaheen Ali. Self stated that when they started interference with the their mountain (suit property) they filed instant suit.

PW-02 was produced and examined as one Moin Hassan s/o Noor Hassan, who deposed on oath in light and support of stance of the plaintiffs. During cross examination he deposed that it is correct that defendants had neither installed crush machine nor interfered with the suit property, self-stated that they had previously interfered and still they are interfering.

PW-03 was produced and examined as one Japan Ali s/o Moraan Ali, who deposed on oath in light and support of the stance of plaintiffs previously alleged in the plaint. During cross examination nothing in rebuttal has been brought on the record.

Contrary to this to prove their stance defendants produced one Naikmal Hassan s/o Insan Ali, special attorney for defendants, who deposed on oath in light and support of the stance of defendants. During cross examination he deposed that it is correct that in Ex-DW1/2 name of disputed Tandair Mountain is not mentioned. It is correct that it is not mentioned in Ex-DW1/2 that they had purchased field along with Tandair Mountain.

DW-02 was produced and examined as one Syed Hadi Hussain s/o Syed Asghar Hussain but he failed to utter a single

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SYED ASGHAR HUSSAIN
Civil Judge (I) /
Tehsil / District /
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word regarding the issue in hand and thus deviated from the stance of defendants.

DW-03 was produced and examined as one Masroor Ali s/o Awraan Ali, who deposed on oath that Tandair Mountain is the ownership of defendants. During cross examination he deposed that above the field, mentioned in Ex-DW1/2, property of Awan Ali is situated. Self stated that above the field of Awan Ali the property of defendants is situated and after that Tandair Mountain is situated.

DW-04 was produced and examined as one Maqсад Ali s/o Waris Ali, who deposed on oath that defendants had purchased a field in Tandair from the plaintiffs, which is mentioned in Ex-DW1/2. Above the said field towards mountain, property of Mirwas Khel is situated and above the same, property of defendants is situated. During cross examination he deposed that it is correct that no other property is situated between the abovementioned field and the property of Mirwas Khel.

In light of the above evidence produced by the plaintiffs to prove the issue no.05, it has been noticed that all the PWs deposed in light and support of the stance of plaintiffs and furthermore; during cross examination nothing in rebuttal or contradictory regarding the ownership of plaintiffs over the suit property (Tandair Mountain) has been brought on the record, which otherwise lead this court to presume that Tandair Mountain is

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ownership of the plaintiffs. Furthermore, as for as the fact that defendants are interfering with the suit property is concerned, it is pertinent to mention here that nothing contradictory in this respect has been brought from PW-01 and PW-03 while PW-02 initially deposed in his cross examination that no interference has been made by the defendants but subsequently in his self stated statement he deposed that they are interfering with the suit property. Furthermore, the self stated statement of PW-01 and PW-02, which are mentioned above, were not even rebutted or denied by bringing on the record any suggestion by the defendants.

On the other hand from the evidence produced by defendants to prove issue no.07 it has been noticed that although DW-01, 03 and 04 deposed in light and support of the stance of defendants. However during their respective cross examinations they were contradicted in material particulars and a brief of which is reproduced here. DW-01 deposed in his cross examination that *"it is correct that in Ex-DW1/2 name of disputed Tandair Mountain is not mentioned. It is correct that it is not mentioned in Ex-DW1/2 that they had purchased filed along with Tandair Mountain"*. Similarly DW-03 had deposed in his cross examination that *"above the field, mentioned in Ex-DW1/2, property of Awan Ali is situated. Self stated that above the field of Awan Ali the property of defendants is situated and after that*

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 Tehsil Courts Kalaya

Tandair Mountain is situated". It is also pertinent to mention here that the deed Ex-DW1/2 has also been admitted by plaintiffs and they further admit that defendants had purchased the field. However on the other hand defendants allege that they had purchased field alongwith Tandair Mountain. It is also worth mentioning here that it has been proved from the cross examination of DWs that between the field, previously purchased by defendants vide deed Ex-DW1/2, and Tandair Mountain, property of Mirwas khel is situated, hence in given circumstances the stance of defendants that they had purchased the field along with Tandair Mountain is not appealable to prudent mind. Furthermore, both the parties submitted translation of Ex-DW1/2 (which was scribed in Persian language) before this court and due to difference between both the translations, this court directed the in-charge of Kalaya Madrassa to translate the said deed and thereafter submit the same before this court. Accordingly the translation was submitted and perusal of the same would reveal that it is nowhere mentioned therein that Tandair mountain was purchased by defendants rather it has been scribed that the property situated in the base of Tandair mountain was purchased by the defendants.

In light of what has been discussed above, as plaintiffs succeeded to prove the issue no.05 through cogent, convincing and reliable evidence while on the other hand defendants failed to


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 Civil Judge (S) Kalaya
 District Court Kalaya

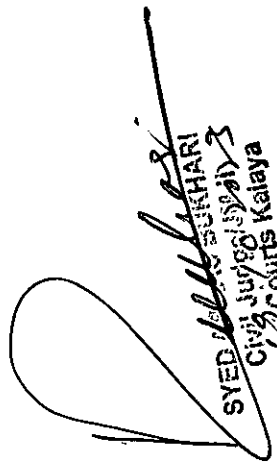
prove issue no.07 through their evidence, hence accordingly the issue no.05 is hereby decided in positive in favour of plaintiffs and against the defendants while issue no.07 is hereby decided in negative against the defendants and in favour of plaintiffs.

ISSUE NO. 6

Whether defendants have installed a crush machine on the property of plaintiffs and are excavating stones and other materials from the Tandir Mountain? OPP

Plaintiffs had previously alleged in their plaint that defendants had installed crush machine on the suit property and further they are excavating stones and other materials from the same. To prove their stance, plaintiffs produced one Qabil Hassan s/o Ghulam Nabi, special attorney for plaintiffs, who deposed in light and support of issue in hand. During cross-examination he deposed that he had not challenged the agreement of crush machine, as same is installed in other mountain owned by one Zaheen Ali. Crush machine has been installed in the property previously sold by plaintiffs and are excavating stones from the mountain of Zaheen Ali.

PW-02 was produced and examined as one Moin Ali s/o Noor Hassan but he failed to depose a single word regarding the issue in hand and thus deviated from the stance of plaintiffs previously alleged in the plaint. During cross examination he deposed that it is correct that no interference regarding crush machine or excavation has been done by the defendants in respect of the suit property.

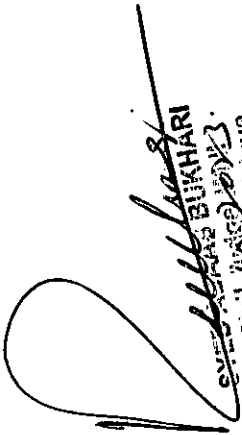

SYED MOIN ALI
Civil Judge (Sd) 3
Teluk Courts Kalaya

PW-03 was produced and examined as one Japan Ali s/o Mooran Ali but he also failed to utter a single word regarding the issue in hand.

In light of the above evidence produced by the plaintiffs to prove the issue in hand, it has been noticed that PW-02 and PW-03 failed to deposed regarding the issue in hand and thus they deviated from the stance of plaintiffs. Furthermore, PW-02 has admitted in his cross examination that "*that no interference regarding crush machine or excavation has been done by the defendants in respect of the suit property*". On the other hand although PW-01 had deposed in his examination in chief in light of the stance of plaintiffs, however during his cross examination he had stated that crush machine is installed in mountain owned by one Zaheen Ali and further defendants are excavating stones from that very mountain.

Furthermore, during cross examination of DW-02 a question was put to the witness to which he replied that "*it is correct that no excavation of stones has been done over suit mountain named as Tandair*". This question by the plaintiffs is in contradiction to their stance regarding interference of defendants in suit mountain.

In light of the above discussion, as plaintiffs failed to prove the issue in hand through cogent convincing and reliable evidence and furthermore, the PWs were also contradicted in material


S. M. MOHAMMAD BUKHARI
JUDGE
Sessions Judge
Tehsil Courts Malaya

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particulars, hence accordingly the issue in hand is hereby decided in negative against the plaintiffs and in favour of defendants.

ISSUE NO. 1

Whether the plaintiffs have got cause of action? OPP

In wake of issue wise findings above, the plaintiffs have got a cause of action, hence the issue in hand is decided in positive in favour of the plaintiffs and against defendants.

ISSUE NO.08:

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

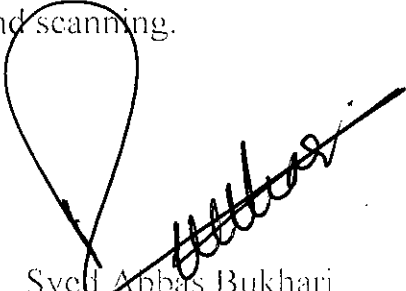
In wake of my issue wise findings above, plaintiffs are entitled to the decree as prayed for, hence the issue in hand is hereby decided positive in favour of the plaintiffs and against defendants.

Relief:

As per issued wise findings above the instant suit of plaintiffs is hereby decreed for the relief as prayed for. No order as to costs. File be consigned to the record room after its necessary completion, compilation and scanning.

Announced

19.10.2023

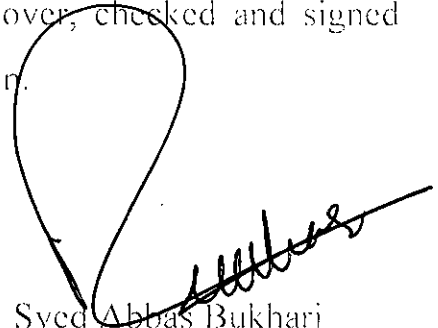

Syed Abbas Bukhari
Civil Judge-II Kalaya Orakzai

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CERTIFICATE

Certified that this judgment of mine consist upon Fourteen (14) pages. Each page has been read over, checked and signed after making necessary correction therein.

Dated: 19.10.2023



Syed Abbas Bukhari
Civil Judge-II Kalaya, Orakzai