

IN THE COURT OF SAMI ULLAH, CIVIL JUDGE-I,
ORAKZAI (AT BABER MELA).

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Civil suit No 29/1 Neem
Date of original institution 17.03.2021
Date of transfer in 06.07.2022
Date of decision 13.12.2023

1. Muhammad Fareed S/o Muhammad Rauf
2. Muhammad Rauf S/o Tahir Shah

Both residents of Qoam Mamozai, Tappa Ado Khel, Bor Khan Nawasi,
Tehsil Upper, District Orakzai.

..... (Plaintiffs)

Versus

1. Sakhi Badshah S/o Khitab Gul
2. Khan Muhammad S/o Sakhi Badshah

Both residents of Qoam Mamozai, Tappa Ado Khel, Bor Khan Nawasi,
Tehsil Upper, District Orakzai.

.....(Defendants)

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

JUDGMENT:

1. Brief facts of the case are that plaintiffs filed the instant suit for declaration, permanent & mandatory injunction and possession to the effect that disputed property was the ownership of Noor Haleem, who sold out the same to defendants in Year 1997 and on which plaintiff expressed to exercise his right of preemption in accordance with the prevailing custom of the locality. Due to which dispute erupted between the parties in respect of disputed property. That later on defendants submitted an application to the Shora of Taliban and it was

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decided that half of purchased property would be given to the plaintiff and half to the defendants. That plaintiffs paid the sale consideration Rs.170,000/- of the disputed property to the defendant No.2 in presence of witnesses namely Habib Ur Rehman and Ibrahim on 20.09.2008 and since then plaintiffs are owner in possession of disputed property. That defendants were asked time and again to admit the legal claim of plaintiffs but in vain, hence, the present suit.

2. After due process of summons the defendants appeared in person and contested the suit by submitting written statement in which contention of the plaintiffs were resisted on many legal as well as factual grounds.
3. The divergent pleadings of the parties were reduced into the following issues.

ISSUES.

1. *Whether the plaintiffs have got cause of action?*
2. *Whether plaintiffs purchased disputed property from defendants by exercising his right of pre-emption and paid sale consideration of disputed property Rs.170,000/-(One lac seventy thousand) to defendant No.2 on 20.09.2008?*
3. *Whether the plaintiffs are entitled to the decree as prayed for?*
4. *Relief.*

4. Parties were afforded with ample opportunity to adduce evidence. Plaintiffs in support of their claim and contention produced 03 Witnesses. Detail of the plaintiff's witnesses and exhibited documents are as under; -

	WITNESSES	EXHIBITIS

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PW-1	Muhammad Fareed S/o Muhammad Rauf Resident of Qoam Mamozai, Upper District Orakzai.	Nil
PW-2	Habib Ur Rehman S/o Sabir Shah Resident of Qoam Mamozai, Upper District Orakzai.	Nil
PW-3	Ibrahim S/o Habib Ur Rehman Resident of Qoam Mamozai, Upper District Orakzai.	Copy of his CNIC is Ex.PW-3/1.

Defendants in support of his claim and contention produced three (03) witnesses. Detail of defendant's witnesses and exhibited documents are as under;

WITNESSES		EXHIBITIONS
DW-1	Haji Rehman S/O Sakhi Badshah, resident of Abdul Khel, Ghiljo, Upper Orakzai.	Special power of attorney is Ex.DW-1/1. Copy of his CNIC is Ex.DW-1/2.
DW-2	Noor Hadim Shah alias Noor Halim Shah S/o Nazar Shah Resident of Abdul Khel, Ghiljo, Upper Orakzai.	Copy of his CNIC is Ex.DW-2/1.
DW-3	Ajab Khan S/o Janat Khan Resident of Qoam Mamozai, Tappa Ado Khel, District Orakzai.	Copy of his CNIC is Ex.DW-3/1.

Learned counsel for the plaintiffs Mr. Noor Kareem Advocate argued that plaintiffs have produced cogent evidence and reliable witnesses to

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prove that the suit property was purchased by the father of the plaintiff No.1 in lieu of rupees 1,70,000. That father of the plaintiff No.1 was impleaded in the instant case as plaintiff No.2, thereby addressing the question of non-joinder of necessary party. That the witnesses are consistent in their statements. Further argued that in absence of any documentary evidence in District Orakzai, plaintiffs have proved their case.

6. Learned counsel for the defendants Mr. Shaheen Muhammad Advocate argued that the plaintiffs have not produced sufficient evidence in order to proof their case. That the statement of the plaintiff witnesses is full of admissions in favour of the stance of the defendants. That it is not established in evidence that who has handed over the sale consideration to the defendant No.2. Furthermore, plaintiffs don't have any documentary proof of any Jirga or their verdict and any document which might have proved receiving of the sale consideration in shape of Rs.170,000 by defendant No.2.
7. After hearing arguments and after gone through the record of the case with valuable assistance of learned Counsels for both the parties, my issue-wise findings are as under:

ISSUE NO.2:

Whether plaintiffs purchased disputed property from defendants by exercising his right of pre-emption and paid sale consideration of disputed property Rs.170,000/-(One lac seventy thousand) to defendant No.2 on 20.09.2008?

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9. The claim of the plaintiffs is that they are owner in possession of the

suit property measuring approximately 60 Marla by payment of sale consideration stated above in accordance with the decision of a jirga. The said jirga decided that half of the suit property would be the ownership of the defendants and half would be given to the plaintiffs after payment of the sale consideration, which they paid to the defendant No.2 through Habib ur Rehman and Ibrahim. Burden of proof regarding the issue was on plaintiffs. Plaintiffs in order to discharge this duty, produced three witnesses. The essence of their statements which helped in deciding the issue are as under.

10. Muhammad Farid who is plaintiff No.1 in the instant case deposed as PW-01. In support of his claim he stated in his examination in chief that the suit property was purchased by him on 20th September, 2008 by payment of sale consideration of rupees 170,000 to the defendant No.2 through Habib Ur Rehman and Ibrahim and since then he is in possession of the same. The said PW further narrated the contents of his plaint. The said PW stated in his cross examination that his father is alive and he has other siblings. It is pertinent to mention here that his father was later on impleaded in the instant case and admission in his cross examination regarding non-joinder of the parties then became irrelevant. The said PW further stated that it is correct that I myself have not paid the said amount to the defendant No.2 but was paid through Habib Ur Rehman and Ibrahim. Further stated that the said amount was given to the aforementioned person by his mother, who they didn't produced to testify the said fact.

11. PW-02 is the statement of Habib Ur Rehman, who supported the

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stance and contention of plaintiffs in his examination in chief and stated that I along with Ibrahim had given the amount of sale consideration to the one Ameen Ullah which was contradicted by his own statement in cross examination that the said amount was handed over to the defendant No.2 by Ibrahim. The said PW recorded in his cross-examination that Ibrahim is his son. He admitted in his cross examination that at the relevant time he was residing with the plaintiffs when the sale was concluded. The said PW further stated that the decision of the jirga was in written form, however, the same was not produced before the court in the instant case.

12. Ibrahim deposed as PW-03 and recorded his examination in chief in support of the claim and contention of the plaintiffs. The said PW recorded in his cross examination that he has handed over the said amount to the defendant No.2. No new fact/ contradiction was brought in his further statement.
13. Defendants in rebuttal of the stance of the plaintiffs produced three witnesses. The essence of the statements of defendants' witnesses is as under.
14. Defendant No.2 appeared as DW-01 and recorded his statement that the suit property was purchased by my father around thirty years ago in lieu of sale consideration of rupees three lacs. We have constructed a house on the suit property and the plaintiffs through various persons has pressurized and stopped the construction of the said house when it was in construction process. He recorded in his cross examination that the time when I received a notice in the instant case, the house was

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already constructed and we are now residing in the said house. The said DW negated the suggestion in his cross examination that he ever received rupees 170,000 in lieu of the property from the plaintiffs. However, he admitted that a jirga has convened last year who has suggested return of the said amount which he refused to accept as the amount was not received by him.

15. The second witness of the defendants was Noor Haleem Shah the person who has sold the disputed property to the defendant No.1 and has recorded his examination in chief in favour of the contention of the defendants. He admitted in his cross examination that the jirga conducted previous year has passed its verdict regarding return of rupees 170,000 by the defendant to the plaintiffs, however the defendants have refused to accept the decision/ suggestion of the said jirga.
16. Similarly, Ajab Khan also testified in favour of the defendants in support of the stance of the defendants. No new facts were brought before the court in the said statement.
17. The statements of the witnesses brought the facts before the court, mentioned above which provided reason for deciding the issue. The crux of the above noted points in the statements are as follow. Firstly, there is no documentary proof of the jirga taken place in the Talibanization era which has ordered payment of the said amount, although PW-02 stated in his statement that the jirgas' lead member/ Qazi has written his verdict. Secondly, the purchase of the suit property by the defendant No.1 in the year 1997 is admitted by the

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plaintiffs. It is pertinent to mention here that the suit property was purchased by the defendant No.1 in the year 1997 as admitted in the plaint and the right of pre-emption was determined by the jirga in the year 2008, which is not appealing to the prudent mind. Thirdly, the possession of the defendants is admitted in the pleadings as well as in evidence. And long-standing possession in absence of any documentary record in the newly merged district of Orakzai is of foremost importance. Fourthly, there is no documentary proof of whatsoever which might have proved the receiving of the said amount by the defendants or their agents. Fifthly, the statement of the PWs were inconsistent about the payment of the sale consideration to the defendant No.2. The plaintiffs in their plaint and PW-01 stated that Habib Ur Rehman and Ibrahim have paid the said amount to the defendant No.2. While Habib Ur Rehman stated in his statement that he has given the said amount to Amin Ullah for giving it to the defendant No.2 and it is not established that defendants had received the said amount.

18. Keeping in view the above discussion, it is held that plaintiffs have failed to produced cogent, convincing and reliable evidence in support of their claim, therefore, issue No.02 is decided against the plaintiffs based on their evidence and admissions made by the witnesses.

ISSUE NO. 1 and 3:

Whether plaintiffs have got cause of action?

Whether plaintiffs are entitled to the decree as prayed for?

19. Both these issues are interlinked, therefore, are taken together for

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discussion.

20. The discussions on the above referred issues show that plaintiff has failed to prove his case by fulfilling the requirements of law and by producing cogent and confidence inspiring evidence; therefore, he has got no cause of action. Therefore, the plaintiffs are not entitled to the decree as prayed for.
21. The issues No.01 and 03 are decided in negative and against the plaintiffs.

RELIEF:


22. The detailed discussion on issues mentioned above transpires that the plaintiffs have failed to prove their case against the defendants by proceedings cogent and confidence inspiring oral or documentary evidence. Hence, suit of the plaintiffs is **Dismissed**.
23. Cost to follow the events.
24. File be consigned to record room after its necessary completion and compilation.

Announced
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CERTIFICATE: -

Certified that this judgment consists of nine (09) pages. Each and every page has been read over, corrected and signed by me where ever necessary.


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