

**IN THE COURT OF SYED OBAIDULLAH SHAH**  
**DISTRICT JUDGE, ORAKZAI (AT BABER MELA)**

CIVIL APPEAL NO. : 14/13 OF 2023  
DATE OF INSTITUTION : 05.07.2023  
DATE OF DECISION : 13.12.2023

KHANZA DIN S/O RAZA DIN, R/O CASTE SHEIKHAN, TAPA  
UMARZAI, TEHSIL CENTRAL, VILLAGE MIKHEL ORAKZAI

.....(APPELLANT)

-VERSUS-

MUHAMMAD SAEED S/O AJDADIN, R/O CASTE SHEIKHAN, TAPA  
UMARZAI, TEHSIL CENTRAL, VILLAGE LAKANRE, DISTRICT  
ORAKZAI

..... (RESPONDENT)

**Present:** Mr. Sana Ullah Khan Advocate for appellant  
: Mr. Abid Ali Advocate for respondent

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**JUDGEMENT**

13.12.2023


Impugned herein is the judgment/decreed dated 25.05.2023 of the learned Senior Civil Judge, Orakzai vide which suit of the respondent/plaintiff has been preliminary decreed.

- (2). The respondent/plaintiff through a civil suit before the learned trial court sought declaration-cum-perpetual and mandatory injunctions and possession to the effect that he is owner in possession of the suit property devolved upon him as a result of family partition since his forefathers as detailed in the headnote of the plaint, that the suit property was first given on ijara to one Yar Khan by the respondent/plaintiff in 1981 which was retrieved and later on was given on ijara to the appellant/defendant in 1998 which remained so till 2017, that the respondent/plaintiff retrieved the suit property from the appellant/defendant in 2017 and gave the same to one

  
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Khalil Khan and that the appellant/defendant having got no concern whatsoever with the suit property is bent upon claiming the ownership of the suit property. As per contents of plaint, three separate jirgas were held on 21.07.2017, 01.10.2017 and 23.11.2018 where the dispute between the parties over the suit property has been resolved in favour of the respondent/plaintiff. The appellant/defendant were summoned who contested the suit by submitting his written statement wherein he contended the suit on various legal and factual grounds. Pleadings of the parties were culminated into the following issues;

- I. Whether the plaintiff has got a cause of action?
- II. Whether the plaintiff is estopped to sue?
- III. Whether the suit of the plaintiff is incompetent in its present form due to non-joinder of the necessary parties?
- IV. Whether the plaintiff is owner of suit property but the same was given on ijara to the one Yar Khan s/o Sahib Jan by the father of plaintiff in the year 1981 but the same was retrieved in the year 1998 from the said person and was given to the defendant on ijara, who had been cultivating the same till 2017 and later on, the same was retrieved and was given on ijara to the one Khalil s/o Rehman Mulla?
- V. Whether the one Kohi Patai (a part of the disputed property) was given to the great grandmother of the parties i.e., the wife of the Saif Uddin by the one Jahanzeb Khan s/o Awal Jan in charity, which was later on partitioned between the parties which both the parties including the one Noor Zadin got equal shares?
- VI. Whether suit property is the ancestral property of the defendant and the plaintiff has nothing to do with the same?

  
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VII. Whether the plaintiff is entitled for the decree as prayed for?

VIII. Relief.

(3). Parties were given opportunity to produce evidence.

Accordingly, respondent/plaintiff produced 07 witnesses in support of his contention while on the other hand the appellant/defendant in support of his contention produced 03 witnesses.

(4). After closure of evidence of parties, the learned trial court heard the arguments and preliminary decreed the suit of the respondent/plaintiff. Appellant/defendant, considering himself aggrieved of the impugned decree/judgment, filed the instant appeal.

(5). Arguments heard and record gone through.


(6). Perusal of the case file reveals that as per contents of plaint the suit property is the ancestral property of the respondent/plaintiff devolved upon him from his forefathers as a result of family partition which was given by his father to one, Yar Khan on ijara in 1981. Subsequently, in 1998, it was passed on to the appellant/defendant and later, in 2017, to Khalil Khan. It was also claimed that the appellant/defendant began asserting ownership of the suit property in 2017 when the same was retrieved from him and handed over to Khalil Khan on ijara, whereafter three jirgas were held on 21.07.2017, 01.10.2017 and 23.11.2018 which were ruled in favour of the respondent/plaintiff. To

  
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substantiate his position, the respondent/plaintiff presented witnesses Sawab Gul/PW-1, Saifoor Khan/PW-2 and Umar Gul Haji/PW-6, the jirga members of 23.11.2018 who admitted their signatures over the jirga verdict wherein the matter was resolved in favour of the respondent/plaintiff. Corroborating evidence came from the testimony of PW-3 Khalil Khan, affirming that he had received the property on ijara from the respondent/plaintiff. PW-4 and PW-5 also supported the version of the respondent/plaintiff.

In contrast, the appellant/defendant denied the respondent/plaintiff's assertions while appearing in the witness box as DW-1. He acknowledged inheriting the suit property from his forefathers besides stating that he is unaware of the family partition, if taken place. In his cross examination, he conceded that the respondent/plaintiff attempted to hand over the suit property to Khalil Khan in 2018 but he restrained him as he is owner in possession of the same since his forefathers and the respondent/plaintiff has no legitimate claim to the suit property; instead, they share a civil dispute over a different piece of land, leading to a jirga convened between them.

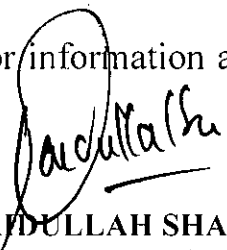
Upon reviewing the record, it's apparent that both the parties admitted the suit property as inherited from their forefathers and remained with the appellant/defendant on ijara until 2017 whereafter it was to be handed over by the

  
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respondent/plaintiff to Khalil Khan but he was restrained by the appellant/defendant. Moreover, as per contention of the respondent/plaintiff, prior to handing over the suit property to the appellant/defendant, it was given on ijara to one, Yar Jan who has not been produced before the learned trial court.

- (7). In these circumstances, this court holds the firm belief that the linchpin of this case is Yar Jan, a crucial witness who has not been examined in the trial court; therefore, the impugned decree/judgment rendered by the learned trial court is set aside. The case is remitted back to the learned trial court with the directions to rewrite the judgment anew, placing a paramount emphasis on the examination of the indispensable witness, Yar Jan.


Judgment announced. File of this court be consigned to Record Room while record be returned. Copy of this judgement be sent to learned trial court for information and compliance.

  
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at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 13.12.2023

  
(SYED OBAIDULLAH SHAH)  
District Judge, Orakzai  
at Baber Mela

