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IN THE COURT OF BAKHT ZADA,
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Civil Suit No. 77/1 of 2021
Date of Original Institution: 22.11.2021
Date of Transfer In: 17.07.2022
Date of Decision: 08.12.2023

1. **Mubarak Shah s/o Khyal Badshah**
 2. **Muhammad Shakeel s/o Mubarak Shah**
Both R/O Qoum Mamozai, Tappa Mir Kalam Khel, Tehsil Upper,
District Orakzai.
- (Plaintiffs)

VERSUS

1. **Nek Badshah s/o Gul Badshah**
 2. **Islam Badshah s/o Gul Badshah**
 3. **Muhammad Rafiq s/o Islam Badshah**
All R/O Qoum Mamozai, Tappa Mir Kalam Khel, Tehsil Upper,
District Orakzai.
- (Defendants)

SUIT FOR RECOVERY OF DAMAGES

JUDGEMENT:

08.12.2023

Plaintiffs Mubarak Shah s/o Khyal Badshah and Muhammad Shakeel s/o Mubarak Shah, caste Mamozai, Village Wadan, Ghiljo, District Orakzai have brought the instant suit against defendants Muhammad Abdullah s/o Gul Badshah and 02 others, for recovery of damages amounting to Rs. 16,00,000/- (16 lacs) suffered by the plaintiffs due to mischief and false statement of the defendants, the details of which are as follows;

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1. Restraining the survey team from conducting survey of 03 houses of the plaintiffs, the compensation for each house was Rs. 400,000/- and total Rs. 12,00,000/- which was to be received by the plaintiffs.
2. For mental torture and embarrassment in the locality an amount of Rs. 300,000/-.
3. Counsel/Lawyer's Fees = 100,000/-.

The plaintiffs alleged that he is resident of upper Orakzai. That during the recent militancy and terrorism in the area, the houses of almost all people of Mamozai caste were damaged and in December 2020, survey for compensation of destroyed houses was underway. The survey team for the said houses was consisted of Tehsildar and Army Major etc. The team was mandated with the task to prepare damage report after survey at the spot. That the defendants along with plaintiff No. 01 were elders/members of the village committee. It is alleged by the plaintiff that defendant No. 01 being member of the committee asked the survey team at the time of survey of his houses that plaintiff No. 01 is a cruel person and restrained them from conducting survey of his houses. Due to the said act of defendant No. 01, the survey team went back without

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conducting survey of the 03 houses of the plaintiffs. That plaintiff is a patriot person and has served in Levi Force in hard times when almost all the officials from Mamozai tribe refused to perform their duties due to fear and threats of the terrorists. That defendants are involved in depriving the plaintiffs from getting compensation of the damaged houses by misrepresentation and false statements before the survey team due to which the plaintiffs suffered from mental torture and embarrassment in the area. That the defendants were asked to pay damages for the said mental torture, embarrassment and financial loss as mentioned in the heading of the plaint, but they refused to do so and hence, the instant suit.

Defendants were summoned who appeared before the court along with counsel Khursheed Alam advocate and contested the suit of the plaintiffs by submitting written statement.

The divergent pleadings of the parties were reduced into the following issues by my learned predecessor in office.

Issues:

1. *Whether the plaintiffs have got cause of action?*
2. *Whether the suit of the plaintiffs is within time?*
- Whether the plaintiffs are entitled to the recovery from defendants an amount of Rs. 12,00,000/- as damages for their damaged*

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houses which was to be received by them under CLCP, but due to conspiracy of defendants, they were deprived of the same?

4. Whether the plaintiffs are entitled to the recovery of Rs. 16,00,000/- in total as damages for mental torture and financial loss etc. caused due to conspiracy of the defendants
5. Whether plaintiffs are entitled to the decree as prayed for?
6. Relief?

Parties were given opportunity to produce evidence in support of their respective claims. The plaintiffs produced and recorded the statements of following PWs,

PW-01: Mubarak Shah s/o Khyal Badshah, plaintiff No. 01, appeared as PW-01. He being plaintiff repeated the story as alleged in the plaint and alleged that the defendants instigated the survey team not to conduct survey of his house. He was cross-examined by the counsel for the defendants.

PW-02, is the statement of Abdul Salam s/o Khyal Badshah. He stated that the plaintiff exchanged harsh words with the survey team for the reason that why they are not conducting the survey of his house. He further disclosed that on inquiry he was told by the defendant that he has told the survey team that plaintiff is a cruel person and that he is bent upon in gulping the rights of his sisters-in-law.

PW-03: Gul Salam s/o Khyal Badshah appeared as PW-03 who repeated the same story as deposed by PW-02. Both PW-02 and PW-03 were cross-examined by the counsel for the defendants.

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On the other hand, defendant No: 01 Abdullah alias Nek Badshah appeared as DW-01. He stated that he was representative of the village committee. Major Hashim was Incharge of the survey team. The plaintiff was given a chit by Tehsildar Khaista Akbar whereupon the names of affectees were written. Major Hashim got angry on the queries of the plaintiff and he expelled the plaintiff from the committee. He also stated that plaintiff lodged a report against him at PS Ghiljo and SHO PS Ghiljo summoned him to PS but later on Major Hashim called the SHO to release him. He alleged that after transfer of Major Hashim, he filed the instant frivolous suit against him.

After closing of evidence of the parties, arguments of the learned counsel for the parties were heard and available record perused.

My Issue wise findings are as under: -

Issue No. 02:

It is alleged at para no. 09 of the plaint that the defendants were asked to admit the claim of the plaintiffs regarding damages and mental torture, but they refused and threatened the plaintiffs continuously. This fact is not denied by the defendants in their written statement. Furthermore, the alleged survey was conducted in the year 2020 and the instant suit has been brought on 22.11.2021. The suit of the plaintiffs

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is well within time under the law. The issue is decided in positive.

Issue No. 03 & 04:

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


It is the case of the plaintiffs that they are entitled for recovery of damages amounting to Rs. 16,00,000/- (16 lacs) suffered by them due to mischief and false statement of the defendants, the details of which are as follows;

4. *Restraining the survey team from conducting survey of 03 houses of the plaintiffs, the compensation for each house was Rs. 400,000/- and total Rs. 12,00,000/-.*
5. *For mental torture and embarrassment an amount of Rs. 300,000/-.*
6. *Counsel/Lawyer's Fees = 1,00,000/-.*

During the course of evidence, the plaintiff No. 01 appeared himself as PW-01 in order to prove his stance and stated that the survey team refused to conduct survey of his house on the ground that they were told by the defendant that plaintiff is a cruel person. The survey team also expelled him

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from the membership of the village committee. He further disclosed that later on he came to know from defendant No. 01 that he has restrained the survey team from conducting survey of the houses of the plaintiffs. The plaintiffs have not produced any evidence to the effect that in whose presence defendant No. 01 has made any misstatement about the plaintiffs. No other PW has uttered a single word about the alleged misstatement. The survey team was consisted of several members and they according to SOPs used to visit the damaged houses at the spot for preparation of compensation report, but neither any member of the survey team has been made party to the suit nor any of the members have been produced before the court as PW in order to prove the claim of the plaintiff. It is not appealing to prudent mind that survey team consisted of responsible members like serving major from Pakistan Army and Tehsildar from district administration can refuse to conduct survey only at the statement of an ordinary member of the village committee without due satisfaction at the spot. Furthermore, no documentary evidence in respect of the refusal of the survey team is brought on record by the plaintiffs during the course of evidence. The plaintiffs have not brought any documentary evidence regarding the sanction of compensation of Rs.


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400,000/- per house on the case file. The details of 03 houses are also not mentioned in the plaint, furthermore no evidence regarding mental torture allegedly suffered by the plaintiff is brought on record in shape of any medical prescription from any psychiatrist and expenses incurred by the plaintiff on the treatment of the same. No receipt or statement of the counsel regarding counsel fee is available on the case file which all clearly shows that the plaintiffs to prove their allegation against the defendants through any direct evidence, therefore, issue No. 03 & 04 both are decided in negative

Issue No. 01 & 05:

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

As sequel to my findings on issue No. 03 & 04, the plaintiffs have failed to prove their stance through cogent oral and documentary evidence, therefore, Issue No. 01 & 05 are decided in negative.

RELIEF:

As sequel to my above issue-wise findings, the plaintiffs failed to prove their case through cogent oral and documentary evidence. Furthermore, they have neither arrayed

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the survey team as defendant nor any of its member is produced as witness to substantiate the claim of the plaintiff, therefore suit of the plaintiffs is hereby dismissed with no order as to cost.

Case file be consigned to the record room after its necessary completion and compilation.

Announced
08.12.2023

Bakht Zada
8.12.23
(Bakht Zada)
Senior Civil Judge,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this judgment of mine consists of nine (09) pages, each has been checked, corrected where necessary and signed by me.

Bakht Zada
8.12.23
(Bakht Zada)
Senior Civil Judge,
Orakzai at (Baber Mela)