

(8)

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, ORAKZAI.

IDA No: 01 of 2022
Date of Institution: 03.03.2022
Date of Decision: 14.06.2022

Muhammad Ibrahim son Khial Baz, resident of Qaum Mishti, Tappa Mamizai, Mir Ghara District Orakzai.
..... (Complainant)

VERSUS

1. Naseeb Gul son of Ali Akbar, resident of Mir Ghara Mishti, District Orakzai.
2. Adnan son of Noor Bat Khan, resident of Mir Ghara Mishti, District Orakzai.
3. Noor Rehman son of Seen Akbar, resident of Qaum Mishti, village Mir Ghara District Orakzai.
4. Shamim son of Hafiz Ur Rehman, resident of Qaum Mishti, village Mir Ghara District Orakzai.
5. Habib Ur Rehman son of Muhammad Afzal, resident of Qaum Mishti, village Mir Ghara District Orakzai.

..... (Accused/Respondents)

Present:

Mr. Zahoor Ur Rehman Advocate for complainant.

Complaint u/s 3, 7 & 8 Illegal Dispossession Act, 2005

JUDGMENT

The story narrated in the contents of complaint is such that the complainant being real son of owner Khayal Baz is looking after the affairs of the property on his behalf due to extreme old age. He while ploughing through tractor in Sheen Baz Patay measuring 04 kanal 0 marla situated at Mir Ghara of Mishti Mela, Orakzai was illegally restrained by respondents from cultivation of the land which is exclusive ownership of his father. The respondents are property grabbers and forcibly possess the land of others in the area. This forcible dispossession with no title in the disputed property being unlawful act with criminal intention was subjected in instant petition under the provision of Illegal Dispossession Act, 2005.

SAYES FAZAL WADOOD
A/c: District Sessions Judge
Orakzai at Hangu

2. Statement of complainant was recorded on oath and the matter was referred to SHO, Mishti Mela for investigation. Investigation report was received and counsel for petitioner was heard on maintainability. The Investigation Report dated 10.03.2022 was found incomplete and re-investigation in line with observations recorded in Order No. 6 dated 11.05.2022 was asked by this Court. Subsequent Report of SHO concerned was presented and arguments of learned counsel have been heard for determination of maintainability.

3. The Investigation Officer has visited the spot and prepared site plan. He recorded the statements of local elders and procured the documents pertaining to ownership. It is in report that Naseeb Gul is presently occupying the disputed land as tenant of respondents. The tenant cultivated the land and respondents are enjoying the ownership and possession of the property as ancestral one. It is further reported that the predecessor in interest of respondent has sold out some portion of the property to one Hussain Akbar about 35 years back and his son Noor Rahman is owner in possession of such part so far.

4. Mr. Zahoor Ur Rehman Advocate representing complainant while arguing the maintainability of petition was of the stance that the dispute over the property is established. The possession of respondents is confirming the allegation of dispossession of the complainant. It was added that all the ingredients required for taking cognizance are being fulfilled and the petition is fit for issuing notice to respondents and procuring evidence.

5. The Court after receipt of the Investigation Report is required to apply its mind whether to further proceed or not with the matter. Consequential power of the Court is flowing out to hold the complaint maintainable or otherwise (PLD-2008 Peshwar-49). This Court is therefore, determining the maintainability by examination of the contents of the petition, investigation

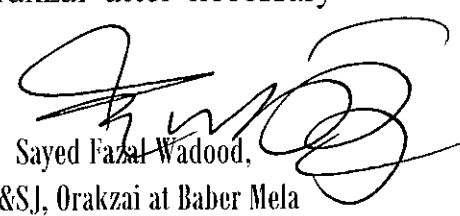
report and ¹⁰ re-investigation, the available evidence and professional assistance rendered by learned counsel representing complainant, in following terms.

6. In order to constitute an offence under Section-3(I) of the Illegal Dispossession Act, 2005, the complainant is required to prove that; the complainant is the actual owner (or occupier i.e in lawful possession) of the immovable property in question; the accused have entered into (or upon) the said property; that the entry of accused into (or upon) the said property is without any lawful authority; that the accused have done so with the intention to dispossess (to grab or to control or to occupy) the complainant. In present case, the Investigation Reports, the statements of local elders and other material speaks about the ownership and possession of the respondents as ancestor were that can easily exclude the existence of prerequisites for attracting the provisions of the Illegal Dispossession Act, 2005. Similarly, no evidence is on record to show that respondent had illegally taken the possession over suit property.

7. For what has been discussed above, this Court finds that the contents of the application are neither supported in the first and second Investigation Report nor the statements and documents procured during investigation. Resultantly, the petition stands dismissed under Section-5(2) of the Illegal Dispossession Act, 2005, on the score of maintainability.

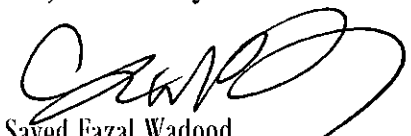
8. File be consigned to District Record Room Orakzai after necessary completion and compilation within span allowed for.

Announced in open Court
14-06-2022


Sayed Fazal Wadood,
AD&SJ, Orakzai at Baber Mela

CERTIFICATE

Certified that this judgment is consisting of three (03) pages. Each page has been read, corrected and signed by me wherever, necessary.


Sayed Fazal Wadood,
AD&SJ, Orakzai at Baber Mela