

175

IN THE COURT OF REHMAT ULLAH WAZIR,
CIVIL JUDGE-I ORAKZAI AT Camp Court, Kalaya.

Civil Suit No. 69/1 of 2019
Date of Institution: 07.11.2019
Date of Decision: 21.12.2021

1. *Rafi Ullah s/o Khwaja Muhammad Khan*
 2. *Wasif Ullah s/o Khwaja Muhammad Khan*
 3. *Safar Khan s/o Halim Gul*
 4. *Farid Ullah s/o Halim Gul*
- All R/O Qoum Mishti, Tappa Darwi Khel, Budgor, District Orakzai*
(Plaintiffs)


VERSUS

1. *Jan Muhammad s/o Mastan Shah*
 2. *Jamshed Ullah s/o Mastan Shah*
 3. *Wakeel Shah s/o Mastan Shah*
- All R/O Mian Mela, Qoum Mishti, Tappa Darwi Khel, District Orakzai*
(Defendants)

**SUIT FOR DECLARARTION CUM PERPETUAL AND
MANDATORY INJUNCTION AND POSSESSION**

JUDGEMENT:
21.12.2021

Plaintiffs Rafi Ullah etc have brought the instant suit for declaration cum perpetual and mandatory inunction and possession against the defendants to the effect that the plaintiffs are the exclusive owners of the suit property while the defendants are the cultivators of the same. That the predecessors of the plaintiffs handed over the suit property along with a built-up house for their residence and cultivation to the predecessors of the defendants. That an application against the defendants was filed before the then Assistant Political Agent, Lower Orakzai for declaration of


REHMAT ULLAH WAZIR
CIVIL JUDGE-I
CAMP COURT
KALAYA ORAKZAI

the plaintiffs as owners of the suit property along with the built-up house and handing over of the possession of the same through ejection of the defendants. That the then APA appointed a jirga and in the light of the jirga decision, an order was passed on 10.11.2014, whereby the ejection of the defendants from the suit property was directed. That the said decision of the APA was upheld by the Commissioner, Kohat vide order, dated: 06.08.2015 but afterwards, the same decision was set aside and the case was remanded back to the trial court by the then FATA Tribunal vide order, dated: 06.11.2017. That the defendants are illegally occupying and enjoying the suit property along with a built-up house over the same and are about to do further constructions over the same despite the fact that they are not the owners of the same rather these are the plaintiffs who are the owners of the suit property. That the defendants were asked time and again to hand over the possession of the suit property but they refused, hence, the present suit.

KEHMAT ULLAH WAZIR
CIVIL JUDGE (M-1)
CAMP COURT
KALAYA ORAKZAI

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 of the plaintiffs and the defendants have nothing to do with the suit property rather they are the mere Kashtkaran (tenants) of the suit property since their predecessors?
5. Whether the plaintiffs are entitled to the possession of the same?
6. Whether the plaintiffs are entitled to the decree as prayed for?
7. Relief.

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

The plaintiffs produced witnesses in whom the one Syed Ameer Shah Raza, record keeper/in-charge judicial record room, Orakzai appeared as PW-01, who produced the suit file No. 19/1, instituted on 25.06.2019, decided on 25.09.2019 by the Civil Judge-II, Orakzai, which is Ex.PW-1/1, comprising in 99 pages and that the same case file was received from the court of the then Assistant Political Agent, Lower Orakzai. further, Mr. Safi Ullah, the special attorney of the plaintiffs appeared as PW-02, who produced his special power of attorney as Ex.PW-2/ and copy of the appeal of the defendants to the Commissioner, Kohat against the decision of the APA, L/Orakzai, which is Ex.PW-2/2 and further fully narrated the same story as in the plaint. Further,

SAFI ULLAH WAZIR
CIVIL JUDGE/JM-1
CAMP COURT
KALAYA ORAKZAI

Mr. Khoba Gul appeared as PW-03, who also supported the stance of the plaintiffs. At the end, Mr. Khamin Gul, the co-villager of the plaintiffs and the witness of the Ijara (share in the produce of the land) given by the defendants to the plaintiffs, appeared as PW-04, who fully supported the stance of the plaintiffs.

In order to counter the claim of the plaintiffs, the defendants produced witnesses, in whom Mr. Jan Muhammad, the defendant no. 01 for himself and as a special attorney for the rest of the defendants appeared as DW-01, who produced his special power of attorney as Ex.DW-1/1 and further fully denied the claim of the plaintiffs. further, Mr. Taj Wali , a friend of the defendants appeared as DW-02, who stated that for the last 35/40 years, the suit land is cultivated by the defendants and that the suit of the plaintiffs is baseless. At the end, Mr. Muhammad Sadiq, a cousin of the defendants appeared as DW-03, who stated that the suit property is cultivated by the defendants for the last 40 years and that the suit of the plaintiffs is baseless.

My issue wise findings are as under:

Issues No. 02:

The defendant in his written statement raised the objection that the plaintiff are estopped to sue but later on,

M
RABI ULLAH WAZIR
JUDGE JM-1
CASE COURT
MALAKKANZA

failed to prove the same and even failed to assert anything in this respect in their evidence, 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 07.11.2019. Thus, the same is well within time.

The issue is decided in negative.

M →

HMAT ULLAH WAZIR
CIVIL JUDGE/JM-1
CAMP COURT
KALAYA ORAKZAI

Issues No. 04 & 05:

Both these issues are inter-linked, hence, taken together for discussion.

The plaintiffs alleged in their plaint that they are the exclusive owners of the suit property while the defendants are the cultivators of the same. That the predecessors of the plaintiffs handed over the suit property along with a built-up house for their residence and cultivation to the predecessors of the defendants. That an

application against the defendants was filed before the then Assistant Political Agent, Lower Orakzai for declaration of the plaintiffs as owners of the suit property along with the built-up house and handing over of the possession of the same through ejection of the defendants. That the then APA appointed a jirga and in the light of the jirga decision, an order was passed on 10.11.2014, whereby the ejection of the defendants from the suit property was directed. That the said decision of the APA was upheld by the Commissioner, Kohat vide order, dated: 06.08.2015 but afterwards, the same decision was set aside and the case was remanded back to the trial court by the then FATA Tribunal vide order, dated: 06.11.2017. That the defendants are illegally occupying and enjoying the suit property along with a built-up house over the same and are about to do further constructions over the same despite the fact that they are not the owners of the same rather these are the plaintiffs who are the owners of the suit property. That the defendants were asked time and again to hand over the possession of the suit property but they refused, hence, the present suit.

M
 HON. RAFI ULLAH WAZIR
 CIVIL JUDGE/JM-1
 CAMP COURT
 KALAYA ORAKZAI

The plaintiffs produced witnesses, who appeared as PW-01, PW-02, PW-03 and PW-04, who all produced the relevant documents which are exhibited. It is established by the plaintiffs through PW-01 that an ejection order was

passed by the then APA, L/Orakzai against the defendants and the same was upheld by the Commissioner, Kohat in an appeal by the defendants against the decision of the APA, L/Orakzai. Though, the same order has been set aside by the then FATA Tribunal but one thing is established that the present defendants/the then appellants have categorically mentioned in their prayer in the appeal before the Commissioner, Kohat that they were ready and are ready to pay Rs. 35,00,000/- to the respondents/present plaintiffs as sale price of the suit property. Meaning thereby that they were admitting the ownership of the plaintiffs, which is a documentary proof against them and the same is unrebutted.

REHMAT ULI AH WAZIR
CIVIL JUDGE/JM
CAMP COURT
KALAYA ORAKZAI

other 03 witnesses of the plaintiffs have been cross examined but nothing contradictory have been extracted out of them during cross examination rather the PW-02 in his cross examination has stated that:

"یہ درست ہے کہ جس وقت ہم نے مدعا علیہم کو مکان حوالہ کیا تھا اس وقت 03 عدد کمرہ جات مکان میں

موجود تھے۔"

The PW-03 in his cross examination has stated that:

"یہ درست ہے کہ اراضی متدعو یہ مدعا علیہم کو برائے کاشت نصف حصہ پر دی گئی تھی۔"

PW-04 in his cross examination has stated that:

"اجارہ میرے سامنے دیا جاتا تھا۔ اراضی مذکورہ نصف بٹائی پر دی گئی تھی۔"

In order to counter the claim of the plaintiffs, the defendants produced witnesses in whom, Mr. Jan Muhammad, the defendant No. 01 for himself and as a special attorney for the rest of the defendants appeared as DW-01, but he admitted in his cross examination that:

"تقریباً 40 سالوں سے اراضی متدعوئیہ پر ہم کاشتکاران ہیں۔ یہ درست ہے کہ اراضی متدعوئیہ کی نسبت اے۔

پی۔ اے، نے مدعیان کے حق میں فیصلہ دے کر ہمیں اراضی و مکان سے بے دخل کرنے کا حکم جاری کیا تھا۔

میں نے اے۔ پی۔ اے، کے حکم یعنی اراضی اور مکان مدعیان کے حوالہ نہ کرنے سے 4/3 سال جیل میں

گزارے۔ جب ہمارا کوئی فوت ہو جاتا ہے تو ہم اپنے علاقہ میاں میلہ قبرستان میں اسے دفن کرتے ہیں۔ ہمارا

HAFMAT ULLAH WAZIR
CIVIL JUDGE/JM-1
CAMP COURT
KALAYA ORAKZAI

گاؤں جائیداد متدعوئیہ سے تقریباً 01 کلومیٹر دور واقع ہے۔ جس وقت ہم اراضی متدعوئیہ میں منتقل ہوئے

اسمیں مکان تعمیر شدہ تھا۔ ہم اراضی متدعوئیہ اب نہیں خریدنا چاہتے اگر عدالت مقدمہ ڈگری بھی کرے تب

بھی ہم جائیداد متدعوئیہ مدعیان کے حوالہ نہیں کریں گے۔ مجھے علم نہ ہے کہ ہم سے پہلے اراضی متدعوئیہ کا

کاشتکار منجانب مدعیان کون تھا۔"

The one Taj Wali appeared as DW-02 but admitted in his cross examination that:

"مجھے اس بابت معلومات نہیں کہ مدعا علیہم کب تک یا کب سے مدعیان کو حاصلات

دیتے رہے اور مجھے یہ بھی علم نہ ہے کہ مدعیان کو مدعا علیہم نے کب حاصلات دینا بند کیے۔ چونکہ میں اس

علاقے کا باشندہ نہیں ہوں اس وجہ سے میں اس علاقے کے بارے میں کچھ زیادہ نہیں جانتا۔"

The one Muhammad Sadiq, the cousin of the defendants appeared as DW-03 but admitted in his cross examination that"


"مدعا علیہم میرے چچا زاد بھائی ہیں۔ اراضی متدعوئیہ ہماری رہائش سے دو گھنٹے کے فاصلے پر ہے۔ مجھے علم نہ ہے

کہ مدعا علیہم مدعیان کو کب تک حاصلات وغیرہ دیتے رہے۔ یہ درست ہے کہ اراضی 35 لاکھ روپے میں

خریدنے کے لئے تیار تھا۔ مدعا علیہم میرے میلے میں رہائش رکھتے تھے اور جائیداد متدعوئیہ میں تقریباً 30 سال قبل

آئے تھے۔"

Thus, it is established through the evidence of


EHMAT ULLAH WAZIR
CIVIL JUDGE/JM-1
CAMP COURT
KALAYA ORAKZAI

the plaintiffs and even from the admissions made by the witnesses of the defendants that the plaintiffs are the owners of the suit property and the defendants are the cultivators. Therefore, in the light of the aforesaid findings, both the issues are decided in positive.

Issues No. 01 & 06:

Both these issues are inter-linked, hence, taken together for discussion.

184


As sequel to my above findings, on issues no. 04 & 05, 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 with costs.


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

Announced
21.12.2021


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

CERTIFICATE

Certified that this judgment of mine consists of 10 pages, each has been checked, corrected where necessary and signed by me.


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