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

Suit No. 57/1 of 2022

Date of Original Institution31.05.2021
Date of transfer to this court.....02.07.2022
Date of Decision of the suit.....16.11.2023


16-11-2023 SYED ABBAS BUKHARI
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1. Nasir Khan s/o Muhammad Yaqoob
2. Fazal Razeem s/o Dilbar Khan
3. Salah Ud Din s/o Abdul Jabbar residents of Qom Mishti, Tapa Darvi Khel village Shaho Khel Kasha Tehsil Central Lower Orakzai.Plaintiffs

Versus

1. Khameen Gul s/o Meeran Gul
2. Wahid Gul s/o Meeran Gul
3. Mustafa S/o Nazir Gul residents of Qom Mishti Tappa Darvi Khel village Tari Banda near Shaho Khel.Defendants

SUIT FOR DECLARATION AND PERMANENT
INJUNCTION

Counsel for plaintiffs: Mr. Abid Ali Advocate
Counsel for defendants: Mr. Haseeb Ullah, Umar Zakir and Lal Habib Khan Advocates

JUDGMENT

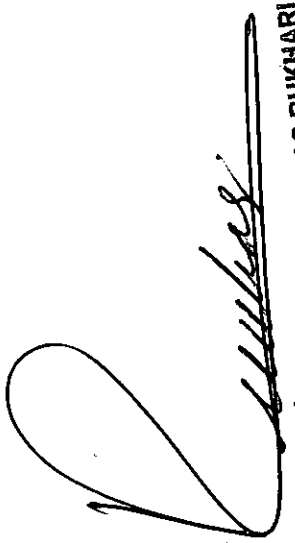
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Vide this judgment I intend to dispose of suit captioned above.

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 measuring 100

situated at Tari Kalay near Teye Ghara since the time of their predecessors and thus the defendants have got no right to claim their ownership over the leased suit property or to dispossess the plaintiffs or to restrain the plaintiffs from cultivating the suit property.

3. Brief facts of the case as narrated in the plaint are that plaintiffs are owners in possession of a field (suit property) measuring 100 Marla situated at Tari Kalay near Teye Ghara since the time of their predecessors. Defendants have got no right to claim their possession over the leased field and further to deny the stance of plaintiffs. Furthermore, said field was previously leased by plaintiffs to defendants in presence of witnesses but defendants refused to enter into written agreement and thus claimed their possession over the suit property. Defendants are further restraining plaintiffs from cultivating the suit property and thus are interfering with the suit property. In this respect the defendants were time and again requested through elders of locality that they should not interfere with the suit property or claim their ownership as well as possession over the same but they refused, hence the instant suit has been instituted.




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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 19.07.2022.

1. Whether the plaintiffs have got a cause of action?
2. Whether the plaintiffs are estopped to sue?
3. Whether the suit of plaintiffs is time barred?
4. Whether plaintiffs are owners in possession of inherited suit property measuring 100 Marla?
5. Whether suit property was given to defendants on Ijara?
6. Whether the plaintiffs are entitled to the decree as prayed for?
Relief.


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6. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiffs produced as many as five 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 opened the arguments and argued that plaintiffs are owners in possession of a field (suit property) measuring 100 Marla situated at Tari Kalay near Toye Ghara since the time of their predecessors. Defendants have got no right to claim their possession over the leased field and further to deny the stance of plaintiffs. Furthermore, said field was previously

by the plaintiffs through their evidence. Learned counsel 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 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 are estopped to sue?

ISSUE NO. 3:

Whether the suit of plaintiffs is time barred?

Defendants have previously alleged in their written statement that plaintiffs are estopped to sue by their own conduct 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, on 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

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deviated from the stance of defendants previously alleged in their respective written statement.

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 plaintiffs are owners in possession of inherited suit property measuring 100 Marla?

Plaintiffs had previously alleged in their plaint that they are owners in possession of inherited suit property measuring 100 Marla. To prove their stance plaintiffs produced one Meena war Khan s/o Mazar Khan, who deposed on oath that at Tari Kalay Toye Ghara on the western side field of plaintiffs is situated while on the eastern side his field is situated. Towards north Shaho is located. He is not in knowledge of the area. Field is ownership of plaintiffs. During cross examination he deposed that he is not in knowledge of the fact that from whom Nasir Khan has purchased the land rather field in question is ancestral property of plaintiffs. This land was ownership of one Malini was either father or uncle of plaintiff.

PW-02 was produced and examined as one Gul Zameer Khan s/o Sahib Gul, who deposed on oath that disputed field is

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ownership of Nasir Khan and his village is situated nearby. His house is at a distance of about half kilometer from the disputed field. The field was cultivated by Nasir Khan and his father. His father told him that the disputed field belongs to Nasir Khan. During cross examination he deposed that he does not remember that when his father had told him about the field.

PW-03 was produced and examined as one Abdul Ghaffar Khan s/o Ayub Khan, who deposed on oath in light and support of the stance of plaintiffs previously alleged in the plaint. During cross examination he deposed that he is not in knowledge that when was told that field is ownership of plaintiffs, self-stated that his father had died 10 years ago. He had not taken part in any Jirga or partition in respect of the disputed field, as nothing has happened. He had seen plaintiffs and their predecessor cultivating the field. Maize and wheat crops were sown in the said field.

PW-04 was produced and examined as Ismail Shah s/o Zamin Shah, who stated on oath he alongwith Nasir Khan were going towards the disputed field in the evening. They sent a messenger to Khameen Gul for coming towards the field. Khameen Gul and his nephew both came and they were also accompanied by the son of Khameen Gul. In his presence they demanded the disputed field on lease or at half share. Plaintiff Nasir Khan told them to enter into a lease agreement with him and

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after that he is ready to deliver the possession of field on lease for cultivation. If he falsely depose, may Allah does not forgive him. Five times, in his presence, they promised to resolve the issue but subsequently refused. After this he is not in knowledge of any fact. During cross examination he deposed that one year earlier he and plaintiff visited defendant to settle the lease issue. Suit property is in possession of plaintiffs being ancestral property.

PW-05 was examined as one Nasir Khan s/o Muhammad Yaqoob Khan, special attorney for the plaintiffs, who deposed on oath in light and support of the stance of plaintiffs previously alleged in the plaint. During cross examination he deposed that it is correct that he had got no documentary proof regarding the suit property. It is also correct that he had got no documentary proof regarding the produce of suit property. It is correct that he had got no documentary proof or any witness regarding the partition of suit property.

In light of the above evidence produced by plaintiffs to prove the issue in hand, it has been noticed that all the PWs deposed in light and support of the stance of plaintiffs previously alleged in the plaint and furthermore, during cross examination the opposite party failed to contradict the witnesses in material particular and thus nothing in rebuttal or contradictory has been brought on the record. Moreover such questions were put to the witnesses which

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were otherwise admissions on the part of defendants. During cross examination of PW-04 it has been brought on the record that "*suit property is in possession of plaintiffs being their ancestral property*". Similarly PW-01 has deposed in his cross examination that "*he is not in knowledge that from whom Nasir Khan had purchased the suit property rather same is ancestral property of plaintiffs*". PW-03 has deposed in his cross examination that "*he had seen plaintiffs and their predecessors cultivating the suit property*". It is also pertinent to mention here that these answers/statements of PWs were not even rebutted through suggestions.

In light of the above discussion, as plaintiffs succeeded to prove issue in hand through cogent, convincing and reliable evidence, hence accordingly the issue in hand is hereby decided in positive in favour of plaintiffs and against the defendants.

ISSUE NO. 05

Whether suit property was given to defendants on Jirga?

Plaintiffs have previously alleged in their plaint that suit property was previously leased by them to the defendants. To prove issue in hand plaintiffs produced as many as five witnesses, however perusal of their statements would reveal that none of the witnesses had deposed a single word regarding the issue in hand and thus deviated from the stance of plaintiffs.

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In light of the above discussion as plaintiffs failed to prove the issue in hand through their cogent, convincing and reliable evidence, hence issue in hand is hereby decided in negative against plaintiffs and in favour of defendants.

ISSUE NO. 01

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 plaintiffs and against the defendants.

ISSUE NO.06:

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

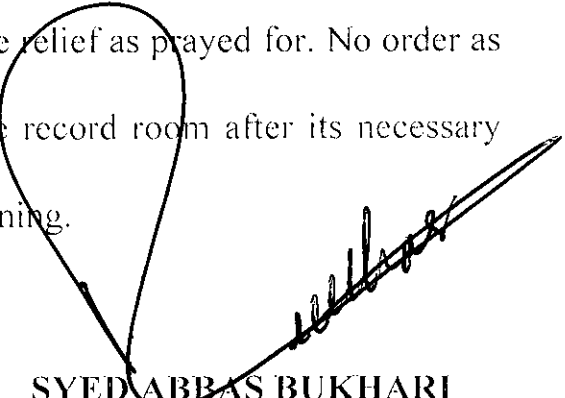
In wake of my issue wise findings above, plaintiffs are entitled to the decree as prayed for, hence the issue in hand is decided in positive in favour of plaintiffs and against the defendants.

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

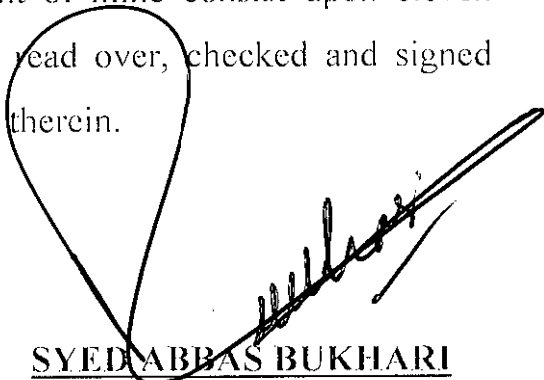
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C E R T I F I C A T E

Certified that this judgment of mine consist upon eleven (11) pages. Each page has been read over, checked and signed after making necessary correction therein.

Dated: 16.11.2023


SYED ABBAS BUKHARI
Civil Judge-II,
Tehsil Courts, Kalaya Orakzai