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IN THE COURT OF REHMAT ULLAH WAZIR,
CIVIL JUDGE-I ORAKZAI AT BABER MELA

Civil Suit No. 65/1 of 2019
Date of Institution: 01.10.2019
Date of Decision: 13.11.2021

1. ***Fazal Khaliq s/o Said Muhammad.***
R/O Qoum Rabi Khel, Tappa Afzal Khel, Village Bazar Kalay, Garhi,
Tehsil Ismail Zai, District Orakzai
(Plaintiff)

VERSUS

1. ***Abdur Rehman s/o Muhammad Ayub***
R/O Ghaz Garhi, District Orakzai.
(Defendant)

SUIT FOR POSSESSION THROUGH PARTITION

JUDGEMENT:

13.11.2021

Plaintiff Fazal Khaliq have brought the instant suit for possession through partition against the defendant to the effect that the plaintiff filed a suit for declaration cum perpetual and mandatory injunction and possession through demolition in the present court. That, that suit was disposed off vide order Dated: 13.09.2019, in the light of the joint statement of the parties which was the result of a jirga decision, whereby it was decided that the suit tube-well along with its boundary wall built up on 40 Marlas property was declared as the joint property of the parties. That this joint property would be equally divided between the parties. That despite the aforesaid facts, there remains always a dispute

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between the parties over the said joint property and the defendant is not allowing the plaintiff to utilize his share or develop his share in the joint property. That the defendant was asked time and again to divide the aforesaid joint land and hand over the possession of the same to the plaintiff, but he refused, hence, the present suit.

Defendant was summoned through the process of the court, who appeared and contested the suit by filing written statement, wherein he raised certain factual and legal objections.

Divergent pleadings of the parties were reduced into the following issues;

1. Whether the plaintiff has got a cause of action?
2. Whether the plaintiff is estopped to sue?
3. Whether the suit property is the joint ownership of the parties?
4. Whether both the parties are equally entitled to their shares in the suit tube-well?
5. Whether both the parties are equally entitled to their shares in the unpartitioned joint suit property?
6. Whether the plaintiff is entitled to the decree as prayed for?
7. Relief.

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

The plaintiff produced witnesses in whom the plaintiff himself appeared as PW-01, who produced copy of the order of this court, which is Ex.PW-1/1, whereby the suit of the plaintiff has been disposed off in the light of the statement of the parties and further narrated the same story as in the plaint. He has been cross examined but nothing against the plaint has been extracted out of him during cross examination. Further, Mr. Jannat Khan appeared as PW-02, who endorsed the jirga between the parties, whereby he was the member of that jirga and that the jirga made decision between the parties as per the plaint. Another jirga member namely Lal Zada appeared as PW-03 and he also endorsed the jirga between the parties and that the jirga decided the issue between the parties in line with the plaint. The defendant produced witnesses, in whom the one Abdul Habib appeared as DW-01, who stated that the suit land is in the ownership and possession of the defendant and have constructed a tube-well over the same but admitted in his cross examination that a dispute over the said property between the parties was resolved through jirga and according to that the property would be equally divided between the parties. Further, Mr. Abid Ur Rehman appeared as DW-02, who denied the claim of the plaintiff but admitted in his cross examination that a dispute between the parties over the suit land was resolved

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through jirga, whereby it was decided that the same would be equally divided between the parties. Further, Mr. Abdur Rehman, the defendant himself appeared as DW-03 and fully denied the claim of the plaintiff but admitted in his cross examination that the dispute between the parties over the suit land was resolved through jirga. That the present plaintiff filed a declaratory suit and the same was disposed off through our joint statement in the light of the jirga decision. That he has got no objection over that decision and that he has got no objection if the suit property is partitioned in the light of that decision of the court.

My issue wise findings are as under:

Issues No. 02:

The defendant in his written statement raised the objection that the plaintiff is estopped to sue but later on failed to prove the same, hence, the issue is decided in negative.

Issues No. 03, 04 & 05:

All the issues are inter-linked, hence, taken together for discussion.

The plaintiff alleged in his plaint that a suit filed by him was disposed off vide order Dated: 13.09.2019, in the light of the joint statement of the parties which was the result

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of a jirga decision, whereby it was decided that the suit tube-well along with its boundary wall built up on 40 Marlas property was declared as the joint property of the parties. That this joint property would be equally divided between the parties. That despite the aforesaid facts, there remains always a dispute between the parties over the said joint property and the defendant is not allowing the plaintiff to utilize his share or develop his share in the joint property. That the defendant was asked time and again to divide the aforesaid joint land and hand over the possession of the same to the plaintiff, but he refused, hence, the present suit. For this, the plaintiff produced witnesses, in whom Mr. Fazal Khaliq, the plaintiff himself appeared as PW-01, who produced a copy of the court order which is Ex.PW-1/1 and further narrated the same story as in his plaint. Further, Mr. Jannat Khan and Lal Zada, the jirga members appeared as PW-02 and PW-03 respectively, who both endorsed the fact that the issue between the parties w.r.t the suit property was resolved by them through jirga and whereby 10 persons each from both the parties took oath and it was decided that the suit property would be equally partitioned between the parties. All the witnesses have been cross examined but nothing tangible against the plaint have been extracted out of them during cross examination.

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In rebuttal, the defendant produced witnesses, in whom, Mr. Abdul Habib, Abid Ur Rehman and the defendant himself namely Abdur Rehman appeared as DW-01, DW-02 and DW-03 respectively. All these witnesses denied the claim of the plaintiff in their examination in chief but all of them admitted in their cross examination that the issue between the parties w.r.t the suit land was resolved through a jirga decision that the same would be equally partitioned between the parties. Over and above this, the defendant as DW-03 has admitted that he has got no objection over the declaratory suit of the plaintiff which was disposed off in the light of the joint statement of both the parties and that he has also got no objection if the suit property is partitioned in the light of that decision.

Thus, in the light of the aforesaid findings, all these issues are decided accordingly.

Issues No. 01 & 06:

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

As sequel to my above findings, on issue no. 03, 04 and 05 the plaintiff has got a cause of action and therefore entitled to the decree as prayed for. Therefore, both these issues are decided in positive.


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Relief

As sequel to my above issue-wise findings, suit of the plaintiff is hereby preliminarily decreed as prayed for. Costs shall follow the event.


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

Announced
13.11.2021


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

CERTIFICATE

Certified that this judgment of mine consists of 07 pages, each has been checked, corrected where necessary and signed by me.


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