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**IN THE COURT OF FARMAN ULLAH**  
SENIOR CIVIL JUDGE ORAKZAI AT BABER MELA, HANGU

Family Case No. 342/1 of 2020  
Date of Institution: 06/10/2020  
Date of Decision: 12/02//2022

**Muhammad Qasim through legal heirs**  
1/1 Mst Marjan, 1/2 Muhammad Habib, 1/3 Abdul Wali, 1/4 Abdullah, 1/5  
Akhtar Marjana, 1/6 Fazal Khajan  
R/o Qoam Rabia Khel, Tappa Ayaz Khel, Khee Kada, Tehsil Ismail Zai &  
District Orakzai ..... (Plaintiff)

VERSUS

1. Akhtar Man Shah s/o Ghulam Shah
2. Wali Man Shah s/o Ghulam Shah through legal heirs 2/1. Mst Salim Bibi, 2/2 Shah Nawaz, 2/3 Jamshid Khan, 2/4 Bibi Shazia, 2/5 Bibi Shahida, 2/6 Mst Saima Bibi.
3. Gul Zameen Shah s/o Ghulam Shah
4. Marwat Shah s/o Ghulam Shah through legal heirs 4/1 Mst Banu, 4/2 Qowat Shah, 4/3 Haji Badshah, 4/4 Menat Shah, 4/5 Aaji Badshah.
5. Amjad Ullah s/o Khokali Man Shah  
R/o Qoam Rabia Khel, Tappa Ayaz Khel, Khee Kada, Tehsil Ismail Zai &  
District Orakzai.....(Defendants)

**SUIT FOR DECLARATION, PERMANENT AND MANDATORY INJUNCTION  
AND POSSESSION**

**JUDGEMENT:**

12.02.2022

Brief facts of case in hand as per amended plaint are that the plaintiff filed a suit for declaration, permanent and mandatory injunction and possession in alternate to the effect that plaintiff is owner in possession of disputed property and which was given to defendants for cultivation on the basis of half share of produce. That defendants paid the half share of produce to the plaintiff for year 1991 and 1992 and thereafter, did not pay the same till year 2002-03. That due to Talibanization and Military Operation in Orakzai, plaintiff along with his family members shifted to Hangu while disputed property remained

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uncultivated for long time. That as law and order situation improved in year 2016, plaintiff intended to cultivate disputed property but defendants restrained him from doing so and started claim of ownership over disputed property. Against which, plaintiff submitted an application in the court of Assistant Political Agent on 08.02.2017. On which Jirga was constituted by APA. The members of Jirga decided the matter in favour of plaintiff and defendants were held wrong doers. That defendants were repeatedly asked not to interfere in disputed property, but they refused, hence instant suit.

Defendants were summoned, who contested the suit of plaintiff by submitting their written statement, wherein, they raised various legal and factual objections.

The divergent pleadings of the parties were reduced into the following issues.

**ISSUES:**

1. Whether plaintiff has got a cause of action?
2. Whether disputed property is the ownership of plaintiff, which was given to defendants for cultivation on the basis of half share?
3. Whether defendants are owners in possession of disputed property since time of their ancestors?
4. Whether plaintiff is entitled to the decree as prayed for?
5. Relief.

It is pertinent to mentioned that before merger of FATA plaintiff filed an application to the APA Orakzai on 08.02.2017. On such application proceedings were conducted by the APA Orakzai and constituted jirga to decide the matter in controversy between the parties. The jirga members submitted their verdict. However, after merger of FATA, the case was sent to

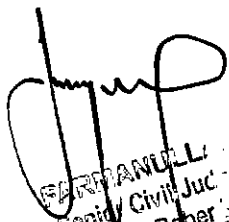
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Senior Civil Judge Orakzai, which was later on transferred to the court of Civil Judge-II, Orakzai and thereafter, amended plaint was submitted by the plaintiff while amended written statement by defendants. The learned Civil Judge-II Orakzai vide order dated: 11.02.2020 disposed of the case by holding it as non-maintainable and defective with the permission to the parties to submit proper pleadings as per law within the time provided by the law. Feeling aggrieved, plaintiff filed appeal before the court of learned ADJ-I Orakzai. The appeal was accepted by the learned ADJ-I Orakzai vide judgment dated: 29.09.2020 and remanded the case to this court with the directions to proceed in accordance with law. Thereafter, the above-mentioned issues were framed. Moreover, plaintiff and defendants No. 2 and 4 died during the pendency of suit, hence their legal heirs were impleaded and summoned. Legal heirs of plaintiff appeared through attorney while legal heirs of defendants No. 2 and 4 after service and appearance did not opt to contest the case rather they remained absent and thus proceeded ex-parte. Similarly, defendant No. 5 was also proceeded ex-parte as neither he himself appeared nor through attorney.

After framing of issues both the parties were provided opportunity to produce evidence in support of their respective contention.

Legal Heirs of plaintiff in support of their contention produced their witnesses as PW-01 to PW-04 while defendant No.1 who is also attorney for defendant No. 3 recorded his statement as DW-01 and other witness was produced as DW-02.

Learned counsel for the parties heard and record gone through. In the light of available record and arguments of counsel for parties, my issue wise discussion is as under:

  
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**Issues No. 02 and 03:**

Both the issues are interlinked and interconnected, hence to avoid the repetition of facts, both the issues are taken together for discussion.

It is the contention of plaintiff that disputed property is his ownership which was given to the defendants for cultivation on the basis of half share of produce while defendants denied the contention of plaintiff and contended that disputed property is their ancestral property and plaintiff has got no concern with the same.

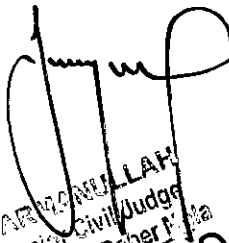
Plaintiff in support of his contention produced Ezat Gul as PW-01, who stated in his examination in chief that jirga was constituted by the APA Orakzai comprising 06 members including 02 members of each party and 02 members nominated by the APA. Thereafter, jirga was held to settle the issue between the parties. The decision of jirga comprising 02 pages is available on file in original is Ex.PW-1/1, the contents of which are correct. He also testified his signature on Ex.PW-1/1 as true and correct and also stated that other members of jirga also put their signatures and thumb impressions in his presence. Islam Bahadar was produced by the plaintiff as PW-02, who stated in examination in chief that Muhammad Qasim submitted an application against Akhtar Man Shah before APA Orakzai. On which jirga, comprising 06 members including 02 members of each party and 02 members nominated by the APA. The contents of decision of jirga members Ex.PW-1/1 are correct and correctly bear my signature as well as signatures of other. He also narrated the detail proceedings of jirga and stated that disputed property was decided in favour of Muhammad Qasim while Akhtar Man Shah was held as  $\text{ظالم}$  (wrong doer). PW-

  
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03 is the statement of Muhammad Ullah Jan, who stated in his examination in chief that he is the permanent resident of locality and the property of the parties is well known to him. That disputed property is the inherited property of Muhammad Qasim, which was given to his grandfather namely Daulat Khan for cultivation by plaintiff in year 1976/77 on the basis of half share of produce and plaintiff regularly received his half share in produce. Later on, plaintiff himself cultivated the disputed property and in the year 1991/92 given to the Akhtar Man Shah for cultivation on the basis of half share of produce. That jirga in respect of disputed property was also held by APA and the jirga members decided the disputed property in favour of plaintiff. PW-04 is the statement of Nasir Ahmad (Attorney for the legal heirs of the plaintiff), who produced the power of attorney as Ex.PW-4/1 and Ex.PW-4/2 and repeated the contents of plaint in detail in his examination in chief.

On other hand defendant No 1, who is also attorney for defendant No. 3 appeared as DW-01 and stated that disputed property is their ancestral property while plaintiff neither belongs to their village nor he has any property in the village. He also stated that he constructed road and pond for disputed property and also cut trees in the same in year 1980. That one side jirga was held and thus they refused to accept its decision. He also stated that witnesses produced by the plaintiff are not impartial as enmity remained between him and them. DW-02 is the statement of Hashim Gul, who stated in his examination in chief that disputed property is the ancestral property of defendants while plaintiff has got no concern with the same. He also stated that witnesses produced by the plaintiff are the enemy of defendants.

  
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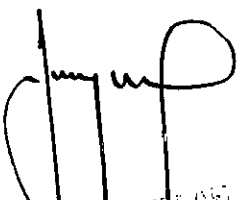
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From the analysis of available record, it is evident that before the merger of FATA, plaintiff submitted an application against defendants regarding disputed property before the APA Orakzai and on which APA constituted 06 members jirga to resolve the dispute between the parties. The majority jirga members gave their verdict, which is available on file as Ex.PW-1/1. However, after merger of FATA, the case file was sent to the Senior Civil Judge Orakzai. PW-01 and PW-02 fully testified the proceedings of jirga as well as contents of jirga decision and their signatures on the same as true and correct. From the statements of both the PWs coupled with the decision Ex.PW-1/1, it is evident that disputed property was decided in favour of plaintiff and defendants were held پڑ (wrong doers). Moreover, PW-03 categorically stated in his examination in chief that disputed property is the ancestral property of plaintiff and the same also remained with his grandfather for cultivation and his grandfather used to give half share of the produce of disputed property to the plaintiff. Facts uttered by the PW-03 regarding the possession of disputed property with his grandfather for cultivation on behalf of plaintiff remained unshattered. During cross examination by defendants, neither such facts were cross examined nor any question in this regard was put to the PW-03. By not cross examining such facts, amount to admission on the part of defendants. Though DW-02 stated in his examination in chief that the witnesses produced by the plaintiff have enmity with defendants but during cross examination stated that he does not know who are the witnesses produced by the plaintiff and he has also no knowledge that with whom Akhtar Man Shah (Defendant No. 1) has enmity. Similarly, the said witness stated in his examination in chief

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that disputed property is the ancestor property of defendant but during cross examination stated that he has not seen the father as well as the grandfather of defendant during his life time as they died before his birth. So, the facts uttered by DW-1 that disputed property is the ancestor property of defendant are without any footing as how can <sup>he</sup> ~~any~~ <sup>he</sup> depose regarding the facts which are prior to his birth. Being such position, the testimony of DW-02 cannot be considered as credible, which can be relied upon. Similarly, DW-01 in his examination in chief stated that one sided jirga was held in respect of disputed property but during cross examination he not only showed his ignorance regarding the jirga but also denied its constitution and existence. Moreover, when DW-01 was asked about his relation with DW-02 during cross examination, then he replied that DW-02 is his friend and villager and denied that his daughter in law is the granddaughter of DW-02 but DW-02 admitted that the daughter in law of defendant No. 1 is his niece. In such eventuality even, the statement of DW-02 cannot be considered as trustworthy. Similarly, defendants could not produce a single witness regarding the fact that prior to year 1991/92 disputed property remained in possession of defendants or with their predecessors. Contrary to this, the decision of jirga members Ex.PW-1/1 and the statement of PW-1 and PW-2 supports the contention of plaintiff. Similarly, the statement of PW-3 also corroborates the stance of plaintiff and his testimony is also relevant for the reason that he belongs to same village where the disputed property is situated and the disputed property also remained in the possession of his grandfather for cultivation on behalf of plaintiff. So, the available record establishes that disputed property is the ownership of plaintiff and the same was

  
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given to the defendants for cultivation on the basis of half share of produce and defendants have got no concern with its ownership.

Hence issue No. 2 is decided in positive while issue No. 3 in negative.

**Issue No. 01 and 04:**

These issues are taken together. For what has been held in issue No. 2 & 3, this court is of the opinion that plaintiff has got cause of action and he is also entitled to the decree as prayed for.

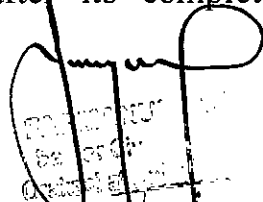
Hence, issues No. 1 and 4 are decided in positive.

**Relief:**

As sequel to above discussion, it is held that plaintiff has proved his stance through cogent and confidence inspiring evidence, hence, suit of plaintiff is hereby decreed against the defendants as prayed for. No order as to costs.

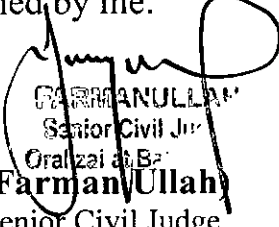
File be consigned to the record room after its completion and compilation.

**Announced**  
12/02/2022

  
(Farman Ullah)  
Senior Civil Judge,  
Orakzai at Baber Mela, Hangu.

**CERTIFICATE**

Certified that this judgment of mine consisting of 08 (eight) pages, each has been checked, corrected where necessary and signed by me.

  
FARMANULLAH  
Senior Civil Judge,  
Orakzai at Baber Mela,  
(Farman Ullah)  
Senior Civil Judge,  
Orakzai at Baber Mela, Hangu.