

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

Civil Suit No. 83/1 of 2020  
 Date of Institution: 24.01.2020  
 Date of Remand 27.02.2021  
 Date of Decision: 20.11.2021

1. *Bibi Syed Marjana d/o Dost Ali, R/O Qoum Mamozai, Tappa Ado Khel, Wali Khel, Dago, p/o Ghiljo, Tehsil Upper, District Orakzai.*

*(Plaintiff)*

**VERSUS**

1. *Fazal Muhammad s/o Sher Muhammad.*  
 2. *Muhammad Ghani s/o Gul Asghar*  
 3. *Salim s/o Jabbar*  
*(All R/O Qoum Akhel, District Orakzai)*

*(Defendants)*

**SUIT FOR DECLARATION-CUM-PERPETUAL AND  
 MANDATORY INJUNCTION AND POSSESSION**

**JUDGEMENT:**

20.11.2021

Plaintiff Syed Marjana has brought the instant suit for declaration-cum-perpetual and mandatory injunction and possession in the alternate against defendants, seeking therein that the suit house measuring 20 Marla and field measuring 1 Jirab, the boundaries of which are mentioned in the head note of the plaint, is the ancestral property of the plaintiff and defendants have nothing to do with it. That the suit property was in her possession along with other family members before the arrival of the militants in the area but due to law and order situation the Plaintiff had to leave her

*Rehmat Ullah Wazir*  
 Civil Judge-I  
 Orakzai at Baber Mela

house and shifted to the settled Area. That on return back to the area, the suit house/property was taken into possession by the defendants, which is illegal and ineffective upon the rights of the plaintiff.

That the defendants were asked to vacate the illegal possession of the property and hand over the same to the plaintiff and admit the claim of the plaintiff, but they refused, hence, the present suit.

Defendants were summoned, who appeared before the court and contested the suit by filing their written statement, wherein they raised some factual and legal objections.

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

**Issues:**

1. Whether the plaintiff has got a cause of action?
2. Whether the plaintiff is estopped to sue?
3. Whether the suit of the plaintiff is time barred?
4. Whether the suit house measuring 20 Marla is the ownership of the plaintiff and was in her possession along with other family members before the arrival of the militants in the area?
5. Whether the suit house is taken into possession by the defendants which is illegal and ineffective upon the rights of the plaintiff?
6. Whether the suit house is the ownership of the defendants while the plaintiff was residing in it as a tenant?
7. Whether the plaintiff is entitled to the decree as prayed for?

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 Mr. Justice  
 Court of Appeal  
 (Fazal vs Marjana)

8. Relief.

Parties were given an opportunity to produce evidence who accordingly produced their respective witnesses.

The plaintiff produced the one Meer Zaman s/o Fazal Rehman as PW-01, who supported the stance of the plaintiff. Further, the plaintiff herself appeared as PW-02, who narrated the same story as in her plaint and thereafter closed her evidence.

In rebuttal, the defendants produced witnesses, in whom, the one Sahib Zada Fazal Muhammad s/o Sahib Zada Sher Muhammad, the defendant no. 01 appeared as DW-01, who fully denied the claim of the plaintiff in his statement rather he asserted that the plaintiff along with her family were his tenants without paying the rent. Further, Mr. Malak Muhammad Rehman s/o Abdur Rehman appeared as DW-02, who also denied the claim of the plaintiff by narrating the same story as in the written statement and he also stated that the plaintiff along with her family were the tenants of the defendants.

My issue-wise findings are as under;

**Issues No. 02:**

The defendants in their written statement raised the objection that the plaintiffs are estopped to sue but later

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Dr. Javed Iqbal  
Chief Justice  
Court of Sessions  
Ghazipur (Bihar State)

61

on failed to prove the same, 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 24.01.2020. Thus, the same is well within time. The issue is decided in negative.

**Issues No. 04, 05 & 06:**


All these issues are interlinked, hence, taken together for discussion.

The Plaintiff alleged in her plaint that the suit house measuring 20 Marla and field measuring 1 Jirab, the boundaries of which are mentioned in the head note of the plaint, is the ancestral property of the plaintiff and defendants have nothing to do with it. That the suit property was in her possession along with other family members before the arrival of the militants in the area but due to law

and order situation, the Plaintiff had to leave her house and shifted to the settled Area. That on return back to the area, the suit house/property was taken into possession by the defendants, which is illegal and ineffective upon the rights of the plaintiff.

That the defendants were asked to vacate the illegal possession of the property and hand over the same to the plaintiff and admit the claim of the plaintiff, but they refused, hence, the present suit.

In support of her contention, the plaintiff produced the one Meer Zaman, her relative as a PW-01, who supported the stance of the plaintiff but admitted in his cross examination that he was not born the time when they shifted from Mamozai rather their parents left that area and also that he has no proof regarding the fact that why these people settled in this area. At the end, he admitted that it is correct that he has no proof regarding the fact that the suit property is the ownership of the plaintiff. The plaintiff herself appeared as PW-02, who asserted her claim in line with the plaint but admitted in her cross examination that it is correct that she has no proof regarding the fact that she is the owner of the suit property. Further, that it is correct that there is no mention of the fact in the plaint that the suit property was given to her father by the Qoum Akhel and further, that she

  
 Rehmat Ullah Wazir  
 Civil Judge (J.C.-I)  
 Orizai at (Babar Mela)

has no witness belonging to Akhel Qoum who may have deposed in favor of ownership of the suit property.

In order to counter the claim of the plaintiff, the defendants produced witnesses, in whom the one Sahib Zada Fazal Muhammad and Malak Muhammad Rehman appeared as DW-01 and DW-02 respectively, who both denied the claim of the plaintiff rather they asserted that the plaintiff along with her family were the tenants of the defendants. They have been cross examined but nothing tangible in favor of the plaintiff has been extracted out of them during cross examination.

Thus, in the light of the aforesaid discussion, the plaintiff badly failed to establish her claim regarding the ownership of the suit property through either oral or documentary evidence. She herself and her sole witness have admitted that they have no proof that she is the owner of the suit property. So far as, the fact of tenancy of the plaintiff along with her family is concerned, admittedly she belongs to Qoum Mamozai while the defendants are of the Qoum Akhel, which are distinct and distant areas and admittedly the family of the plaintiff had to leave the Mamozai area long-long ago on account of an enmity and it used to be a practice in vogue in the Erst-while FATA to give asylum to such like people. Further, she has not produced any person for corroboration of

the fact that her family was given the property in ownership by the Qoum Akhel. Thus, in the light of the said findings, the issue no. 04 & 05 are decided in negative while the issue no. 06 is decided in positive.

**Issues No. 01 & 07:**

Both these issues are interlinked, hence, taken together for discussion.

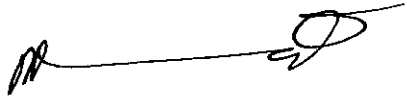
As sequel to my findings on issue no. 04, 05 and 06, the plaintiff has got no cause of action and thus, she is not entitled to the decree as prayed for. Hence, both these issues are decided in negative.

**Relief**

As sequel to my above issue-wise findings, suit of the plaintiff is hereby dismissed with costs.

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

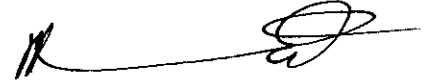
**Announced**  
20.11.2021

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

65

**CERTIFICATE**

Certified that this judgment of mine consists of **08** pages, each has been checked, corrected where necessary and signed by me.



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